



**Ndirangu v Wachira (Environment and Land Miscellaneous Application  
13 of 2022) [2022] KEELC 15150 (KLR) (15 November 2022) (Ruling)**

Neutral citation: [2022] KEELC 15150 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION 13 OF 2022  
JA MOGENI, J  
NOVEMBER 15, 2022**

**BETWEEN**

**IBRAHIM NDUNGU NDIRANGU ..... APPLICANT**

**AND**

**SAMUEL NYAGA WACHIRA ..... RESPONDENT**

**RULING**

1. By a notice of motion dated August 8, 2022, the plaintiff brought this application pursuant to section 1A, 1B, 3, 3A and section 63 (c) of the [Civil Procedure Act](#), and order 40 rule 3, order 51 rule 1 of the [Civil Procedure Rules 2010](#), and all other enabling provisions of law seeking the following orders:
  - i. Spent
  - ii. That the honourable court be pleased to cite and punish the Samuel Nyaga Wachira the respondent herein for disobeying and/or disregarding the lawful court orders issued and/or granted on May 7, 2020 and July 19, 2021.
  - iii. That consequently, to prayer no 2 herein being granted, that the honorable court be pleased to commit the Samuel Nyaga Wachira for duration not exceeding 6 months and/or such shorter period as the court may deem fit and expedient.
  - iv. That costs for this application be provided for.
  - v. That this honorable court be pleased to grant such further orders as may deem just and fit in the circumstances of this case.
2. The application is premised on the grounds stated on the face of the application and the supporting affidavit of Ibrahim Ndungu Ndirangu the applicant herein sworn on the August 8, 2022. The long and short of it is that on April 6, 2019, the Rent Restriction Tribunal issued a stay of execution of the orders it had granted on March 10, 2020 granting the plaintiff/landlord leave to break into



the suit premises for purposes of letting out to another tenant and also an order of removal of the tenant's goods to be removed and kept in a secure store. A second ex parte order was issued on May 7, 2020 in which the respondent herein was ordered to release all the applicant's personal effects such as clothing, documents and tools of trade and retain other attachable items as security for payment of the outstanding rent arrears of Ksh 188,000.

3. This order of May 7, 2022 was served upon the respondent by Amos Chege Kanoga a process server on June 8, 2020 at his business place Shalom Furnitures Zimmerman as per the affidavit of service that was attached to the supporting affidavit marked as INN-2.
4. The suit was heard before the Rent Restriction Tribunal and on February 4, 2021 and an order issued on July 19, 2021 in the presence of the counsel of the applicant and the respondent herein. The respondent/landlord was ordered to release personal effects belonging to the applicant/tenant such as cloths and documents on a date and time to be mutually agreed between the parties. This was to be witnessed by the rent inspector of the tribunal and an independent witness.
5. The court order dated July 19, 2021 which is annexed to the affidavit as INN-3 was served by Amos Chege Kanoga of PO Box 4500 Thika on August 19, 2021 on the respondent/landlord Mr Samuel Nyaga Wachira at Zimmermann estate where he operates business t/a Shalom Furnitures. In the sworn affidavit of service Mr Amos Chege avers that the respondent accepted service but refused to sign on his copy. He however filed an affidavit of service.
6. The applicant in the application has stated that despite being served with the said orders one dated May 7, 2020 and one dated July 19, 2021 the respondent has continued to disobey the court orders blatantly. He has refused to release the applicant's goods as directed by the tribunal.
7. Further that despite being duly served with the application; the respondent did not file any response and the application is therefore unopposed.

#### **Issue for determination**

8. Having considered the notice of motion, and the supporting affidavit by the applicant who is acting in person and did not file any submissions, the singular issue for determination is whether the respondent ought to be punished for disobeying the orders issued by the Rent Restriction Tribunal issued on May 7, 2020 ex parte and July 19, 2021 inter-partes.

#### **Analysis and determination**

9. *Black's Law Dictionary Ninth Edition* defines contempt of court as follows:  

' 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 for imprisonment'
10. The *Contempt of Court Act* commenced on the January 13, 2017 but had been declared invalid by the High Court in the case of *Kenya Human Rights Commission vs Attorney General & Another [2018] eKLR*. In his application, the applicant has filed the application pursuant to various provisions of the law and all other enabling provisions of the law. I am therefore obliged to revert to the provisions of the law that operated before the enactment of the Contempt of Court of Act, to avoid a lacuna in the enforcement of court's orders.
11. It was in this respect as observed in the case of *Republic vs Returning Officer of Kamkunji Constituency & The Electoral Commission of Kenya HCMCA No 13 of 2008, that the High Court* (read Environment



- and Land Court) has the responsibility for the maintenance of the rule of law, hence there cannot be a gap in the application of the rule of law.
12. In addition, in the case of *Republic v Principal Secretary, Ministry of Defence Ex parte George Kariuki Waitbaka [2019] eKLR*, it was held that where there is a lacuna with respect to enforcement of remedies provided under the *Constitution* or an Act of Parliament, or if, through the procedure provided under an Act of Parliament, an aggrieved party is left with no alternative but to invoke the jurisdiction of the court, the court is perfectly within its rights to adopt such a procedure as would effectually give meaningful relief to the party aggrieved, in exercise of the inherent jurisdiction granted to the court by section 3A of the *Civil Procedure Act* to grant such orders that meet the ends of justice and avoid abuse of the process of court.
  13. Section 5(1) of the *Judicature Act* which provided that:

' The High Court and the Court of Appeal shall have the same power to punish for contempt of court as is for the time being possessed by the High Court of Justice in England, and that power shall extend to upholding the authority and dignity of subordinate courts.'
  14. Section 29 of the *Environment and Land Court* is clear to the effect that;

' 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'.
  15. The rationale for contempt orders is set out in the case of *Teachers Service Commission v Kenya National Union of Teachers & 2 others (2013) eKLR* where Ndolo J observed as follows:

' 38. The reason why courts will punish for contempt of court 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 safeguarding the rule of law'.
  16. In the case of *Kenya Human Rights Commission v Attorney General and Another (supra)*, the court observed as follows:

' Article 159 of the *Constitution* recognizes judicial authority of the courts and tribunals established under *Constitution*. Courts and tribunals exercise this authority on behalf of the people and for that reason they must not only be respected and obeyed but must also be complied with in order to enhance public confidence in the judiciary which is vital for our constitutional democracy. The judiciary acts in accordance with the laws (article 160) and exercises its authority through its judgments, decrees and orders or directions to check government power, keep it within the constitutional stretch, hold the legislature and executive to account and thereby secure the rule of law, administration of justice and protection of human rights. For that reason, the authority of the courts and dignity of their processes are maintained when court orders are obeyed and respected thus courts become effective in the discharge of their constitutional mandate.

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It is therefore a fundamental rule of law that court orders be obeyed and where an individual is enjoined by an order of the court to do or refrain from a particular act, he has a duty to carry out that order. The court has a duty to commit that individual for contempt of its orders where he deliberately fails to carry out such orders. See *Louis Ezekiel Hart v Chief George1 Ezekiel Hart SC 52/2983 February 2, 1990*.'

The fact that the power to punish for contempt is inherent and not granted by statute follows the recognition by the *Constitution* in article 159 that judicial authority is derived from the people and vests in and is exercised by courts and tribunals established by or under the *Constitution*'

17. In order to make a case for civil contempt the applicant must prove certain elements which were set out in the case of *Cecil Miller v Jackson Njeru (2017)*. The court cited the book entitled '*Contempt in Modern New Zealand*' which sets out the elements of civil contempt as follows:
  - a. That the terms of the order (or injunction or undertaking) were clear and unambiguous and were binding on the defendant.
  - b. That the defendant had knowledge of or proper notice of the terms of the order.
  - c. That the defendant acted in breach of the terms of the order.
  - d. That the defendant's conduct was deliberate.
18. The applicant has deposed in their affidavit that the contemptuous acts are still ongoing. A fact which has not been controverted or denied by the respondent since he has not challenged the application which is unopposed.
19. In the Scottish case of *Stewart Robertson vs Her Majesty's Advocate, 2007 HCAC 63*, Lord Justice Clerk stated that:

' Contempt of court is constituted by conduct that denotes willful defiance of or disrespect towards the court or that willfully challenges or affronts the authority of the court or the supremacy of the law, whether in civil or criminal proceedings'.
20. And in the case of *Hadkinson vs Hadkinson(1952) ALL ER 567* Romer LJ stated as follows:

' It is the plain and unqualified obligation of every person, against, or in respect of, whom an order is made by a 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 even void'



21. In numerous decisions, the courts have held that unless and until a court order is discharged, it ought to be obeyed. As was held by the Court of Appeal in *Central Bank of Kenya & Another vs Ratalal Automobiles Limited & Others, Civil Application No Nairobi 247 of 2006*, it is a fundamental tenet of the rule of law that court orders must be obeyed and it is not open to any person or persons to choose whether or not to comply with or to ignore such orders as directed to him or them by a court of law.
22. The court held in the case of *Awadh vs Marumbu (No 2) No 53 of 2001 (2004) KLR 458*, that it is the duty of the court not to condone deliberate disobedience of its orders nor waiver from its responsibility to deal decisively and firmly with the approved contemnors.
23. In the instant case, the court issued two orders one dated May 7, 2020, issued ex parte and served on the respondent on June 5, 2020 by a process server who filed an affidavit of service sworn on June 8, 2020. The second order dated July 19, 2021 was served on the respondent on July 30, 2021 and the process server filed an affidavit of service sworn- on August 19, 2021. All these orders were issued by Mr Hillary K Korir chairman of the Rent Restriction Tribunal in Rent Restriction Case No 101 of 2020. The instant application was also served upon the respondent on the October 5, 2022 as evidenced by the affidavit of service of Mr Samson Karau Mutiso sworn on October 11, 2022 and filed in court through the CTS system. I note that the orders issued by the Rent Restriction Tribunal are clear and unambiguous and are binding on the respondent. The respondent having been served with the said order, has deliberately failed to honor the said orders and release all the applicant's personal effects. It is therefore my finding that the respondent is culpable of disobeying the court orders dated May 7, 2020 ex parte and July 19, 2022 inter partes.
24. I thus find that the respondent herein is in blatant contempt of court orders and proceed to punish him for contempt.
25. Further orders are that the police officers within the jurisdiction of the suit premises are herein directed to ensure that the orders of the court are enforced upon being notified of the existence the orders.
26. Given the foregoing, the applicant's application dated August 8, 2022 is herein allowed with costs.
27. The matter shall be mentioned on December 15, 2022 for sentencing.

It is so ordered

**DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 15TH DAY OF NOVEMBER 2022.**

.....  
**MOGENI J**

**JUDGE**

Ruling read in virtual court in the presence of:

Mr Ibrahim Ndiragu Ndungu for the Applicant

No appearance for the Defendant

Ms Caroline Sagina : Court Assistant

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**MOGENI J**

**JUDGE**

