



REPUBLIC OF KENYA



**Musembi v Njoroge & 2 others (Environment & Land Case 230 of 2014)
[2022] KEELC 14851 (KLR) (17 November 2022) (Ruling)**

Neutral citation: [2022] KEELC 14851 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS
ENVIRONMENT & LAND CASE 230 OF 2014
CA OCHIENG, J
NOVEMBER 17, 2022**

BETWEEN

FRANCIS JOHN MUSEMBI PLAINTIFF

AND

MARION NJERI NJOROGE 1ST DEFENDANT

ATTORNEY GENERAL 2ND DEFENDANT

AND

**CHIEF LAND REGISTRATION OFFICER MINISTRY OF LANDS AND
PLANNING CONTEMNOR**

RULING

1. What is before the court for determination is the plaintiff's notice of motion application dated the August 5, 2021 where he seeks the following orders:
 1. That the contemnor be and is hereby held to be in contempt of the orders this honourable court made on December 14, 2018.
 2. That the contemnor be committed to civil jail for a period of sixty (60) days or such other period this honourable court may deem fit in the circumstances.
 3. That the contemnor bears the costs of this application.
2. The application is supported by the affidavit of Francis John Musembi, the plaintiff herein where he deposes that this honourable court delivered its Judgment in this case on December 14, 2018 in which *inter alia* the contemnor was ordered to register land title number LR No 337/427 (hereinafter the "suit property") in the plaintiff's name. He avers that the orders were duly extracted and served upon the contemnor on October 5, 2020. Further, that the contemnor raised queries and clarifications which



were duly addressed but he has refused, neglected and failed to register the suit property, which actions are contemptuous of this court.

3. The contemnor opposed the instant application by filing grounds of opposition dated December 14, 2021, where he stated that the application is pre-mature, misconceived and bad in law. He argued that the application is fatally incompetent and incurably defective as the contemnor is not a party to the suit. Further, that the terms of the order are not clear and miss out on essential details as to whom it applies to. He reiterated that there is a court order dated the June 5, 2013 which put a caveat on the suit property by the Principal Magistrate's Court at Mavoko Civil Case No 339 of 2013, prohibiting any dealings with the suit land which has never been set aside.
4. The plaintiff filed a further affidavit and stated that the grounds of opposition are misleading, mischievous, misconceived and an abuse of the court process. He argued that it is a gross mischief for the attorney general to allege that the orders are incapable of obedience because they were directed to the chief land registrar, a title carried by several officers at the ministry of lands. He argued that court orders are directed to offices not individuals. He confirmed that he indeed sued the defendant in Mavoko PMCC Civil Case No 339 of 2013 and obtained a temporary injunction against her in respect to the suit property, but the said suit was withdrawn and the instant one filed in its place. He reiterated that the temporary injunction lapsed after 12 months and this court should order the contemnor to obey the orders herein or be punished for contempt.
5. The application was canvassed by way of written submissions.

Submissions

Applicant's submissions

6. The plaintiff in his submissions contends that it is the obligation of every person against whom an order is made by a court of competent jurisdiction to obey it unless the order is discharged. Further, it does not matter whether or not the person agrees with the order or believes it to be irregular or even void. He insisted that a public office need not be a party to proceedings for a court of competent jurisdiction to order it to do certain actions within its mandate to secure justice for the parties in such proceedings. To support his arguments, he relied on section 29 of the [Environment and Land Court Act](#) as well as the following decisions: Kajiado HCC No 19 of 2020 *Shaila Casuatt Isseberg v Anthony Macharia Kinyanjui* where the judge cited Cromwell J writing for the Supreme Court of Canada in *Carey v Lanken*.
7. The contemnor in his submissions insists that the plaintiff should clarify how the orders of injunction issued in the matter he withdrew were discharged. He argues that the terms of the order were not clear in respect to the identity of the person to be served. Further, that the court can only punish for contempt if it is satisfied that the terms of the injunction are clear and unambiguous. He further submits that there is no evidence he was served. He reiterates that contempt cannot occur to a person not party to the proceedings as in this instance. To support his arguments, he relied on the following decisions: *Hadkinson v Hadkinson* (1952) 2 All ER 567; *Abraham Mwangi Wamwigi v Simon Mbiriri Wanjiku and another* [2012] eKLR; *Rose Njeri Munoru & 13 others v Hannah Mwibaki Muturi & 4 others* [2016] eKLR; *North Tetu Farmers Co. Ltd v Joseph Nderitu Wanjohi* [2016] eKLR; *James Gachiri Mwangi v John Waweru Muriuki & 3 Others* [2020] eKLR; *Simmers Plaza Limited v National Bank of Kenya Limited* (2015) eKLR; Nyamongo v KPTC CA Appl No Nai 264/1993 as well as *Kariuki & 2 others v Minister for Gender, Sports, Culture, Social Services & 2 Others* [2004] eKLR and *Henry Kigera Thuo & 2 others v Jackson Maina Mwangi & 3 others* [2013] eKLR.



Analysis And Determination

8. Upon consideration of the instant notice of motion application including the respective affidavits, grounds of opposition and rivalling submissions, the only issue for determination is whether the alleged contemnor should be cited for contempt and committed to civil jail for 60 days.
9. The law on contempt in Kenya is anchored in section 63(c) of the [Civil Procedure Act](#) which provides as follows:

"63 (c) In order to prevent the ends of justice from being defeated, the court may, if it so prescribed, 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."
10. [Black's Law Dictionary](#) (*Ninth edition*) defines contempt of court as:-

"conduct that defies the authority or dignity of a court. because such conduct interferes with the administration of justice, it is punishable usually by fine or imprisonment."
11. While section 29 of the [Environment and Land Court Act](#) stipulates thus:

"Any person who refuses, fails or neglects to obey an order or direction of the court given under this Act, commits an offence, and shall, on conviction, be liable to a fine not exceeding twenty million shillings or to imprisonment for a term not exceeding two years, or to both."
12. Further, section 4(1) (a) of the [Contempt of Court Act](#) defines civil contempt as:

"willful disobedience of any judgment, decree, direction, order, or other process of a court or willful breach of an undertaking given to a court."
13. In the case of [North Tetu Farmers Co Ltd v Joseph Nderitu Wanjohi](#) (2016) eKLR where Justice Mativo stated that:

"writing on proving the elements of civil contempt, learned authors of the book Contempt in Modern New Zealand have authoritatively stated as follows:-

"there are essentially four elements that must be proved to make the case for civil contempt. The applicant must prove to the required standard (in civil contempt cases which is higher than civil cases - (a) the terms of the order (or injunction or undertaking) were clear and unambiguous and were binding on the defendant; (b) the defendant had knowledge of or proper notice of the terms of the order; (c) the defendant has acted in breach of the terms of the order; and (d) the defendant's conduct was deliberate."
14. Further, in the case of [Ochino & another v Okombo & 4 others](#) (1989) eKLR the Court of Appeal held that: -

"We have to follow the procedure and practice in England. As we read the law, the effect of the english provisions is that as a general rule, no order of court requiring a person to do or abstain from doing any act may be enforced (by committing him for contempt) unless a copy of the order has been served personally on the person required to do or abstain from doing the act in question. The copy of the order served must be indorsed with a notice informing the person on whom the copy is served that if he disobeys the order, he is liable to the process of section to compel him to obey."



15. In this instance the plaintiff claims the Chief Land Registration Officer is in contempt for failing to implement the judgment of the court which was served upon him on October 5, 2020. The contemnor has not expressly denied receipt of the court order but contends that he was unable to implement it, since there was another court order dated the June 5, 2013 which placed a caveat on the suit property by the Principal Magistrate's Court at Mavoko *vide* Civil Case No 339 of 2013, prohibiting any dealings with the suit property which has never been set aside. The plaintiff in his further affidavit admits that he indeed obtained orders of injunction in Mavoko PMCC No 339 of 2013 and registered the same against the title to suit property. He explained that the said lower court case was withdrawn after which he proceeded to file the instant suit. He argued that an order of injunction cannot subsist for more than twelve (12) months and hence the alleged contemnor ought to have implemented the order. Even though the alleged contemnor was not a party to the suit but I find that he was served with the said court order. However, since there was already a caveat registered against the title as explained by the plaintiff, i opine that the plaintiff ought to have obtained an express order discharging it first, before seeking to register the judgment and decree of December 14, 2018. To my mind, I believe this created an element of ambiguity.
16. Based on the facts as presented while associating myself with the authorities cited and relying on the quoted legal provisions, I do not find that the alleged contemnor willfully declined to implement the court order as claimed and will exonerate him.
17. In the circumstances, I find the notice of motion application dated the August 5, 2021 unmerited and will disallow it.
18. I make no order as to costs.

DATED, SIGNED AND DELIVERED VIRTUALLY AT MACHAKOS THIS 17TH DAY OF NOVEMBER, 2022

CHRISTINE OCHIENG

JUDGE

