



**Sketty (Legal Administrator of the estate of Nassor Ali Nahdy) v Mahsoud
aka Awadh Mas (Environment and Land Miscellaneous Application
51 of 2021) [2022] KEELC 13600 (KLR) (11 October 2022) (Ruling)**

Neutral citation: [2022] KEELC 13600 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION 51 OF 2021
MAO ODENY, J
OCTOBER 11, 2022**

**IN THE MATTER OF: AN APPLICATION FOR LEAVE TO APPLY FOR AN
ORDER OF COMMITAL TO CIVIL JAIL FOR CONTEMPT OF COURT ORDERS**

BETWEEN

**MUNIR MOHAMED SKETTY (LEGAL ADMINISTRATOR OF THE ESTATE
OF NASSOR ALI NAHDY) PLAINTIFF**

AND

AWADH MAHSOUD AKA AWADH MAS DEFENDANT

RULING

1. This ruling is in respect of a Notice of Motion dated 17th November 2021 by the Plaintiff/Applicant seeking the following orders: -
 - a. That an order of commital to be made against Awadh Mahsoud a.k.a Awadh Mas the defendant herein to prison for such a period as this Honourable court may deem fit and just in that he, the said Awadh Mahsoud a.k.a Awadh Mas has disobeyed a court order issued by the Honourable in Kilifi CMELC Case No. 13 OF 2021 Munir Mohamed Sketty (Suing as the legal administrator of the Estate of Nassor Ali Nahdy) vs Awadh Mahsoud a.k.a Awadh Mas on the 8th of March 2021 Inter alia Restraining the defendant/Respondent herein from trespassing, encroaching, demolishing, building, selling, dividing, disposing off, alienating or in any other manner having any dealings with parcel of land situate in Kilifi County known as Plot No. 89/284/III/MN pending the hearing and determination of this suit.
2. Counsel agreed to canvas the application vide written submissions which were duly filed.



3. A brief background to the case as stated in the sworn affidavit of Munir Mohamed Sketty the Plaintiff/Applicant herein is that he was granted temporary orders of injunction dated 8th March 2021 restraining the Defendant/Respondent herein and/or his agents, employees, servants or any other person acting at his behest from trespassing, encroaching, demolishing, building, selling, dividing, disposing of, alienating or in any manner having any dealings with the parcel of land situate in Kilifi county known as Plot No. 890/284/III/MN pending hearing and determination of the suit.
4. The Applicant further stated that the Respondent was served with the order but he ignored and disobeyed the said order therefore in in contempt of Court.
5. The Respondent opposed the application and submitted that the application is an abuse of court process and that the Applicant has not met the requisite legal threshold for grant of such orders and urged the court to dismiss the application with costs.

Analysis And Determination

6. I will not belabor much on this application as it should have been filed in the court that issued the orders of temporary injunction which the Plaintiff claims to have been disobeyed.
7. The Black's Law Dictionary 9th Edition defines contempt of court as ;-

“conduct that defines the authority or dignity of a court. Because such conduct interferes with the administration of justice, it is punishable usually by fine or imprisonment”
8. Section 10 of the Magistrate's Court's Act vests into the Magistrate's Courts power to punish for contempt not only in the face of the court but also in civil proceedings which is provided for under the section as follows: -

“In the case of civil proceedings, the willful disobedience of any judgment, decree, direction, order, or other process of a court or willful breach of an undertaking given to a court constitutes contempt of court.”
9. Sections 5 and 6 of the contempt of Court Act, 2016 empowers the subordinate court to punish for contempt of court, whether it is contempt in the face of the court, or for disobedience of any lawful court orders.
10. Section 38 of the Contempt of Court Act provides that the provisions of the Act shall supersede any other written law relating to contempt of court which include Section 5 of Judicature Act (repealed as stipulated in Section 38 of the contempt of Court Act, among other written laws.
11. Similarly, Section 63(1) of the Civil Procedure Act and Order 40 of the Civil Procedure Rules both give the court whose orders are disobeyed in breach of an order of temporary injunction the power to punish for contempt. However, it should be noted that such power is limited to breach of a temporary injunction only.
12. Section 63(1) provides that: -

“In order to prevent the ends of justice from being defeated, the court may, if it is so prescribed-

 - (a) Grant a temporary injunction and in case of disobedience commit the person guilty thereof to prison and order that his property be attached and sold.



13. Order 40 Rule 3 (1) of the Civil Procedure Rules, provides that: -

“In case of disobedience or breach of any of such terms, the court granting an injunction may order the property of the person guilty of such disobedience or breach to be attached and may also order such a person to be detained in prison for a term not exceeding six months unless in the meantime the court directs his release.”

14. In the case of Ramadhan Salim –v- Evans M. Maabi t/a Murphy Auctioneers and Winfred Wanjiku Gatbo [2016] eKLR the Court of Appeal held that: -

“the only jurisdiction the Magistrate’s Court could exercise when dealing with contempt of court is, if it is committed in the face of the court or as set out in Section 10 of the 2015 Magistrate’s Court’s Act.”

15. The Court further stated as follows: -

“However, unlike the Magistrate’s Court which had no powers to punish for contempt, save when it was contempt in the face of the Court or if there was disobedience of temporary injunction, the High Court had no such limitation. That jurisdiction is expressly provided for in Section 5(1) of the Judicature Act...”

16. In the case of GO v ACG [2022] eKLR Muchelule J (as he then was) struck out an application for contempt and stated thus: -

“This means that, if the applicant felt that the respondent had willfully disobeyed the orders issued on 27th November 2018 by the Children’s Court he ought to have filed a notice of motion before the same court seeking that she be found guilty of contempt of the orders and be punished for it. He instead came before the wrong court.”

17. I had earlier stated that the order the Applicant is seeking to cite the Respondent for contempt was an order of temporary injunction which is within the Magistrates Court mandate to hear and determine.

18. I therefore strike out this application with costs to the Respondent. The Applicant is at liberty to file the application in the Magistrates Court where the order was issued.

DATED, SIGNED AND DELIVERED AT MALINDI THIS 11TH DAY OF OCTOBER, 2022.

M.A. ODENY

JUDGE

NB: In view of the Public Order No. 2 of 2021 and subsequent circular dated 28th March, 2021 from the Office of the Chief Justice on the declarations of measures restricting court operations due to the third wave of Covid-19 pandemic this Ruling has been delivered online to the last known email address thereby waiving Order 21 [1] of the Civil Procedure Rules.

