



Muraga & another v Ethangatha & 2 others (Environment & Land Case 13 of 2020) [2022] KEELC 15190 (KLR) (7 December 2022) (Ruling)

Neutral citation: [2022] KEELC 15190 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIRONMENT & LAND CASE 13 OF 2020
CK YANO, J
DECEMBER 7, 2022**

BETWEEN

AGGREY MURAGA 1ST APPLICANT

SARAH MWATHERI 2ND APPLICANT

AND

ERIC KINOTI ETHANGATHA 1ST RESPONDENT

MOSES NDEREBA ETHANGATHA 2ND RESPONDENT

HUMPHREY KIRAMANA ETHANGATHA 3RD RESPONDENT

RULING

1. This ruling is in respect of the notice of motion dated May 4, 2022 in which the plaintiffs/applicants seek for orders that this honourable court be pleased to order that the 4th defendant/respondent be committed to six (6) months imprisonment for contempt of court order and costs.
2. The application is premised on the grounds-;
 - a. That the defendant/respondent has defied the court orders of temporary injunction given on May 10, 2021 in this matter and has instead cultivated almost the entire LR No Tigania West/Uringu II/644 leaving the 2nd plaintiff/applicant with her homestead only without anywhere to cultivate.
 - b. That unless the present application is heard and determined on a priority basis, the defendant/respondent will continue to deny the 2nd plaintiff/applicant an opportunity to earn a living through farming which is her only source of livelihood.
 - c. That it is in the interest of justice that the present application be allowed.



3. The application is further supported by the affidavit of Sarah Mwathera, the 2nd plaintiff/applicant sworn on May 4, 2022, wherein she states that on May 10, 2021, this honourable court gave orders of temporary injunction restraining the defendants (including the respondent herein) by themselves, their agents, assigns, heirs or anyone working on their behest from cultivating, trespassing into or otherwise interfering with the plaintiff's/applicants quiet possession of the suit property pending hearing and determination of the suit. A copy of the court order given on May 10, 2021 has been annexed. That the respondent was duly served with the said order on March 28, 2021 through his advocate on record who received the said order and stamped a return copy which has also been annexed. That the respondent subsequently filed the application dated June 12, 2021 seeking to discharge and or set aside the orders of May 10, 2021 but the said application was dismissed with costs on November 10, 2021.
4. The applicants aver that they complained to the area Senior Assistant Chief Amwari sub-location about the respondent's trespass and the said Senior Assistant Chief wrote to the respondent on March 18, 2022 demanding that they should comply with the said court order, but the respondent ignored the said letter, and the Senior Assistant Chief wrote a letter dated April 7, 2022 to the OCS Nchiru Police Station informing him of the respondent's actions and he advised the applicants to seek court redress. Copies of the said letters have also been annexed. The applicants have also attached photos showing the cultivation by the respondent on the suit land. It is averred that unless the present application is heard and determined on priority basis, the respondent will continue to deny the 2nd plaintiff/applicant an opportunity to earn a living through farming which is her only source of livelihood. That it is in the interest of justice that the application is allowed.
5. In opposing the application, the 4th defendant/respondent filed a replying affidavit sworn on July 4, 2022 in which he contends that the application is false, incompetent and an abuse of the due process of the court. The respondent states that he has complied fully with the order give on May 10, 2021 and denies having cultivated, trespassed and or otherwise interfered in any manner with the property LR No Tigania West/Uringu II/644. The respondent states that the photographs attached to the applicants' application do not portray cultivated land but rather portray bare land which is not cultivated. He states that the 2nd applicant has been cultivating and grazing on the said property LR No Tigania West/Uringu II/644 and that the rest of the land is not cultivated. The respondent has annexed copies of photographs of the cultivated land, and prayed for the dismissal of the application herein with costs.
6. The application was canvassed by way of written submissions. The applicants filed their submissions on July 18, 2022 while the respondent filed his on August 26, 2022 and what he referred to as addendum submissions on October 25, 2022.
7. I have considered the application, the response and the submissions filed. The issue for determination is whether the 4th respondent has disobeyed the orders of temporary injunction issued by the court on May 10, 2021 as stated by the applicants and whether the respondent should be punished for contempt.
8. The court record indicates that the plaintiffs/applicants filed an application dated April 23, 2020 seeking for orders of inhibition and injunction over parcel No Tigania West Uringu II/2096 & 37 and Parcel No Tigania West/Uringu II/644. The court considered the application on May 10, 2021 and ordered as follows-;
 1. That a temporary order of inhibition be and is hereby issued inhibiting any dealings with land parcel No Tigania West/Uringu II/2096 & 937 pending hearing and determination of this originating summons.



2. That a temporary order of injunction be and is hereby issued restraining the respondents by themselves, their agents, assigns, heirs or anyone working on their behest from cultivating, trespassing into or otherwise interfering with the plaintiff/applicants' quiet possession of land parcel No Tigania West/Uringu II/644 pending hearing and determination of this originating summons.
3. THAT this matter is now fixed for pre-trial directions on September 21, 2021.
9. The said orders were made in the presence of counsel for the applicants and in the absence of the advocate for the respondent though the court noted that the date was taken by consent. The applicants allege that the 4th respondent has defied the said court order by cultivating almost the entire LR No Tigania West/Uringu II/644 leaving the 2nd applicant with her homestead only. In support of the application, the applicants have annexed some photographs. I have perused the said photographs. I am in agreement with the respondent's averment that the said photographs do not portray any cultivated land. Instead, the photographs seem to show some bare land which is not cultivated. From the photographs and material on record, there is no evidence to show that the respondent has undertaken any cultivation on the suit land. Besides the allegations made by the applicants and which have been denied by the respondent, there is no evidence to show that the respondent has trespassed on the suit land. I am not persuaded that the applicants have proved that the court orders made by the court on May 10, 2021 have been disobeyed.
10. The court will only punish for contempt if satisfied that the orders of court have been disobeyed. Given that contempt of court orders seek the imprisonment of a party and denial of liberty of the person, the applicants cannot wish away the duty to prove beyond a shadow of doubt the requirements expected of them to show that the orders have been disobeyed by the respondent. The criminality of punishing a party for disobeying a court order places a greater burden on the applicants to prove to the court that despite the respondent being fully aware of the orders, he has chosen to disobey and for that reason should be punished. The evidence adduced by the applicants in this case does not lead this court to make a finding that the respondent is in contempt of the orders issued on May 10, 2021.
11. In light of the above, I find no merit in the plaintiffs' application dated May 4, 2022 and the same is hereby dismissed. Each party to bear their own costs.
12. It is so ordered.

DATED, SIGNED AND DELIVERED AT MERU THIS 7TH DAY OF DECEMBER, 2022

In presence of:

Court Assistant – Kibagendi

No appearance applicant

No appearance respondent

C K YANO

ELC JUDGE

