



Mdari v Attorney General & 2 others; Bw'omwanwa (Contemnor) (Constitutional Petition 4 of 2017) [2022] KEELC 14958 (KLR) (9 November 2022) (Ruling)

Neutral citation: [2022] KEELC 14958 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
CONSTITUTIONAL PETITION 4 OF 2017**

M SILA, J

NOVEMBER 9, 2022

BETWEEN

CHARLES COSMAS MDARI PETITIONER

AND

ATTORNEY GENERAL 1ST RESPONDENT

KENYA RAILWAYS CORPORATION 2ND RESPONDENT

NATIONAL LAND COMMISSION 3RD RESPONDENT

AND

GERSHOM OTACHI BW'OMWANWA CONTEMNOR

RULING

(Application to commit the Chairperson of the National Land Commission to civil jail for failing to abide by the judgment of the court; no response filed to the application; application allowed and warrant for his arrest issued)

1. Through an application filed on 16 March 2022, the petitioner herein seeks orders to have Mr. Gershom Otachi Bw'omanwa, the Chairperson of the National Land Commission (the contemnor) to be committed to civil jail for a period of six (6) months and be fined such amount as the court may deem fit to be personally paid by him within 14 days of the order. The applicant also wants the contemnor to purge the contempt by the National Land Commission and communicate the determination of the value of compensation payable to the petitioner upon its acquisition. The application is supported by the affidavit of the petitioner. In it, he has referred to the judgment of this court dated on 18 June 2021 and delivered on 24 June 2021 and contends that the contemnor has not ensured its compliance despite being served. There is no response filed to this application and I have considered it.



2. The petitioner is the proprietor of the land parcel Kwale/Mackinon Road Phase 1/6. This land was acquired for the construction of the Standard Gauge Railway (SGR). The petitioner filed this suit on 21 April 2017, on the ground that he had not been compensated for the land. He inter alia sought orders to compel the National Land Commission (NLC) to communicate to him the determination of the value for purposes of compensation. In the judgment delivered on 24 June 2021, I held in favour of the petitioner. I inter alia ordered the NLC to communicate to the petitioner its determination of the value of compensation payable within 21 days of the judgment and if the communication was acceptable to the petitioner, then payment be made within 30 days. In this application, the petitioner avers that the Commission has not complied with this order despite being aware of the judgment.
3. I already mentioned that nothing has been filed to challenge this application. I have no reason to doubt that the decree has been served upon the Commission and the Commission has not deemed it fit to comply with it. The contemnor is the Chairman of the Commission and he has not come to court to deny that he has a duty to ensure that the Commission complies with the judgment.
4. I have no reason not to allow this application. I hereby issue a warrant of arrest for Gershom Otachi Bw'omwanwa, the Chairperson of the National Land Commission. Upon his arrest, he shall be escorted to this court, so that the court may give him a chance for mitigation before the appropriate sentence can be meted out. The warrants to be extracted by counsel for the petitioner and to be executed by the Inspector General of Police forthwith upon receipt.
5. The contemnor shall also pay the costs of this application and any costs that may be incurred by the petitioner in executing the warrants of arrest.
6. Orders accordingly.

DATED AND DELIVERED THIS 9TH DAY OF NOVEMBER, 2022.

JUSTICE MUNYAO SILA

JUDGE, ENVIRONMENT AND LAND COURT

AT MOMBASA

Delivered in presence of :-

Ms. Ongeso holding brief for Mr. Karega instructed by M/s Wanjiku, Mohamed & Company Advocates, for the petitioner/applicant.

Ms. Opondo instructed by M/s Gikera & Vadgama Advocates for the 2nd respondent in the petition.

No appearance for the Chairman, National Land Commission, respondent in the application.

Court Assistant – Wilson Rabong'o.

