



**Maangi & 178 others v B2 Yatta Ranching Co-operatives (Environment & Land Case E002 of 2021) [2022] KEELC 14832 (KLR) (15 November 2022) (Ruling)**

Neutral citation: [2022] KEELC 14832 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KITUI  
ENVIRONMENT & LAND CASE E002 OF 2021  
LG KIMANI, J  
NOVEMBER 15, 2022**

**BETWEEN**

**MUANGE NZONGOI MAANGI & 178 OTHERS ..... APPLICANT**

**AND**

**B2 YATTA RANCHING CO-OPERATIVES ..... RESPONDENT**

**RULING**

1. The Applicants filed a chamber summon dated January 20, 2022 seeking orders that summons be issued against Nicholas Muli Kakungi, Dennis Mbangu, Jackson Kamba, Paul Cheruiyot and Wilson Kibaara to appear before the Court to show cause why contempt of court proceedings cannot be commenced against them for blatant disobedience of the orders of the court issued on December 16, 2021 and in default, they be committed to jail for a maximum of 6 months for contempt of the said court orders.
2. The application is supported by the affidavit of the 1<sup>st</sup> Applicant and a supplementary affidavit sworn on February 17, 2022 where he stated that on January 14, 2022, the Respondents descended on the Applicants' crops and fences, raided and confiscated their livestock despite being aware of the court orders issued on December 16, 2021 and extended on December 31, 2021. The Applicants state that the Respondents are demanding payment before release of the said livestock. They have attached some letters that claim that the livestock was found trespassing on the suit property LR 11802 on January 14, 2022. The Applicants state that the Ranch Manager, Nicholas Muli Kakungi, Dennis Mbangu in charge security and Jackson Kamba the Ranch Chairman while accompanied by Mr Paul Cheriot the OCS Kanyonyoo Police Station with a contingent of 5 police officers destroyed their homes.
3. It is as a result of this and failure of the OCS Kanyonyoo Police Station to record the occurrence of this incidence that they had to report the same at Kwa Vonza Police Station. The Applicant states that these acts of disobedience as well as derogatory utterances against the court orders have grossly painted



our judicial system as a lame duck, unsuitable and unqualified of any respect thus putting the dignity and reputation of this Honourable Court into great ridicule.

### **The Respondent's Case**

4. Nicholas Muli Kakungi, Dennis, Mbaangu, Jackson Kamba, Paul Cheruiyot and Wilson Kibaara filed a joint Replying Affidavit in response to the application stating that the order dated December 16, 2021 was issued against a different entity Yatta Ranching Co-operative Society while their employer is B2 Yatta Ranching Cooperative Society Limited. They stated that the Defendant B2 Yatta Ranching Cooperative Society Limited has been in occupation of the suit land since a Lease was obtained from Kitui County Government and has invested massively in the land and is carrying out economic activities including ranching. They claim that the Applicants are trespassers on the land.
5. According to the alleged Respondents, the applicants have taken advantage of the ex parte orders issued on December 16, 2021 to carry out criminal activities by attacking their workers, wanton destruction of properties on the land and killing and maiming their livestock. They have also been alleged to be growing bhang on the said land.
6. Further, they alleged that the Applicants have illegally cordoned off one of their dams for purposes of water harvesting and have on numerous occasions chased their animals from watering points. They have destroyed their conserved environment that had been preserved for grazing as well as cutting down trees for charcoal burning. They are also ploughing the land for planting which goes against the conditions given under the title which specifically states that the land is for grazing purposes only. The applicants have also been accused of poaching and killing a lot of the game. It is the Respondents averment that if these orders remain in force they would greatly prejudice their existence as an organization and all their activities would be crippled.
7. They relied on the ground that a claim for adverse possession against the County Government who is the registered owner of the land cannot succeed since they are only lessees, Further that the County Government of Kitui is not enjoined to these proceedings.
8. According to the deponents, they obtained orders against the Plaintiff/Applicant on September 30, 2020 restraining them from entering, trespassing, erecting, building, grazing, cultivating and/or in any way dealing with the suit property known as LR 11802 pending hearing and determination of the suit being Machakos ELC Case No 78 of 2019 and the said order was never set aside or appealed against by anyone.

### **The Applicants Supplementary Affidavit**

9. The 1<sup>st</sup> Applicant swore a Supplementary Affidavit denying the claim that the Respondents were not served with the orders in question. Further, that the question of misdescription of the Defendant Company was corrected by mutual consent between their advocate and the advocate for the Respondent and cannot be an excuse for the contemnors to blatantly disobey a lawful court order. They denied encroaching the Respondents land as alleged .
10. The Applicants denied claims of destruction of property and meting violence. Further, regarding the other suit claimed to exist, the Applicants averred that those orders are unknown to them and they were not parties to the suit. They pointed out that the Respondents have not rebutted the fact that they confiscated cows belonging to them.



11. The Applicants added that the alleged contemnors' advocate was present in court on December 31, 2021 and consented to the extension of the court orders in the presence of his client and contemnors and could not feign ignorance as to the existence of the said court order.

### **Applicant's Written Submissions**

12. The Applicant submitted that on December 31, 2021, the Advocates for the Respondents extended by consent the already existing interim orders and did not complain of lack of service of the order. That there was proper service of pleadings and the court order effected to the required standard and the process server filed an affidavit of service. They reiterated the acts of contempt carried out on the January 14, 2022, and further stated that their livestock was taken away and the alleged Respondents did not release the confiscated animals even upon being served with the contempt application. The Applicants relied on the cases of *Hadkinson vs Hadkinson* (1952) All ER cited in *EAM -VS- PAA* (2017) eKLR where it was held that a court order must be obeyed as this is how the courts exert authority.
13. It is the Applicants' submission that the level of disobedience by the contemnors is in fact tainted with arrogance and malice. They relied on the cases of *Akber Abdullah Kassam Esmail vs Equip Agencies Ltd & 4 others* as well as the Supreme Court case of *The Board of Governors, Moi High School, Kabarak vs Malcom Bell & Another* SC Petition No 6 and 7 of 2013 and invited the court to exercise its authority and safeguard the fundamental supremacy of the law which is under great challenge by the contemnors.

### **Respondents' Submissions**

14. The Respondents/Alleged contemnors reiterated the contents of their replying affidavit and insisted that the Plaintiffs are trespassers and have encroached onto the said parcel and have invaded it while harassing their herders as well as trying to steal their cattle. They also reiterated their stance that one cannot claim for adverse possession against the County Government as they prayed for the application to be dismissed.

### **Analysis and Determination**

15. I have carefully, considered the application, the rival affidavits both in support and opposition, the submissions filed as well as the authorities and the law cited.
16. The term "contempt" is defined in Brian A Garner in *Black's Law Dictionary* (Eleventh Edition) Thompson Reuters, 2019 defines contempt of court as: -

"Contempt is a disregard of, or disobedience to, the rules or orders of a legislative or judicial body, or an interruption of its proceedings by disorderly behavior or insolent language, in its presence or so near thereto as to disturb the proceedings or to impair the respect due to such a body."

17. In the case of *Hadkinson -v- Hadkinson*(1952) 2 All ER 567, it was held that:

"It is plain and unqualified obligation of every person against or in respect of, who 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." (Also see the case of *Katsuri Limited Vs Paurchand Deepar Shah* (2016) eKLR).



18. I agree with the holding in the above mentioned decision that every court order should to be obeyed by the person to whom it is directed.
19. The power to punish for contempt of Court, is provided for under the Section 5 of the Judicature Act, Chapter 8 of the Laws of Kenya, and a number of other legislations. Numerous case law exist on these powers. This court is given power to punish for the offence of contempt of Court under Section 29 of the Environment and Land Court Act which stipulates:
- “.... 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.”
20. Order 40 rule 3 of the Civil Procedure Rules provides for consequence of breach of an order of injunction and states:
- “In cases of disobedience, or of breach of any such terms, the court granting an injunction may order the property of the person guilty of such disobedience or breach to be attached, and may also order such person to be detained in prison for a term not exceeding six months unless in the meantime the court directs his release”
21. Dealing with the question of contempt 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.”
22. Having laid the basis on which courts in Kenya can punish for contempt of court orders, I now turn to address the issues raised in the Application at hand.
23. Courts have set out established principles of law in an application for civil contempt and in the case of Samuel M N Mweru & Others v National Land Commission & 2 others [2020] eKLR the held that:
- “It is an established principle of law that in order to succeed in civil contempt proceedings, the applicant has to prove (i) the terms of the order, (ii) Knowledge of these terms by the Respondent, (iii). Failure by the Respondent to comply with the terms of the order. Upon proof of these requirements the presence of wilfulness and bad faith on the part of the Respondent would normally be inferred, but the Respondent could rebut this inference by contrary proof on a balance of probabilities.”
24. The terms of the court order dated December 16, 2021 are in my view very clear and they are as follows:
1. “That the application dated December 16, 2021 is hereby certified as urgent



2. That a temporary injunction be and is hereby issued for a period of 14 days restraining the defendant either by themselves, agents servants, employees and/or proxies from evicting the Applicants from land parcel Kanyonyo11802 located within Kitui County or selling and/or alienating the said land
  3. The application to be served for inter partes hearing on December 31, 2021.
25. However, in spite of the clear terms of the orders, the fact that there exists a discrepancy between the names of the Defendant/Respondent to whom the order is addressed and the employer of the alleged contemptors casts doubt as to whether it can be said that the order was clear and/or binding on the Respondent or whether the order was directed at the persons sought to be cited. The order was directed at Yatta Ranching Co-operative Society the initial Respondent. As claimed by the Respondent Yatta Ranching Co-operative Society Ltd is a different entity. This difference necessitated an application for amendment of the notice of motion application and the originating summons. The application for amendment was allowed on December 31, 2021 but it is noted that the amended notice of motion was filed on 20/1/2022. The acts of contempt complained of are said to have occurred on January 14, 2022. The Applicant has not shown that the order itself was ever amended and served on the Respondent in the amended suit papers.
26. In the case of *Ex-parte Peter Nyamu Karaguri vs AG of Kenya and 5 others*, Odunga, J held as follows:
- “The slightest ambiguity to the order can invalidate an application for committal as ambiguity can in turn lead to the standard of proof which is the criminal standard not being attained especially on affidavit evidence.”
27. Did the intended contemptors have knowledge of the orders? On the issue of service of the court order I find that the Applicants have not proved that the intended contemptors were served with or were aware of the terms of the court order. I am guided by the fact that 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.
28. Looking at the application under consideration the Applicants claim that the Respondent was served with the court order. However, no affidavit of service is attached to the said supporting affidavit. Further the Applicants claim that when the matter came up for inter partes hearing of the application dated December 16, 2021 the order was extended by consent of the Respondents Advocate. However, the court record shows that when the matter came up for inter partes hearing on December 31, 2021, Mr Odhiambo Advocate for the Respondents indicated that even though he had filed Notice of Appointment of Advocates and a preliminary objection, his client had not been served. Counsel for the Respondent indicated that he did not oppose the application for leave to amend the Notice of Motion and the Originating Summons but did not consent to the extension of the interim orders. However, the court extended the orders to allow for the parties to respond substantively to the Notice of Motion and for hearing of the preliminary objection.
29. The court has also looked at the Applicants’ application dated December 23, 2021 which sought leave to be heard during the courts vacation and an affidavit of service attached thereto sworn by one Gilford Muli Kinyatta on December 23, 2021. The affidavit deponed that the Applicant had served the Respondent with the certificate of urgency, originating summons, supporting affidavit and Notice of motion, its supporting affidavit all dated December 16, 2021 and another notice of motion dated December 17, 2021 for amendment of pleadings. There was no mention of service of the court order. I therefore find that the Respondents cannot be said to have had personal knowledge of the court order.



30. The acts of contempt complained of are that on 14/1/2022, the contemptors descended on the Applicant's crops and fences raided their cowsheds and took away their animals. That this was all done by Nicholas Muli Kakungi, the ranch manager Denis Mbugu in charge security and Jackson Kamba the ranch chairman accompanied Mr Paul Ceruiyot who is the OCS Kanyonyoo Police Station with a contingent of 5 police officers among them Wilson Kibaara.
31. In response, the Respondents stated that the Applicants are the ones guilty of invading their land and causing various forms of destruction as outlined herein before. 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. 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 or 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.”
32. As proof of the acts of contempt committed, the Applicants have exhibited photographs showing half demolished homes and a large truck and have stated that the demolitions were carried out by the intended citees with the help of the OCS Kanyonyoo police station. It is noted that the Respondents did not address the allegations of demolition of homes and confiscation of livestock. They however stated that the Respondent B2 Yatta Ranching Co-operative Society Ltd is the registered owner of the suit land and that the Applicants are trespassers. That the Applicants have taken advantage of the court orders issued on December 16, 2021 to carry out criminal activities of attacks on workers destruction of properties and killing, maiming and stealing livestock and wildlife. They have attached photographs of injured persons and injured and dead wildlife. From the evidence on record, and the facts set out in the affidavits by both parties, it is not clear who between the two parties is causing destruction of property, injury to persons and animals and confiscation of animals on the suit land. None of the parties have shown where the acts complained of took place. What is clear is that there is destruction going on within the suit land and there is necessity for law and order to be restored and maintained. I therefore find that from the evidence on record, the Applicants have not proved to the required standards the acts of contempt of court complained of and that the said acts were committed by the Respondents.
33. Having noted as above I do further find that the applicants have not proved to the required standard that the Respondents are guilty of contempt of the specific terms of the court order issued on



December 16, 2021 and specifically they have not shown that they have been evicted from the suit property land parcel Kanyonyo 11802, or that the suit land has been sold or alienated. The application dated January 20, 2022 is found to have no merit and the same is dismissed with costs.

**DELIVERED, DATED AND SIGNED AT KITUI THIS 15<sup>TH</sup> DAY OF NOVEMBER, 2022.**

**L. G. KIMANI**

**JUDGE ENVIRONMENT AND LAND COURT**

Ruling read in open court in the presence of-

Musyoki Court Assistant

Kalwa Advocate for the Plaintiff/Applicant

Odhiambo Advocate for the Defendant/Respondent

