



**Chek v Kisumu County Land Registrar & 3 others; Ethics & Anti-Corruption Commission (Interested Party) (Environment & Land Case 56 of 2018) [2022] KEELC 13530 (KLR) (7 October 2022) (Ruling)**

Neutral citation: [2022] KEELC 13530 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KISUMU  
ENVIRONMENT & LAND CASE 56 OF 2018  
A OMBWAYO, J  
OCTOBER 7, 2022**

**BETWEEN**

**PHILIP CHEK ..... PLAINTIFF**

**AND**

**KISUMU COUNTY LAND REGISTRAR ..... 1<sup>ST</sup> RESPONDENT**

**COUNTY DIRECTOR OF HOUSING ..... 2<sup>ND</sup> RESPONDENT**

**ATTORNEY GENERAL ..... 3<sup>RD</sup> RESPONDENT**

**NATIONAL LAND COMMISSION ..... 4<sup>TH</sup> RESPONDENT**

**AND**

**ETHICS & ANTI-CORRUPTION COMMISSION ..... INTERESTED PARTY**

**RULING**

1. The Ethics and Anti-corruption Commission has come to this court vide Notice of Motion dated 18<sup>th</sup> May 2022 against Dr. Philip Chek praying that the plaintiff/respondent be cited for contempt and disobedience of this Honorable Court’s orders and be committed to Civil jail for 6 months for defying and being in flagrant and contemptuous breach of the honorable courts order dated 12<sup>th</sup> February, 2019 and more particularly Order number 3 thereof and confirmed on 18<sup>th</sup> February, 2019.

That an order of committal be made against the plaintiff/respondent to prison for such period and/or a fine as this honorable court may deem fit and just as the plaintiff/ Respondent has willfully and flagrantly disobeyed the order made herein on 12<sup>th</sup> February 2019, and more particularly Order number 3 thereof and confirmed on 18<sup>th</sup> February 2019, “ that the parties do maintain the Status Quo, and specifically there be no



further construction, demolition, transfer, alienation, wastage, or any other act that would substantially alter the suit property pending the hearing and determination of the suit”

That the Contemnor be summoned to appear before this Honorable Court to show cause why he should not be committed to civil jail for disobeying the orders.

That this honorable court do issue orders directing the plaintiff/respondent to immediately remove all the metal fencing surrounding the suit property and to demolish all the further construction and developments on the suit property in contravention of the orders of this honorable court issued on 12<sup>th</sup> February, 2019 and more particularly Order number 2 thereof and confirmed on 18<sup>th</sup> February 2019.

That without prejudice to the forgoing, this honorable Court do order the plaintiff/respondent to carry out the orders under paragraph 5 at his own cost and within the next 7 days from the date of the orders.

That the plaintiff/respondent be condemned to pay the costs of the application herein.

2. The application is based on grounds that the 3<sup>rd</sup> respondent on 11<sup>th</sup> February, 2019 filed an application seeking the preservation of the suit property and for the avoidance of further deterioration of public land. This honorable court on 12<sup>th</sup> February, 2019 issued orders maintaining a status Quo and more specifically that there be no further construction, demolition, transfer, alienation, wastage, or any other act that would substantially alter the suit property pending the hearing and determination of the suit. The plaintiff/respondent was represented by his advocates on record when the orders for status quo were issued by this honorable court, which information can be confirmed from the records of the court.

The firm of Sala Mudany Advocates appeared in court for the plaintiff/respondent on 12<sup>th</sup> February, 2019 when the orders were issued by the court and have been seized of this suit and therefore the Orders of this honourable court.

Despite being aware of the said orders, the plaintiff/respondent has ignored, treated with contempt and has continued to disobey the said orders by fencing off and constructing a building and other alterations on the suit property in defiance of the Court orders.

The said order of 12<sup>th</sup> February, 2022 has been disobeyed willfully and flagrantly violated by the contemnor.

The acts of contempt on the part of the contemnor are malicious, malafides, and the same are being executed with conniving impunity and total disrespect of the judicial proceedings, the law and this honorable court.

The aforesaid acts on the part of the contemnor are calculated to lower the authority and dignity of this honorable court and to defeat the purpose for which the court orders was issued.

The contemnor has intentionally committed acts of contempt and disrespect to the judicial proceedings herein and in respect of this honorable court’s order in particular Number 3 thereof. The acts are malicious and highly contemptuous.

The dignity of this honorable court must at all times be upheld as contempt of court’s orders is a form of judicial attack and such acts eat insidiously into the fabric of and fatally dismembers and take away the dignity, prestige and authority of the court and destroys confidence in the entire judicial system.



The honorable court has a duty to uphold the rule of law by punishing all those on contempt of court.

This honorable court has a duty to uphold the Rule of law by punishing all those in contempt of court.

3. The contemnor should be committed to jail to send a clear message to the wider public that the court has powers to punish contemnors so as to act as a deterrent to any like-minded persons. The application is supported by the affidavit of Charles Kiptanui.
4. In the replying affidavit the alleged contemnor stated that there is no construction on going on the suit property and in contempt of court orders issued on 12<sup>th</sup> February 2011. Moreover, that any ongoing construction in the area done by the respondent. The purported new fence is an old fence.
5. It was established that when the order for status quo was made, it was stressed that there was to be no construction, demolition, transfer, alienation wastage or any other act that would substantially alter the suit property pending hearing and determination of the suit. However, the plaintiff has gone ahead and drastically changed the status quo by construction a whole floor and was attempting to do another floor until he was stopped by other agencies. This court visited the site on 27<sup>th</sup> September 2022 and found that the status quo had changed on the ground.
6. I have considered the evidence on record and rival submissions and do find the plaintiff to be in contempt of court by proceeding to construct on the suit property when he is aware that the same had been stopped by the court. I do find that the plaintiff willfully disobeyed a court order. This court observes that it is a quasi-criminal act for a party to wilfully disobey court orders as it leads to anarchy and threatens the rule of law.

In the case of Econet wireless Kenya Limited vs minister for information & Communication of Kenya & Another, the court stated as follows;

“It is essential for the maintenance of the rule of law and order that the authority and the dignity of our courts are upheld at all times. The court will not condone deliberate disobedience of its orders and will not shy away from its responsibility to deal firmly with proved contemnors. It is the plain and unqualified obligation of every person against or in respect of whom, an order is made by the court of competent jurisdiction to obey it unless and until that order is discharged. The uncompromising nature of this obligation is shown by the fact that it extends even to cases where the person affected by an order believes it to be irregular or void.”

7. Again, in the case of *Teachers Service Commission vs Kenya National Union of Teachers & 2 others* (2013) eKLR Ndolo J observed that;

“The reasons why courts will punish for contempt of court then is to safeguard the rule of law which is fundamental in the administration of Justice. It has nothing to do with the integrity of the judiciary or the court or even the personal ego of the presiding Judge. Neither is it about placating the applicant who moves the court by taking out contempt proceedings. It is about preserving and safeguard the rule of law”

8. I do find the plaintiff to be in contempt of orders made by the court hence I do grant orders that the plaintiff/respondent be and is hereby committed to Civil jail for 6 months for defying and being



in flagrant and contemptuous breach of the honorable courts order dated 12<sup>th</sup> February, 2019 and more particularly Order number 3 thereof and confirmed on 18<sup>th</sup> February, 2019. The plaintiff in the alternative to pay a fine of Ksh1,500,000. That the plaintiff/respondent is hereby condemned to pay the costs of the application herein. Orders accordingly.

**DATED AND DELIVERED THIS 7<sup>TH</sup> DAY OF OCTOBER 2022**

**A. O OMBWAYO**

**JUDGE**

