



**Nyangau v Wagaki (Environment & Land Case 239 of 2014)
[2022] KEELC 15180 (KLR) (6 December 2022) (Ruling)**

Neutral citation: [2022] KEELC 15180 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
ENVIRONMENT & LAND CASE 239 OF 2014
NA MATHEKA, J
DECEMBER 6, 2022**

BETWEEN

PETER O NYANGAU PLAINTIFF

AND

NJERI NJAU WAGAKI DEFENDANT

RULING

1. The application is dated February 10, 2022 and is brought under section 5 of the *Judicature Act* cap 8, order 52 rules 2 & 3 of the *Supreme Court of England*, section 3A and section 63 of the *Civil Procedure Act* and order 51 rule 1 of the *Civil Procedure Rules 2010* seeking the following orders;
 1. That the respondent Njeri Njau Wagaki be ordered and directed to forthwith surrender to this honourable court original title No 477/1X/M1.
 2. That the respondent Njeri Njau Wagaki be committed to civil jail for contempt of the orders issued by this honourable court on 1st March.
 3. That the costs of this application be borne by the respondent.
2. It is based on the grounds that the respondent having been served with court orders issued in Mombasa ELC No 239 of 2014 has flagrantly disobeyed the same. That the respondent has refused and/or neglected to surrender the original title No 477 /IX/MI to court as ordered by this honourable court. That in the circumstances the respondent should be committed to civil jail for willful disobedience of express court orders. That it is only fair and just the respondent be directed to forthwith release and surrender to this honourable court the original title No 477/1X/MI and obey the terms of the orders granted by this honourable court on March 1, 2021. That this honourable court has the jurisdiction to hear and grant the orders sought in the motion filed herein.



3. The application was served but the respondent failed to file any response or attend court. The *Black's Law Dictionary* (ninth edition) defines contempt of court as:

“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 or imprisonment.”

4. This application is anchored on section 63 (c) of the *Civil Procedure Act* which provides that;

“63) In order to prevent the ends of justice from being defeated, the court may, if it is so prescribed:-

(c) Grant a temporary injunction and in case of disobedience commit the person guilty thereof to prison and order that his property be attached and sold”

5. Pursuant to section 63(c) aforesaid, it is provided under order 40 rule 3(1) of the *Civil Procedure Rules* that;

“3(1) In case of disobedient 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”

6. In the case of *Teachers Service Commission vs Kenya National Union of Teachers & 2 others* (2013) eKLR the court stated as follows;

“The reason why courts will punish for contempt of court then is to safe guard 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.”

7. Contempt of court is a grave matter as it concerns the dignity of the court when law and order is threatened and the fact that liberty and fundamental rights and freedoms of the alleged contemnor are at stake. The standard of proof is higher than proof on a balance of probabilities but not as high as proof beyond reasonable doubt. In the case of *Republic vs Ahmad Abolfathi Mohammed & another* (2018) eKLR, the Supreme Court stated as follows:

“We are also conscious of the standard of proof in contempt matters. The standard of proof in cases of contempt of court is well established. In the case of *Mutitika vs Baharini Farm Limited* [1985] KLR 229, 234 the Court of Appeal held that:

“In our view, the standard of proof in contempt proceedings must be higher than proof on the 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, in criminal cases. It is not safe to extend it to an offence which can be said to be quasi-criminal in nature.”

The rationale for this standard is that if cited for contempt, and the prayer sought is for committal to jail, the liberty of the contemnor will be affected. As such, the standard of proof is higher than the standard in civil cases. This power, to commit a person to jail, must



be exercised with utmost care, and exercised only as a last resort. It is of utmost importance, therefore, for the respondents to establish that the alleged contemnor's conduct"

8. In the instant case the respondent having been served with court orders issued in Mombasa ELC No 239 of 2014 has flagrantly disobeyed the same. The respondent has refused and/or neglected to surrender the original title No 477 /IX/MI. The applicant states that in the circumstances the respondent should be committed to civil jail for willful disobedience of express court orders. That it is only fair and just the respondent be directed to forthwith release and surrender to this honourable court the original title No 477/1X/MI and obey the terms of the orders granted by this honourable court on March 1, 2021. The application was not opposed. I find that this application is merited and I make the following orders;

1. That the respondent to comply with the court order issued on June 14, 2019 within the next 60 (sixty) days after service of this order failure of which the will be cited for contempt and be directed to pay a fine of Kshs 50,000/= each and in default, the respondent to be committed to civil jail for a period of one (1) month.
2. The respondent to pay the costs of this application.

It is so ordered.

DELIVERED, DATED AND SIGNED AT MOMBASA THIS 6TH DAY OF DECEMBER 2022.

N.A. MATHEKA

JUDGE

