



Kimechwa v County Land Adjudication & Settlement Officer, Trans Nzoia & 3 others; Simeon (Interested Party) (Environment & Land Petition E002 of 2023) [2025] KEELC 308 (KLR) (3 February 2025) (Ruling)

Neutral citation: [2025] KEELC 308 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KITALE
ENVIRONMENT & LAND PETITION E002 OF 2023
CK NZILI, J
FEBRUARY 3, 2025**

BETWEEN

JOSEPH KIMECHWA PETITIONER

AND

COUNTY LAND ADJUDICATION & SETTLEMENT OFFICER, TRANS NZOIA 1ST RESPONDENT

THE DIRECTOR OF LAND ADJUDICATION & SETTLEMENT 2ND RESPONDENT

THE LAND REGISTRAR, TRANS NZOIA COUNTY 3RD RESPONDENT

THE ATTORNEY GENERAL 4TH RESPONDENT

AND

ALICE MOKEIRA SIMEON INTERESTED PARTY

RULING

1. By an application dated 1/3/2024, the court is asked to find the Interested Party, Alice Mokeira Simeon, guilty of contempt of court order issued on 27/12/2023 and deny her right of audience before it.
2. The grounds are set out on the face of the application and in a supporting and further affidavit of Joseph Kimechwa dated 1/3/2024 and 13/3/2024. The Applicant avers that orders of status quo were issued to the effect that no person would be evicted, as per the extracted order attached as JK '1'.
3. Further, it is averred that when the matter came up on 12/2/2024 before the court, the IP attempted to mislead the court that the land she had ploughed was different from what the petitioner was referring



- to. The Applicant says a letter was written by his advocates, dated 24/1/2024 to the interested party to confirm the plot number, as per the letter dated 29/1/2024 marked as JK '2' and JK '3'.
4. The Applicant avers that the extracted order had a penal notice and was duly served upon the respondents as per an affidavit of service attached as JK '4'. The Applicant avers that while the Applicant was aware of the terms and conditions of the orders, he proceeded to construct and erect a new fence by replacing and destroying the petitioner's older fence as per annexed photographs marked JK 5'A' and 5'B', respectively.
 5. The Applicant avers that the interested party has ploughed up the land and wholly taken up charge of the same, thereby constructively evicting him from the land. The Applicant avers that his semi-permanent house is still on the land in which his servant or manager lives as per photographs to the application dated 20/12/2023, before the clearing and ploughing occurred, marked as JK 6'A' and 'B.' The Applicant urges the court to grant the reliefs sought to ensure the dignity and authority of the court is protected.
 6. In the further affidavit, the Applicant deposes that the interested party reploughed the land in dispute on 5/3/2024 and planted maize as per photographs attached marked JK1'A', 'B,' 'C,' and 'D.'
 7. The interested party opposes the application through an affidavit sworn on 27/3/2024 for lack of merits, bad in law, and for not establishing any contempt on her part. The IP depones that she was never swerved with any court order as alleged or at all for the affidavit of service talks of service upon one Dan. The IP deposes that she duly became aware of the suit through an anonymous caller, whom she directed to serve the papers on her advocates on record. The IP deposes that she has been in possession and occupation of plot No. Trans Nzoia/Zea/292 since the allocation of it, and ploughed it in 2024 in readiness for planting as per annexure marked AMS'1' to the replying affidavit to the petition dated 12/1/2024; hence it is not true that she breached any order for status quo.
 8. The interested party deposes that from the said annexure to the replying affidavit, it is clear that she had repaired her fence at the time she was ploughing the land. She attached the same as exhibits in this application and urged the court, in the interest of justice, to dismiss the application.
 9. The Applicant relied on a written submission dated 20/6/2024. It is submitted that the power of this court to punish for contempt of court is governed by Section 5 of the *Judicature Act*. The Applicant submits that there are consequences for disobeying a court order as held in Daniel Nderi Njogu -vs.- Lydia Muthomi Kibage [2010] eKLR. In this case, the Applicant submits that there is no dispute that the interested party was served and or was aware of the order issued on 27/12/2023 and went ahead to willfully defy the same by interfering with the subject land.
 10. The Applicant submits that before and after the status quo orders were issued on 27/12/2023, he was entirely in possession of the land with effect from 30/4/1977, going by annexures JK 2A to 2D in the application dated 20/12/2023. However, afterward, the interested party began interference by first fencing the land, followed by a forceful invasion in 2024, hence denying him the opportunity and freedom to utilize the land as he had always done in previous years, and went ahead to plant maize thereby completely and consistently disregarding or disobeying the court order.
 11. Reliance was placed on Hadkinson -vs.- Hadkinson [1952 ALLER 567, Republic -vs.- Kitui County Government Exparte Fairplan Systems Ltd [2022] eKLR.
 12. The Interested Party relied on a written submissions dated 10/7/2024 that the application does not meet the threshold to grant the orders sought, he has come to court with unclean hands, and that she is the one who has been in possession and occupation of the suit land. The IP submits that the



Applicant has no documents to prove ownership of plot No. 299 ADC 365 transformed into Trans Nzoia/Zea/292.

13. The interested party submits that since she was the bona fide allottee of the plot, status quo orders issued on 20/12/2023 meant that she was to continue being in occupation of the plot; otherwise, she was acquired the plot No. 292 Zea Settlement Scheme measuring 2.4 Ha by a letter dated 2/6/2022.
14. The interested party submits that the Applicant has failed to discharge the burden of proof under Section 107 of the *Evidence Act* on contempt as held in Mutitika -vs.- Baharini Farm Ltd [1985 KLR 229, more so when there is nothing to show that he was in occupation of the said land at the time the court order was issued.
15. The 1st - 4th respondents in the main petition did not participate in this application.
16. Section 29 of the ELC Act grants this court powers to punish for refusal, failure, or neglect to obey a court order or directions. The party seeking for the court to punish another for contempt of court has to meet the following ingredients:
 - (1) The terms of the order were clear and unambiguous.
 - (2) The respondent knew the terms conditions of and the court order.
 - (3) The respondent acted in breach of the court order.
 - (4) There was a willful and deliberate failure to obey the order. See Cecil Miller -vs.- Jackson Njeri & Another [2017] eKLR.
17. In Republic -vs- Ahmed Abolfathi Mohammed & Another [2018] eKLR, the apex court held that the power to commit a person to jail must be exercised with utmost care and only as a last resort, after it is established that the respondent's conduct was deliberate. The degree of proof is higher than on a balance of probability. The procedure to punish for contempt was considered in detail in Christine Wangari Gachaga -vs.- Elizabeth Wanjiku Evans & Others [2014] eKLR and in Shimmers Plaza Ltd -vs.- Nairobi Ltd, NRB C.O.A. No. 33 of 2012.
18. In Refrigeration and Kitchen Utensils Ltd. -vs.- Gulabehead Popatalal Shah & Another Civil Application No. 39 of 1990, the court observed that it is essential for the maintenance of the rule of law and good order that the authority and dignity of the court is upheld at all times. In Shimmers Plaza Ltd -vs.- NBK (Supra), the court reiterated that court orders must be obeyed and parties against whom orders are made are not allowed to trash them with impunity; obedience to court orders is not optional, instead it is mandatory, and a person does not choose as to whether to obey a court order or not, for as said by Theodore Roosevelt, obedience to the law is demanded as of right and not as a favor. Additionally, the court held that it could not fold its hands in helplessness and watch as its orders are disobeyed with impunity, left, right, and center; otherwise, it would amount to abdication of its duty under *the Constitution*.
19. The burden in this application is, therefore, on the Applicant to demonstrate that the terms of the order were clear, unambiguous, and binding on the interested party; she knew about the order, she acted in breach, and the conduct was deliberate. See Katsuri Ltd -vs- K.D. Shah [2016] eKLR.
20. The proceedings of contempt are quasi-criminal, as held in Woburn Estate Ltd -vs.- Margaret Bashforth [2016] eKLR, for a man may be sent to jail for it. Evidence to incriminate him must be, therefore, availed before a court.



21. What the Applicant is saying is that an order to maintain the status quo was issued on 29/12/2023. The order was issued *ex parte*. It states that the status quo be maintained. It was issued pursuant to an application dated 20/12/2023, which had been brought under a certificate of urgency by the Applicant. The Applicant had sought conservatory orders regarding title No. Trans Nzoia/Zea/292 situated at Zea Settlement Scheme, Kwanza Sub-county, measuring approximately 5 acres. He was seeking to stop the IP from interfering with his quiet possession.
22. At paragraph 4 of the supporting affidavit, the Applicant averred that the IP had invaded the land after acquiring a title deed and had begun fencing it. The Applicant had told the court that he was a lawful allottee of the land going by a letter of allocation dated 3/4/1997. Other than photographs, the Applicant had no valuation report or records from a Land Surveyor or Land Valuer to show that he was in occupation of the suit land.
23. In the reply dated 17/1/2024, the interested party alleged ownership, possession, and occupation of the land plot No. Trans Nzoia/Zea/292. She refuted that the Agricultural Development Corporation (ADC) could allocate or alienate any proprietary interest to the petitioner/applicant. Again, the IP challenged the allegation that plot No. Zea ADC 365 was currently plot No. Trans Nzoia Zea/292.
24. The interested party averred that she was offered plot No. 292 at Zea Settlement Scheme measuring 2.4 Ha by a letter dated 2/6/2022, accepted and made payments to discharge it, transfer documents were signed and terms fulfilled, and that she obtained a title deed as per annexures ALS 2(a), (b), (c) and 3(a) and (b). An issue has been raised by the interested party regarding annexure JK-1'. The petitioner has not answered the same as to whether he went back to the Agricultural Development Corporation (ADC) for the issuance of plot No. Trans Nzoia Zea/292.
25. Maintenance of status quo is issued for purposes of preserving the subject matter. ELC Practice Direction No. 28(K) in Gazette No. 5178 of 2014 gives the court the leeway and discretion to make an order for the status quo to be maintained until the determination of the case for the greater justice of the matter. See Joel Mungambi Mukira & Others -vs.- County Government of Nyeri [2019] eKLR and Joel Kipkurui Arap Koech -vs.- Alice Wambui Magandu & Others [2018] eKLR.
26. In this application, the Applicant has to show that he was the one on the land and not the interested party at the time the order was issued on 27/12/2023. He says that the interested party moved in after the order was issued and committed acts in breach of the order.
27. So the question of what the order for maintenance of the status quo meant must be looked at in the context of the pleadings by the parties on what the status quo on the ground was when the order was issued. Both the interested party and the Applicant are unable to agree on who was on the land, what developments were, and to whom they belonged as of 27/12/2023. The order had indicated that no one was to be evicted. The affidavit in reply by the 1st respondent to the main petition at paragraphs 7-9 attached a ground and status report dated 3/6/2022. It clarifies the status of the land and the proprietorship of the same between 1/11/2021 and 20/12/2023. I agree with the interested party that the status quo order meant that the person in occupation would remain on the land and was not to be evicted.
28. Paragraph 4 of the Applicant's affidavit dated 20/12/2023 confirms the proprietorship as of 3/11/2023. Additionally, paragraph 4 of the verifying affidavit on the main petition confirms that an invasion of the land and fencing had taken place a week before 20/12/2023. All these facts taken together mean that the order of status quo and non-eviction could not have been taken to mean restoration of the Applicant to the land and removal of the interested party from the land.



29. The photos relied upon by the Applicant do not show the date they were taken and processed. A certificate accompanying them by the maker was not availed in line with Section 106B (2) and (3) of the *Evidence Act*. The order was made *ex parte*. The service of the order is alleged to have been made against Mr. Dan on 30/12/2023 on behalf of the interested party. The nexus between the alleged manager and caretaker with the interested party has not been established. Knowledge of the contents of the order and its clarity to the alleged contemnor has to be proved by the Applicant. The exact locality and details of the land where the alleged caretaker/manager was found during the effecting of service are missing.
30. Order 5 Rules 1, 6, 13, and 15 of the C.P.R. relates to more of the time and manner in which the service was effected, the name and address of the person, if any, identifying the person served and witnessing the service. How the process server knew or became aware that Mr. Dan was an authorized agent of the interested party to receive service of the court orders on her behalf is not clear. Proof of personal service and knowledge of the court order on the part of the alleged contemnor is therefore not established.
31. On the violation of the court order, as indicated above, the order of status quo as issued related to the status on the ground as pleaded by the petitioner. The Applicant, in his application for conservatory order, had not specified if he was on the land co-existing together with the interested party. The Applicant has not told the court that after the order was served upon the interested party, she proceeded to evict her through personal or through her known agents, contrary to the order that no eviction of any persons should take place. The Applicant has failed to demonstrate the manner in which the interested party personally or through proxy disregarded the court order. See Stephen K. Sang & Another -vs- Chebii Boiyo & Another [2021] eKLR in Aggrey Wafula -vs- Public Service Commission & Another [2022], and Shimmers Plaza Ltd -vs NBK [2015] eKLR.
32. Evidence of disobedience must be availed to link the contemnor with willful and deliberate disobedience of a court order. See Kenya National Union of Nurses -vs- County Government of Meru & Another [2022] eKLR. Even if there was valid service of the court order, still the Applicant must avail evidence that the interested party knew of the contents of the court order or acted as if she knew there was a court order as held in Basil Criticos -vs- Attorney General & Others [2012] eKLR.
33. The standards of proof in contempt proceedings as held in Mutitika -vs- Bahari Farm Ltd [1985] KLR 229 is higher than proof on a balance of probabilities but not exactly beyond reasonable doubt.
34. The evidence adduced in support of the alleged contempt must be sufficient to satisfy any reasonable court directing its mind to the dispute and the nature of the orders issued to find that; indeed, the party concerned did not comply with the order. The evidence must be sufficient and with probative value. Photographic evidence availed by the Applicant lacks probative value. It lacks a certificate to identify the date, time, and the electronic device used to take the photographs and develop them. The place where they were taken has not been indicated or verified by the maker. The affidavit of service of the court order is scanty and unconvincing. The order was not personally served upon the interested party. Evidence that the contact of the interested party was deliberate is lacking. See Republic -vs- Ahmed Abolpathi Mohammed and Another [2018] eKLR.
35. The contents of the further affidavit sworn by the Applicant on 13/3/2024 do not make matters better for the Applicant for lack of authentication of the photographs, with verification that the images of the persons in the photographs were agents of the interested party.
36. The upshot is that I dismissed the application dated 1/3/2024 with costs.

RULING DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT KITALE ON THIS 3RD DAY OF FEBRUARY, 2025.



HON. C.K. NZILI
JUDGE, ELC KITALE

3/2/2025

Coram:

Before - Hon. C.K. Nzili, Judge

Court Assistant - Chemutai

Mr. Kwame for Odongo for the respondents

Lichuma for Katama Ngeywa for the Petitioner present

Court

Ruling delivered.

HON. C.K. NZILI
JUDGE, ELC KITALE

