



County Government of Trans Nzoia v Kenya Railway Corporation (Environment & Land Case 4 of 2023) [2025] KEELC 369 (KLR) (5 February 2025) (Ruling)

Neutral citation: [2025] KEELC 369 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KITALE
ENVIRONMENT & LAND CASE 4 OF 2023
CK NZILI, J
FEBRUARY 5, 2025**

**BETWEEN
COUNTY GOVERNMENT OF TRANS NZOIA PLAINTIFF
AND
KENYA RAILWAY CORPORATION DEFENDANT**

RULING

1. The application before the court is the one dated 9/5/2024. It seeks the court to:

Cite the County Secretary Trans Nzoia County for contempt of court orders issued on 4/10/2023, arrest, sentencing, and committal to civil jail.
2. The reasons are set out on the face of the application and in a supporting affidavit of Christine Macharia sworn on 9/5/2024. The applicant deposes that a site visit was conducted on 29/9/2023 in the presence of the Deputy Registrar, the parties, and their advocates, after which a report was prepared, showing that the land was bare except for the ablution block with one layer of bricks, no market on the property and only a heap of sand.
3. The applicant deposes that the court on 4/10/2023 confirmed the status quo in the presence of the lawyers for the parties that the ablution block should not to be pulled down or added on, the plaintiff remains in possession but not to conduct any further developments on the property pending hearing and determination of the suit.
4. The applicant deposes that despite being aware of the order in place, the plaintiff has continued to develop the suit property in total disregard of the orders as per annexed photographs marked CM'1'. The applicant deposes that the orders were clear, unambiguous and binding on the parties, yet the respondent has willingly and knowingly disregarded them by conducting further developments on the suit land. The applicant deposes that every Kenyan is bound by the rule of law as one of the national



values and principles of governance under Article 10 of the Constitution, which entails obedience or compliance with court orders.

5. The applicant terms the acts of the respondent as conducted in bad faith, warranting punishment before this court for its deviance from court orders that have brought disrepute. Therefore, the applicant urges the court, in the interest of justice, to grant the orders sought.
6. The application is opposed by a replying affidavit of Truphosa Amere, the County Secretary of the plaintiff, sworn on 26/8/2024. It is averred that the respondent is aware of the directions of maintaining the status quo and finding it guilty of contempt of court in the other two pending matters before the court. It is deposed that on 16/5/2024, the advocates acting for the County wrote letters to the applicant requesting a meeting to attempt a possible settlement of the dispute under the Intergovernmental Relations Act, which letter is attached as TA'1', but was yet to elicit a response.
7. The respondent states that the contents of the application remain unsubstantiated, it is unmeritorious and an abuse of the court process. Further, the respondent deposes that it was in the interest of justice that the application be dismissed, for it discloses no compelling evidence to sustain the orders sought.
8. The respondent relies on written submissions dated 16/9/2024. On the merits of the application, it is submitted that Article 189 of the Constitution, as read together with Sections 32 and 33 of the Intergovernmental Relations Act, embraces the principle of cooperation between different levels of government and the need to resolve disputes through negotiations and other ADR means, which the letters written to the applicant, sought to invoke.
9. It is submitted that the applicant, in a show motivated by ill will, ignored the said letter and rushed to apply on unsubstantiated grounds instead of resorting to an amicable settlement of the dispute. Reliance was placed on Peter O. Ngoge -vs.- Francis Ole Kaparo & Others [2007] eKLR, Republic -vs- Principal Secretary, Ministry of Defence Exparte George Kariuki Waithaka [2019] eKLR.
10. The respondent submits that it is aware of the importance of adhering to court orders which it has consistently complied with the same and the allegation of developing the disputed land in violation of the status quo orders was baseless.
11. The respondent submits that the burden to prove contempt is on the applicant which it has not met. Reliance was placed on Econet Wireless (K) Ltd -vs.- Minister for Information and Communication of Kenya & Another [2005] eKLR.
12. The respondent submits that it acted in good faith, seeking an amicable resolution and adhering to the status quo; hence, there was no evidence of willful and contumacious conduct. Reliance was placed on Gatharia K. Mutitika -vs- Baharini Farm Ltd [1985] KLR 227.
13. Section 29 of the ELC Act, as read together with Section 5 of the Judicature Act, grants this court powers to punish conduct amounting to contempt of court, in order to uphold the authority and dignity of the court. In Fred Mtiangi -vs.- Miguna Miguna & Others NRB Criminal Appeal No. 1 of 2018, the court observed that contempt jurisdiction is intended to protect the administration of justice and rule of law.
14. In Shimmers Plaza Ltd -vs.- National Bank of Kenya [2015] eKLR, the court observed that personal service of the order is not necessary where it was made in the presence of the respondent's advocate or where the respondent is aware of the order.
15. To form a basis for contempt of court, the applicant must prove that:
 - (1) The order was clear and unambiguous.



- (2) the Citee knew the order.
- (3) The cites breached the order.
- (4) He willfully and deliberately violated the order.

See Amos Mathenge Kabuthu -vs- Simon Peter Mwangi [2015] eKLR and Republic -vs- Ahmed Abolfathi Mohammed & Another Criminal Appeal No. 2 of 2018 and Katsuri Ltd -vs- K.D. Shah [2018] eKLR.

16. The standards of proof of the above elements must be above the balance of probabilities but below reasonable doubt, as held in Mutitika -vs.- Baharini Farm Ltd [1985] KLR.
17. Having set out the requirements for one to be held guilty of contempt of court from the caselaw cited, has the applicant surmounted the hurdles? Is the respondent, County Secretary, guilty of contempt of court? The burden of proof lies on he who alleges to prove the existence of specific facts for which he wants the court to find in favor of his legal rights.
18. Contempt of court consists of conduct that interferes with the obstruction of justice or impedes or perverts the course of justice. It also includes the failure to comply with a judgment, order, or direction of the court. It also constitutes willful deviances of or disrespect towards the court or challenges or affronts the authority of the court or the supremacy of the law. See Sam Nyamweya & Others -vs.- Kenya Premier League Ltd & Others [2015] eKLR.
19. In this application, it is not disputed that the respondent filed an application dated 18/7/2023 for interim orders regarding LR No. Kitale Block 8/848, accompanying a plaint dated 18/7/2023, seeking eviction and a permanent injunction against the defendant from the land measuring approximately 3.31 Ha.
20. The defendant filed a defense and a counterclaim dated 19/9/2023, claiming that the land belongs to it as per vesting orders of 1986, survey plan of 1926, and layout of 1955 and 1954. It termed the alleged acquisition of the land by the plaintiff as fraudulent or illegal. Therefore, the defendant's counterclaim for invalidation of the allocation and registration of any lease of the land in favor of the plaintiff, entitlement to 3.22 acres of the land, rectification of the register, and a permanent injunction.
21. With regard to the application dated 18/1/2023, the defendant filed a replying affidavit dated 19/9/2023. It appears that on 27/9/2023, parties took a mention for 28/9/2023 to confirm the terms of the status quo that they intended to record. When the matter came up on 28/9/2023, the parties told the court that they had not agreed on the terms. Another mention date for 29/9/2023 was issued. It is on this day that parties agreed to have a scene visit later that afternoon. The Deputy Registrar of this court accompanied the parties and prepared a report attached to this application. Parties, therefore, appeared in court on 3/10/2023 and compromised the application dated 8/7/2023 to the effect that the status quo be maintained as per the report of the Deputy Registrar.
22. Again, on 4/10/2023, parties advocates appeared before the court and, while confirming that the County Government of Trans Nzoia was in possession of the property, agreed to maintain the status quo as per the Deputy Registrar's report pending the hearing of the suit. The status quo was clarified to the effect that the suit land was bare, save for deposits of some ballast and a few bricks for building an ablution block of which the foundation had been done, and building of the same done to the level of only one course above the surface, going by the photographs attached to the report of the Deputy Registrar.



23. Further, the parties consented that the plaintiff remains in occupation of the ground but does not carry out any further construction or deposit of further materials. The parties also agreed to file trial bundles to pave the way for the main hearing on 23/11/2023.
24. The site visit was undertaken in the presence of Miss Truphosa Amere, the County Secretary of the plaintiff. The Chief Officer Lands Mr. Osoro, the County Executive Member of Lands and Trade Miss Jane Rosa Nasimiyu and Mr. Stanley Kirui, accompanied her. Similarly, the Director of Enforcement, Mr. Fred Ndubi, was present. All these are senior officers of the respondent. From the photographs availed by the Deputy Registrar to her site visit report, the images of the attendees to the site are visible, and the status of the land at the time is clear and consistent with the report.
25. The respondent in the replying affidavit sworn on 26/8/2024, other than attaching a letter dated 16/5/2024, has deliberately avoided commenting on whether it has undertaken adverse developments on the suit property as averred on oath after the site visit and the recording of the consent order to maintain the status quo as defined in the report by the Deputy Registrar and confirmed as a reflection of the ground by the lawyers representing the parties.
26. Instead of addressing the particulars laid out for the alleged contemptuous conduct, the respondent has blamed the applicant for not responding to their letter seeking to settle the land dispute through the Intergovernmental Relation Act.
27. The respondent has submitted that the elements of the alleged contempt is unsubstantiated and that it has consistently adhered to and complied with the court order. Expressly, the respondent has denied developing the suit property or engaging in activities on the property that would constitute contempt of court.
28. From the photographic evidence and averments on oath by Christine Macharia, an officer of this court, the respondent, has not sought to cross-examine her for the contents of her averments. Similarly, the respondent has not brought viral reports to counter the evidence that the ground position has now changed through illegal developments above one course, as per the Deputy Registrar's report.
29. The respondent County Secretary does not deny that she was in attendance at the site visit, where the status on the ground was established. She does not deny knowledge of the site visit report and its photographs. She does not deny that the report was subsequently adopted as part of the court record. She does not deny that the report and the findings of the site visit were reduced to an order of the court, compromising the application for interim orders. The respondent does not deny that it was bound by the terms and conditions of the court order that was recorded in the presence of the lawyers. All these are facts pointing to the knowledge or awareness of the court. The order was clear and unambiguous.
30. What, however, bothers me is whether, other than the appearance of the lawyers at the recording of the consent order, a formal order was extracted and duly served upon the respondent. The applicant's affidavit is silent as to this. As much as the respondent, County Secretary attended the site visit and given that it is not clear whether she was present in court when the report was adopted on 3rd and 4th October 2023, I will give her the benefit of the doubt.
31. The burden was on the applicant to show that there was a willful and deliberate breach of the court order and that the County Secretary made the breach in person or at her instructions. The applicant has produced no single letter that it wrote to the County Secretary, notifying her of the court order and its contents. Equally, there is no evidence that the applicant wrote to the County Secretary complaining on any ongoing developments on the suit land contrary to the court order. Other than the photographs, which lack a certificate as per Section 106B of the *Evidence Act*, the applicant has not brought any valuer's report showing that the ablution block, which was at the ground level during the



site visit, has now been fully developed on the same locality on the directions of the respondent. The particular persons or entity undertaking the developments contrary to the court order on behalf of the respondent, has not been indicated, identified, or named.

32. The upshot is that I find the application lacking merits. It is dismissed with costs.

33. Orders accordingly.

RULING DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT KITALE ON THIS 5TH DAY OF FEBRUARY 2025.

HON. C.K. NZILI

JUDGE, ELC KITALE.

In the presence of:

Court Assistant - Chemutai

Miss Moraa for the Defendant/Applicant

Mr. Jura for the Respondent

