



**Njoroge & 20 others v Chief Land Registrar – Nairobi & 3 others  
(Environment and Land Civil Miscellaneous Application E007 of 2019)  
[2022] KEELC 15041 (KLR) (23 November 2022) (Ruling)**

Neutral citation: [2022] KEELC 15041 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAKURU  
ENVIRONMENT AND LAND CIVIL MISCELLANEOUS APPLICATION E007 OF 2019  
A OMBWAYO, J  
NOVEMBER 23, 2022**

**BETWEEN**

**PATRICK MUIRURI NJOROGE & 20 OTHERS ..... APPLICANT**

**AND**

**CHIEF LAND REGISTRAR – NAIROBI ..... 1<sup>ST</sup> RESPONDENT**

**LAND REGISTRAR – NAKURU ..... 2<sup>ND</sup> RESPONDENT**

**LAND REGISTRAR- NAIVASHA ..... 3<sup>RD</sup> RESPONDENT**

**DISTRICT LAND SURVEYOR ..... 4<sup>TH</sup> RESPONDENT**

**RULING**

1. The application before this court is dated August 29, 2022. The application is brought by Patrick Muiruri Njoroge and 20 others as interested parties against the Chief Land Registrar Nairobi, the Land Registrar Nakuru, the Land Registrar Naivasha and the District Land Surveyor Naivasha. The applicants seek orders that the officer commanding Gilgil police station, Kikohey, do provide security, enforce and ensure compliance of the court orders issued on August 12, 2021.
2. The applicant further pray that this honorable court be pleased to summon the 3<sup>rd</sup> and 4<sup>th</sup> respondents/contemnors, to show cause why they have deliberately and willfully failed to comply with the court order issued by this honorable court on August 12, 2021.
3. Further, that this honorable court be pleased to cite the 3<sup>rd</sup> and 4<sup>th</sup> respondents/contemnors for contempt of this honorable courts order for contravening the order issued on August 12, 2021 that was duly served and that they be committed to civil jail for a period of six (6) months.
4. The application is brought on grounds that the suit relates to Gilgil/Gilgil Block1(Kekopey ranch) (LR No 9361). That on August 12, 2021 Hon Justice J Mutungi ordered *inter- alia* that the adopted



consent dated October 15, 2020 and November 28, 2020 respectively be set aside. The Hon judge further ordered that the orders issued by the court on November 28, 2020 and all other consequential orders flowing therefrom be set aside and vacated. The extracted order was served upon the 3<sup>rd</sup> and 4<sup>th</sup> respondents *vide* a letter dated September 6, 2021.

5. The 3<sup>rd</sup> and 4<sup>th</sup> respondent were equally represented in the proceeding hence have knowledge of the court order herein.
6. According to the applicant, in utter disregard and disobedience of the said orders, the 3<sup>rd</sup> and 4<sup>th</sup> respondent failed, refused and /or neglected to register the said orders against the title deeds and the map thereof in enforcement of the self-explanatory orders of the court despite being properly served.
7. The applicants have moved the 3<sup>rd</sup> respondent twice *vide* a letter dated November 10, 2021 and an official booking form dated December 2, 2021 for official searches all which were not acted upon. The applicants contend that as a result of the 3<sup>rd</sup> respondent contemning conduct, she continues to issue new titles to 3<sup>rd</sup> parties who now fencing, demarcating and blazing advertising the suit land for sale. The conduct of 3<sup>rd</sup> respondent is willful and deliberate and is likely to promote anarchy.
8. The 3<sup>rd</sup> and 4<sup>th</sup> respondents are officers of the court and ought to promote the overriding objective as well as lead from the front in obedience of the court orders. The dignity and authority of this honorable court should be protected at all times.
9. The applicants/interested parties will suffer irreparable loss while the respondent/contemnor will not be prejudiced in any way. That it is the interest of justice that this honorable court allows this application.
10. The application is supported by the affidavit of Patrick Muiruri Njoroge who states that on August 12, 2021, Hon Justice J Mutungi ordered *inter-alia* that the adopted consent dated October 15, 2020 and November 28, 2019 respectively be set aside. The Hon judge further ordered that the orders issued by the court on November 28, 2020 and all other consequential orders flowing therefrom be set aside and vacated. The deponent contends that through his advocates on record, he served the respondents with the said order *vide* a letter dated September 6, 2021.
11. The deponent further contends that on the two instances he caused to be registered on the suit lands, the orders of the court hereinabove mentioned. That in the hope of successful registration of the said orders against the suit land titles, he conducted searches on the disputed parcels of land *vide* a letter dated November 10, 2021 but unfortunately the office of the 3<sup>rd</sup> respondent has refused, declined and/or neglected to provide him with the suit land searches. That on the account of the willful and deliberate non-compliance with the self-explanatory orders of this court; the 3<sup>rd</sup> respondent has contemptuously issued land titles to a third party known as Faraja Settlers Ltd that is clandestinely and contemptuously fencing and advertising the suit parcel of land.
12. The deponent states that the brazen conduct of the third parties is fortified by the disobedience of the court orders by the 3<sup>rd</sup> and 4<sup>th</sup> respondents. That on or about the year 2021, he purchased registry index map for the Gilgil/Gilgil Block 1 (Kekopey ranch) to see if the respondents had effected and / or complied with the said orders, and to his utter surprise, orders of the court had not been enforced and the land was as it were. That *vide* a letter dated November 15, 2021 he instructed his advocates on record to demand that the orders issued by this court be enforced to the letter. However. Despite service of the said orders and letters there has been in action from the 4<sup>th</sup> respondent/contemnor.
13. The 3<sup>rd</sup> and 4<sup>th</sup> respondents were aware of the said orders as they copied to the deponent a letter dated November 24, 2021 which letter was sent to this honorable court for verification of the court orders.



- That it is evident however, that the 3<sup>rd</sup> and 4<sup>th</sup> respondents have deliberately and willfully disobeyed the court orders despite proper service and demand to do what is legitimately expected.
14. That the 3<sup>rd</sup> and 4<sup>th</sup> respondent are well aware of the court orders having all along being represented by the Attorney General.
  15. The willful and deliberate disobedience of the crystal-clear orders on the face of it, is making a mediocre of this honorable court and undermining its authority thereof. The conduct of the 3<sup>rd</sup> and 4<sup>th</sup> respondents is blatant disregard to the rule of law and serves to embarrass the court process.
  16. The District Land Registrar and the District Land Surveyor respectively replied by stating in a sworn affidavit that they were compelled to facilitate and effect gazette notice No NLC/HLI/11/2017 as per the National Land Commission's Recommendation as per the order dated November 28, 2019 civil application (Misc) No 17 of 2019. That they have been shown and explained to the contents of a further order dated August 12, 2021. That the order cancels gazette notices No 5385 dated July 20, 2020 and 3756 dated May 29, 2020. That they do not have any authority to cancel gazette notices. That no advertisement has been received by their respective offices to cancel the gazette notices.
  17. They do not have any specific orders to deregister any title nor amend maps or any orders as to subdivision following the amalgamation of Gilgil/Gilgilblk 1 6789-7283.
  18. This matter came up for mention for directions of the applications dated August 24, 2020 and September 21, 2020 on November 9, 2020 before Honorable J M Mutungi J, and upon directions being given on disposal of the applications by way of written submissions and upon the matter coming up for ruling on July 15, 2021, the court ordered that orders made on November 28, 2019 and all other consequential orders flowing there from be set aside and or vacated. That the Kenya gazette notices Nos 5385 of July 30, 2020 and 3756 dated May 29, 2020 were cancelled for all purposes. The parties were to bear their own costs of the applications. The ruling disposed off the proceedings in the miscellaneous application and the court file was accordingly marked as closed.
  19. When the application dated August 29, 2022 came up for hearing, this court directed that the District Land Registrar, Nakuru and the District Land Registrar, Naivasha, and the District Land Surveyor, Naivasha do attend court and do show cause why they should not be jailed for contempt of court. The District Land Registrar Nakuru on his part came to court and stated that the order dated August 12, 2021 had an error because the order being set aside was dated November 28, 2019 and not November 28, 2020. He stated that the parties can access their records without a problem. The order was amended by consent and the same was to be extracted and served for compliance.
  20. On her part, the District Land Registrar, Catherine Minnie Wacuka stated that they did not receive an order cancelling gazette notice number 5386 and therefore the same remains in force as it has not been cancelled. The block of land now belongs to Faraja Settlement Company as from September 2020. According to the Land Registrar the court order issued on August 12, 2021 did not specify the action to be taken and that she did not see any order of status quo.
  21. On cross examination by M/S Mukira learned counsel for the applicants, she states that they received the order for registration on the December 2, 2021 but the order did not cancel gazette notice number 5386 that was issued on July 30, 2020 and that there was no specific action to take. She states that she has not disobeyed any court order.
  22. M/s Mukira learned counsel for interested parties submits that the interested parties have proved that the 3<sup>rd</sup> and 4<sup>th</sup> respondents are in contempt of the court order and that the Land Registrar Naivasha district has confirmed that there are new owners and occupants of the suit properties.



23. Mr Muthuri Principal Litigation for the Attorney General on his part argues that the facts speak for themselves that the Land Registrar is not in contempt of the court order. That Faraja Settlement Company is not party to this proceedings.

24. I have considered the application and the responses to the same and the rival submissions and do find that on the July 15, 2021 this court found that the two (2) applications dated August 24, 2020 and September 21, 2020 had merit and ordered that the consent dated October 15, 2020 adopted by the court on November 28, 2019 be set aside. <sup>th</sup> November 2019 and all other consequential orders flowing there from be set aside vacated. That the Kenya gazette notices Nos 5385 of July 30, 2020 and 3756 dated May 29, 2020 were ordered cancelled for all purposes. That parties were to bear their own costs of the applications. That the ruling disposed off the proceedings in the miscellaneous application and the court file was accordingly marked as closed. The order was issued at Nakuru on August 12, 2021. The order was served upon the 3<sup>rd</sup> and 4<sup>th</sup> respondents with a penal notice.

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25. The applicants now seek orders that the respondents be punished for disobeying these orders of the court. There is no dispute that the respondents were aware of the court orders. The respondent's contention is that the court order did not specify to them what to do in respect of the Gilgil land and that gazette notice number 5386 was not cancelled.

26. The main issue to be determined by this court is whether the respondents are in contempt of this court order aforesaid. Contempt of court is that conduct or action that defies or disrespects authority of the court. *Black's Law Dictionary* 9<sup>th</sup> Edition, defines contempt as:

The act or state of despising; the conduct of being despised. Conduct that defies the authority or dignity of a court or legislature. Because such conduct interferes with the administration of justice.

27. Contempt is conduct that impairs the fair and efficient administration of justice. Courts punish for contempt to uphold their dignity and authority and to ensure compliance with directions of the court, observance and respect of due process of law, preserve an effective and impartial system of justice, and maintain public confidence in the administration of justice by courts.

28. Without sanctions for contempt, there would be a serious threat to the rule of law and administration of justice. For a party to be cited for contempt, he must have violated and or disobeyed an order that was directed at him.

29. The application before court seeks to have the 3<sup>rd</sup> and 4<sup>th</sup> respondents cited for contempt of this court's order of July 12, 2021 and that they be committed to civil jail and or fined as the court may deem fit.

30. In *Econet Wireless Kenya Ltd v Minister for Information & Communication of Kenya & another* [2005] KLR 828, Ibrahim, J (as he then was), underscored the importance of obeying court orders, stating:

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 whom an order is made by court of competent jurisdiction, to obey it unless and until the 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 the order believes it to be irregular or void. (emphasis)

31. In *T. N Gadavarman Thiru Mulpad v Ashok Khot And Anor* [2006] 5 SCC, the Supreme Court of India also emphasized on the dangers of disobeying court orders, thus:

Disobedience of this court's order strikes at the very root of the rule of law on which the judicial system rests. The rule of law is the foundation of a democratic society. Judiciary is the guardian of the rule of law. Hence, it is not only the third pillar but also the central pillar of the democratic State. If the judiciary is to perform its duties and functions effectively and remain true to the spirit with which they are sacredly entrusted to it, the dignity and authority of the courts have to be respected and protected at all costs. Otherwise, the very corner stone of our constitutional scheme will give way and with it will disappear the rule of law and the civilized life in the society. That is why it is imperative and invariable that court's orders are to be followed and complied with.

32. Contempt of court is in the nature of criminal proceedings and, therefore, proof of a case against a contemnor is higher than that of balance of probability. This is because liberty of the subject is usually at stake and the applicant must prove willful and deliberate disobedience of the court order, if he were to succeed.

33. This was aptly stated in *Gatharia K Mutikika v Baharini Farm Limited* [1985] KLR 227, that:

A contempt of court is an offence of a criminal character. A man may be sent to prison. It must be proved satisfactorily.... It must be higher than proof on a balance of probabilities, almost but not exactly, beyond reasonable doubt. The standard of proof beyond reasonable doubt ought to be left where it belongs, to wit criminal cases. It is not safe to extend it to offences which can be said to be quasi-criminal in nature.

However, the guilt has to be proved with such strictness of proof as is consistent with the gravity of the charge... Recourse ought not to be had to process of contempt of court in aid of a civil remedy where there is any other method of doing justice. The jurisdiction of committing for contempt being practically arbitrary and unlimited, should be most jealously and carefully watched and exercised with the greatest reluctance and the greatest anxiety on the part of the judge to see whether there is no other mode which is not open to the objection of arbitrariness and which can be brought to bear upon the subject... applying the test that the standard of proof should be consistent with the gravity of the alleged contempt... it is competent for the court where contempt is alleged to or has been committed, and on an application to commit, to take the lenient course of granting an injunction instead of making an order for committal or sequestration, whether the offender is a party to the proceedings or not.

34. Due to the gravity of consequences that ordinarily flow from contempt proceedings, it is proper that the order be served and the person cited for contempt should have had personal knowledge of that order.
35. The applicants contend that the Attorney General was represented by Mr Cheruiyot, state counsel when the order was made and that they were again served with the order, a fact that is not denied by the respondents. For the respondent to be held in contempt, the applicants must demonstrate that there was willful disobedience of the order.



36. In this regard, the Supreme Court of India held in *Indian Airports Employees Union v Ranjan Catterjee & another* [AIR 1999 SC 880: 1999(2) SCC:537, that in order to amount to “civil contempt” disobedience must be willful. If disobedience is based on the interpretation of court’s order, notification and other relevant documents, it does not amount to willful disobedience.
37. M/S Mukira advocate for the applicants rightfully submitted that that respondents were aware of the order because their advocate was in court and that the District Land Registrar actively participated in the proceedings.
38. In *Carey v Laiken*, 2015 SCC 17 (April 16, 2015), the court expounded on the three elements of civil contempt of court which must be established to the satisfaction of the court, thus:
- i) The order alleged to have been breached “must state clearly and unequivocally what should and should not be done.” This ensures that a party will not be found in contempt where an order is unclear. An order may be found to be unclear if, for example, it is missing an essential detail about where, when or to whom it applies; if it incorporates overly broad language; or if external circumstances have obscured its meaning.
  - ii) The party alleged to have breached the order must have had actual knowledge of it. It may be possible to infer knowledge in the circumstances, or an alleged contemnor may attract liability on the basis of the willful blindness doctrine.
  - iii) The party alleged to be in breach must have intentionally done the act that the order prohibits or intentionally failed to do the act that the order compels. (emphasis)
39. Contempt proceedings are a serious undertaking because a court exercising this jurisdiction is minded to ensure the orderly functioning of society and the rule of law. On conviction, the alleged contemnor stands to lose his or her liberty. It should not, therefore, be taken lightly.
40. It was in this regard that the Indian Supreme Court again stated in *Re: Vinay Chandra Mishra* [(1995) 2 SCC584], that:
- The judiciary has a special and additional duty to perform, viz, to oversee that all individuals and institutions including the executive and the legislature act within the framework of not only the law but also the fundamental law of the land. This duty is apart from the function of adjudicating the disputes between the parties which is essential to peaceful and orderly development of the society. Dignity and authority of the court has to be respected and protected at all costs.
41. But even as courts punish for contempt to safeguard the peaceful and development of society and the rule of law, it must be borne in mind that the power to punish for contempt is a discretionary one and should be used sparingly. That is why the court observed in *Carey v Laiken* (supra), that if courts were to find contempt too easily, “a court’s outrage might be treated as just so much bluster that might ultimately cheapen the role and authority of the very judicial power it seeks to protect The court’s contempt power should be used cautiously and with great restraint. It is an enforcement power of last resort rather than first resort.”
42. In this matter the court ordered that the consent dated October 15, 2020 adopted by the court on November 28, 2020 be and is hereby set aside. <sup>th</sup> November 2019 and all other consequential orders flowing there from be and are hereby set aside vacated. That the Kenya gazette notices Nos 5385 of July 30, 2020 and 3756 dated May 29, 2020 are hereby ordered cancelled for all purposes. That parties shall bear their own costs of the applications. That this ruling disposes off the proceedings in the instant



miscellaneous application and the court file is accordingly marked as closed. The land registrar was not directed “to take” or “not to take” any action as the court had already cancelled the gazette notices. This court finds that the applicants have not demonstrated that the 3<sup>rd</sup> and 4<sup>th</sup> respondents have wilfully and deliberately disobeyed the court order issued on August 12, 2021. The application is dismissed with no order as to costs.

That the orders made by the court on 28

**DATED AND DELIVERED AT KISUMU THIS 23<sup>RD</sup> DAY OF NOVEMBER, 2022.**

**A O OMBWAYO**

**JUDGE**

