



**Onditi v Nyaruri & another (Environment & Land Case
44 of 2020) [2024] KEELC 599 (KLR) (8 February 2024) (Ruling)**

Neutral citation: [2024] KEELC 599 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT & LAND CASE 44 OF 2020
A OMBWAYO, J
FEBRUARY 8, 2024**

BETWEEN

JASON NYARURI ONDITI PLAINTIFF

AND

ABEL HAYORA NYARURI 1ST DEFENDANT

LAND REGISTRAR NAKURU 2ND DEFENDANT

RULING

1. On 26th October 2023, Abel Hayora Nyaruri was found in contempt of the orders of this court and was fined Kshs200, 000 or was to face a jail term of 30 days in prison. The said Abel Hayora Nyaruri paid the fine but did not purge the contempt and therefore the plaintiff has come to court again with application dated 4th December 2023 seeking orders that the said Abel Hayora Nyaruri be committed to civil jail, for a period of six months, for contempt of court,
2. In the alternative, Abel Hayora Nyaruri be fined Kshs.1,000, 000/= for disobeying court orders and he be restrained from accessing the property until the suit is heard and determined.
3. Cost of this application be borne personally by Abel Hayora Nyaruri the Respondent herein.
4. The application is based on grounds that the Plaintiff/Applicant herein instituted the current proceedings *vide* a plaint dated 21st July, 2020. That the plaint was filed concurrently with an application of the even date. That on the 23rd July, 2020 the court issued directions and ordered that parties maintain and observe status quo as of the date of filing the suit in regard to parcel of land known as Njoro/Ngata Block 2/1613 (Kirobon "A").
5. That further the Plaintiff/Applicant filed an application dated 4th November, 2023 seeking for conservatory orders allowing Beatrice Bonchere Nyaruri to continue staying in the main house



- constructed on the suit property while the Plaintiff is away in the United States of America for medical treatment.
6. That the application came up for inter-parties hearing on 18th November, 2020 and the Honorable Court issued among others orders that parties maintain status quo where Plaintiff/Applicant remains in possession and continued usage of the main house on the suit property and without interference of the 1st Defendant/Respondent's usage of the land by himself and/or his agent and servants until the suit is heard and determined.
 7. That the 1st Defendant/Respondent *vide* an application dated November, 2020 sought for orders restraining the Plaintiffs daughter one Beatrice Nyaruri from accessing the main house on the suit property which application was dismissed.
 8. The Plaintiff/Applicant's daughter one Beatrice Bonchere Nyaruri has been residing in main house that is built on the suit property with the permission of the Plaintiff and without any interference of the 1st Defendant/Respondent.
 9. The order was given in the presence of both counsels for the Applicant and counsel for the 1st Defendant/Respondent virtually.
 10. The 1st Defendant/Respondent on the 16th of July, 2023 without any court order evicted the Plaintiff's/Applicant's daughter from the suit property and further threw out their belongings including that were in the main house.
 11. The 1st Defendant/Respondent has made the Applicant's daughter's use and occupation of the main house on the suit land impossible. The order issued by the court on maintenance of status quo did not grant the 1st Defendant/Respondent the right to evict the Applicant's daughter from the suit property.
 12. The suspected contemnor was and is aware of the orders of this court, as the said orders were given when his Advocate on record was present.
 13. The 1st Defendant's/Respondent's has and continues to frustrate the Plaintiff/Applicant's daughter from accessing the main house on the suit property despite having knowledge that the court order referenced above grants her authority to do so.
 14. No explanation was given by the contemnor as to why he defied the orders of the court.
 15. The plaintiff/applicant instituted contempt proceedings against the 1st defendant *vide* an application dated the 25th July 2023.
 16. On the 26th October 2023, the Honorable Court in its ruling, found the 1st Defendant in contempt of the court orders and sentenced him to 30 days imprisonment or in the alternative to pay a fine of Kshs.200,000.
 17. On the November 2023, the applicant and his daughter, Beatrice Nyaruri, in the company of the Officer Commanding Station Menengai police station went to enforce the orders but the 1 defendant refused to allow them entry and/or enforce the orders.
 18. The 1st Defendant has not yielded to the orders of court and has continued interfering with the Plaintiffs/Applicant's occupation of the main house in the suit
 19. The 1st Defendant/Respondent is a violent citizen who does not obey the law and by extension, the courts of this country and therefore should be committed to jail.

The Plaintiff/Applicant has no other way of enforcing the said order.



20. In reply, the alleged contemnor denies allegation of contempt and states that Beatrice Bochere Nyaruri is not daughter to the applicant and that the applicant has fabricated birth document to that effect, That the court order did not state that the alleged daughter of the applicant and her adult children to remain in possession of and continue using the main house. He contends that the daughter and her adult children are not mentioned in the order.
21. I have considered the supporting affidavit of Jason Nyaruri Onditi, the replying affidavit of Hebel Hayora Nyaruri and the supplementary affidavit of the former and do find that the alleged contemnor is trying to explain why he has not allowed the applicant to utilize the house on the parcel of land with his daughter and her adult children.
22. The court's interpretation of the order made on 18th November 2020 is that the plaintiff was to enjoy the usage of the main house on the land and the same was supposed to be quiet enjoyment. The court made an order that status quo be maintained and therefor the applicant/plaintiff remain in possession. At the time of the order of status quo, the plaintiff, his daughter and grandchildren were living in the house. By evicting the plaintiff's daughter and grandchildren, the 1st defendant has disobeyed the court order and therefore should be punished for the same. The 1st defendant argues that the application is *res-judicata*, but the court is of a different view because contempt proceedings are quasi- criminal proceedings and that failure to purge the contempt creates another cause of action.
23. I do find that by continuing to disobey the orders of this court even after being penalized by the court, the 1st defendant has no remorse and therefore I do order that he be jailed for 90 days for contempt. In the alternative, he is ordered to pay a fine of Kshs600,000/= . Cost of the application to applicant. Orders accordingly.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY AT NAKURU THIS 8TH DAY OF FEBRUARY 2024.

A O OMBWAYO

JUDGE

