



Akiyda Two Thousand Limited v County Government of Kisumu (Environment & Land Case E013 of 2021) [2022] KEELC 13421 (KLR) (7 October 2022) (Ruling)

Neutral citation: [2022] KEELC 13421 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISUMU
ENVIRONMENT & LAND CASE E013 OF 2021**

**A OMBWAYO, J
OCTOBER 7, 2022**

BETWEEN

AKIYDA TWO THOUSAND LIMITED PLAINTIFF

AND

COUNTY GOVERNMENT OF KISUMU DEFENDANT

RULING

1. There are 2 applications before me. One dated August 19, 2021 made by the plaintiff seeking orders that the County Government of Kisumu be and is hereby found guilty of contempt of court and that a notice to Show cause be and is hereby issued against Mr Abala Wanga, Ag Kisumu City Manager, and Mr Idris Omondi, the Kisumu County Attorney, to show cause why the County Government of Kisumu should not pay a fine of Kenya shillings ten million (Ksh 10,000,000.00) for failing to obey Orders issued herein on March 24, 2021;

A notice to show cause be and is hereby issued against Mr Abala Wanga, Ag Kisumu City Manager, and Mr Idris Omondi, the Kisumu County Attorney, to show cause why they should no be committed to civil jail for a period of two (2) calendar years;

Any other or further orders geared towards protecting the dignity and authority of this honourable court. The costs of this application be borne by the defendant.

2. The application is supported by affidavit of Elka Motanya an advocate of the High Court of Kenya who states tha the applicant sought for a mandatory injunction against the defendant to reconstruct and replace to the same condition as before the metal chain link, marker and/or beacons on the suit property and a prohibitory injunction restraining the defendant, its agents, servants and/or employees from accessing, damaging or in any manner whatsoever interfering with the whole of the suit parcel;

That on the 2March 4, 2021, the application was heard upon which the following orders were issued:-



- (i) a mandatory injunction be and is hereby issued to compel the defendant to reconstruct and replace to the same condition as before and as its cost the metal chain link fence, concrete columns, markers and/or beacons placed on the perimeter of the suit property that have been damaged, destroyed and/or removed;
- (ii) a prohibitory temporary injunction be and is hereby issued to restrain the defendant, its agents, servants and/or employees from accessing, damaging, or in any manner howsoever interfering with the whole of the parcel of land known as land reference number 15401 pending the hearing and determination of this suit;

According to counsel, a copy of the court order was served upon advocates for the defendant on the 12th of April, 2021 who accepted service thereof by retaining a copy and acknowledged receipt on the service copy. A copy of the affidavit of service filed in court on April 30, 2021 was annexed to the affidavit.

3. The 2nd application is made by the defendant seeking a stay of execution of the orders made on March 24, 2021, and that the applicants be granted leave to appeal out of time in the ruling made dismissing the defendant's application dated September 20, 2021. In grounds of opposition filed on March 29, 2022 the plaintiff stated that it is a general rule, fortified in the case of *Econet Wireless Kenya Limited v Minister for Information and Communication of Kenya and Anor* 2005 eKLR and which must be applied strictly, that when a contempt of court application has been filed, the alleged contemnor will not be allowed to set aside orders or take any other step until the application for contempt is heard and determined.

That there is no basis in law upon which execution of orders issued on March 24, 2021 which the defendant opted to review albeit unsuccessfully, hence exhausting the process of review up to appeal, need to be stayed;

That the defendant/applicant does not meet the threshold prescribed under order 42 rule 6 of the *Civil Procedure Rules* which must be met before stay is granted;

That the defendant/applicant is seeking leave to appeal a decision rendered on November 25, 2021 which is more than four calendar months contrary to order 43 subrule (3) of the *Civil Procedure Rules, 2010* (as amended by legal notice no 22 of 2020) which enjoins a party seeking leave of court to make an application within fourteen days from the date the order is made;

That the application does not raise any reasonable grounds therein upon which this court would exercise its wide and unfettered discretion to allow the same;

That in the circumstances, the application should be dismissed with costs to the plaintiff/respondent.

4. I have considered the application and do find that the application dated August 19, 2022 is merited as it is clear that the defendant was served with the court orders but has not obeyed the same. There is evidence of willful disobedience of court order.
5. 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.



6. In the case of *Econet wireless Kenya Limited v 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 v 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 February 12, 2019 and more particularly order number 3 thereof and confirmed on February 18, 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.
9. I do order that the Kisumu city manager to be imprisoned for a term of six months or pay to court a fine of Kshs 1, 500,000.00. The application dated March 3, 2022 is dismissed for reason that that there is inordinate delay in making the application as more than 14 months have lapsed since the order was made. Orders accordingly.

DATED AT KISUMU THIS 7TH DAY OF OCTOBER, 2022

ANTONY OMBWAYO

JUDGE

