



Wanjohi & 2 others v Mwiki Company Limited & another (Environment & Land Case 368 of 2017) [2022] KEELC 15436 (KLR) (19 December 2022) (Ruling)

Neutral citation: [2022] KEELC 15436 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENT & LAND CASE 368 OF 2017**

JG KEMEI, J

DECEMBER 19, 2022

BETWEEN

AGNES MUTHONI WANJOHI 1ST PLAINTIFF

FRANCIS WANJOHI MUNYERI 2ND PLAINTIFF

PHILIP MWANGI KABIRU 3RD PLAINTIFF

AND

MWIKI COMPANY LIMITED 1ST DEFENDANT

ROBERT WAIRIRI 2ND DEFENDANT

RULING

1. The plaintiffs/ applicants filed the instant application dated 18/8/2021 seeking orders that;
 - a. Spent.
 - b. This honorable court be pleased to issue a notice to show cause against the 1st defendant/ respondent's director Mr Robert Wairiri, the 2nd defendant for committal to civil jail for contempt for willfully failing, refusing and neglecting to obey the decree of this honorable court of November 7, 2018.
 - c. This honorable court does order the defendant/respondent to sign transfer documents in favor of the applicants and in default the deputy registrar of this court be ordered to execute the same on behalf of the defendant.
 - d. The 1st defendant's director Mr Robert Wairiri be denied audience before this honorable court until such time the respondent shall have purged his contempt.
 - e. This honorable court be pleased to issue a vesting order unto the applicants ownership of LR No 10901/187 as per the decree by this honorable court.



- f. This honorable court be pleased to issue any other orders for contempt of court and execution of then transfer instruments in favor of the applicants as it may deem fit.
 - g. Costs be in the cause.
2. The application is based on the grounds thereat and supporting affidavit of even date of Philip Mwangi Kabiru, the 3rd plaintiff on behalf of the plaintiffs. He deponed that this court on 7/11/2018 decreed that the defendants to cause the transfer and registration of title in favor of the plaintiffs within 6 months from the date of the judgment as shown by copy of the decree; PMK1. That further the court decreed that a declaration be made that the plaintiffs are the legal owners of all that parcels of land measuring 5.5 acres each to be excised from LR No 10901/ 187 (being a subdivision of LR No 101901/29) by virtue of purchase for valuable consideration. That there have been correspondences – PMK2 between the parties with a view of concluding the conveyance in compliance with the court’s decree but three years later the transfer is yet to take place. That it is time the court’s stamps its authority to enable the plaintiffs enjoy the fruits of their judgment.
 3. The defendants filed grounds of opposition dated 22/9/2021 and a replying affidavit sworn on October 27, 2021 by Robert Wairiri, the 2nd defendant. The defendants admitted that indeed there have been communication geared towards compliance with the court’s decree. That they are now in possession of the original title for LR No 10901/29 and deed plan for LR No 10901/187 which had been misplaced. Copies of the title deed and deed plan are annexed in the replying affidavit as RB-1a and RB-1b. That the completion of transfer in favor of the 1st defendant is underway for it to ultimately transfer the same to the plaintiffs as ordered by the court. Further that the draft transfer has already been sent to the transferor’s advocates, M/s Sharpley Barret & Co Advocates for perusal and approval.
 4. The application was prosecuted by way of written submissions which submissions I have read and considered.
 5. The plaintiffs through the firm of J M Njengo & Co Advocates filed submissions dated 23/5/2022 and drew a single issue for determination; whether the defendants are in breach of the decree of the honorable court issued on 7/11/2018. They submitted that contempt of court is the act by an individual of being disobedient towards a court of law and its orders in a manner that defies authority. That the plaintiffs have demonstrated the willful disobedience of the court decree that was based on the parties consent to settle the matter amicably. That for an applicant to succeed in an application for contempt proceedings it must be proven that there exists such court orders; the respondent is aware of the orders and the respondent has failed to comply with the order as was held in the case of *Katsuri Ltd v Kapurchand Depor Shah* [2016] eKLR. That various correspondences – PWK2 were made between the parties to no avail hence the application.
 6. The firm of Kamere & Co Advocates filed submissions dated 20/6/2022 on behalf of the defendants. They maintained that they are innocent of any contempt of court and that they had explained the difficulties they faced in ensuring that they comply with the court order as outlined in their replying affidavit. That the plaintiffs have failed to prove that the 2nd defendant has willfully disobeyed the court order placing reliance in the case of *Samuel MN Mweru & Others vs National Land Commission & 2 others* [2020] eKLR.
 7. The main issue for determination is whether the application is merited.
 8. It is common ground that the parties herein settled the suit in terms of the consent dated 7/11/2018 and filed in court on even date which consent was adopted as the orders of the court and fashioned as follows;



- a. That a declaration be and is hereby issued that the defendants are the legal owners of all that parcel of land known as LR No 10901/187 (being a subdivision of LR No 10901/29).
 - b. That a declaration be and is hereby issued that the 1st plaintiff, Agnes Muthoni Wanjohi is the legal owner of all that parcel of land measuring 5.5 acres to be excised out of LR No 10901/187 being a subdivision of LR No 10901/29) by virtue of purchase for valuable consideration *vide* a sale agreement made on May 21, 1992.
 - c. That a declaration be and is hereby issued that the 2nd plaintiff, Francis Wanjohi Munyiri is the legal owner of all that parcel of land measuring 5.5 acres to be excised out of LR No 10901/187 (being a subdivision of LR No 10901/29) by virtue of purchase for valuable consideration *vide* a sale agreement dated May 6, 1992.
 - d. That a declaration be and is hereby issued that the 3rd plaintiff, Phillip Mwangi Kabiru is the legal owner of all that parcel of land measuring 5.5 acres to be excised out of LR No 10901/187 (being a subdivision of LR No 10901/29), by virtue of purchase for valuable consideration *vide* a sale agreement dated July 24, 1992.
 - e. That the defendants shall within 6 months from the date hereof cause the transfer and registration of the titles in the names of the plaintiffs for their respective parcels aforesaid.
 - f. That the plaintiff shall pay the stamp duty, the land rates, rent and registration fees necessary for the transfer and registration of the titles to their respective names. Provided that the plaintiffs shall apply the sum of Kshs 972,659/- advances to the defendants for purposes of paying the stamp duty and the registration fees expenses.
 - g. That this suit be and is hereby marked as settled with no orders as to costs.
9. Upon adoption of the said consent a decree was issued to that effect on November 20, 2018. The terms of the consent *inter alia* at para 5 was that the defendants shall within 6 months from the date thereof cause the transfer and registration of the titles in the names of the plaintiffs for their respective parcels aforesaid.
 10. In order to succeed in civil contempt proceedings, the applicant is duty bound to prove the following 4 elements; -
 - 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.
 11. The orders of the court, subject of this application for contempt were arrived at by the consent of the parties. They were clear and unambiguous having been a product of negotiation and agreement and knowledge of the parties, the respondents included. The first and second limbs of contempt have therefore been satisfied.
 12. The next question for examination is whether the defendants have acted in breach of the court order? At the time of filing the instant application, 19/8/2021 it was almost three years of plaintiffs awaiting compliance of the said court orders. In their defence, the defendants claimed that the original title and deed plan were missing but the same have been found and the transfer is underway. That the draft



transfer had been forwarded to the firm of Sharpley Barret & Co Advocates for approval as shown by RW2a & b. A glean of the letter to the said firm dated October 18, 2021 does not indicate evidence of receipt by M/s Sharpley Barret Advocates. Further as the plaintiff rightly submits the consent did not contain a provision for any third-party approval of the impugned transfers. There is evidence of correspondence in the plaintiff's supporting affidavit most of which was never responded to by the defendants. A reading of the consent filed in court did not mention any third-party involvement to give effect to the orders of the court.

13. It is the finding of the court that the defendants have willfully and deliberately failed to comply with the court orders as they have not explained what the difficulty they have faced in getting the documents executed.
14. I therefore make orders as follows;
 - a. The application is allowed and the 2nd respondent is found to be in contempt of the court orders issued on the 7/11/2018.
 - b. The 2nd respondent is hereby directed to purge the contempt within the next 60 days by availing the completion documents to the applicant in compliance of the court order.
 - c. In default of the compliance with b above a notice to show cause will issue against the 2nd respondent to appear in person before this court on the 8/3/2023 to show cause why he should not be committed to civil jail for the disobedience of the court orders issued on the 7/11/2018.
 - d. Costs in the cause.
15. It is so ordered.

DELIVERED, DATED AND SIGNED AT THIKA THIS 19TH DAY OF DECEMBER, 2022 VIA MICROSOFT TEAMS.

J G KEMEI

JUDGE

Delivered online in the presence of;

1st – 3rd Plaintiffs – Absent

Ms. Mwangi for 1st and 2nd Defendants

Court Assistant – Phyllis / Kevin

