



**M'laaru (Suing by His Next Friend Jerusha Kanario Mwenda) v Miro & another
(Environment & Land Case E005 of 2023) [2024] KEELC 1256 (KLR) (6 March 2024) (Ruling)**

Neutral citation: [2024] KEELC 1256 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIRONMENT & LAND CASE E005 OF 2023**

**CK NZILI, J
MARCH 6, 2024**

BETWEEN

**SAMUEL M'MAINGI M'LAARU (SUING BY HIS NEXT FRIEND JERUSHA
KANARIO MWENDA) PLAINTIFF**

AND

ABEDNEGO MATATA MIORO 1ST DEFENDANT

INSPECTOR GENERAL OF POLICE 2ND DEFENDANT

RULING

1. On 1.11.2023, this court granted prayers numbers 23 & 4 of the plaintiff's application dated 3.10.2023 and the 2nd defendant was directed to enforce the said orders. On 26.11.2023, the plaintiff came back and applied for contempt of court proceedings against the defendants. After the application was certified urgent, a hearing inter-parties was fixed for 7.12.2023.
2. Directions were given on the mode of hearing the contempt application. The respondents were granted seven days to file any responses and for the applicant to file a supplementary affidavit restricted to issues raised in the replying affidavit. Parties were at liberty to put in written submissions before the hearing date.
3. When the matter came up on 17.1.2024, learned counsel for the respondents applied for another hearing date due to the late filing of a further affidavit by the applicant. The court granted the parties another date and directed all the deponents to the respective affidavits to attend court for cross-examination on 24.1.2024. So, the application proceeded with the applicant testifying as PW 1. He was cross-examined and re-examined. The matter was adjourned for response by the 1st respondent on 8.2.2024.
4. The applicant filed another application dated 29.1.2024 seeking the issuance of witness summons to the executive officer Meru ELC court to produce court file No. Meru ELC Case No. 325 of 2017,



Samuel M'Maingi v Martin Murithi & others. The grounds are that this suit touches part of the pleadings, documents, and properties in issue in the referred suit, it was in the interest of justice for the file to be availed during the cross-examination of the respondents, and that the right to a fair hearing included the right to produce documents as held in Christopher Odhiambo v David Ouma & others (2018) eKLR.

5. In support of the application, Jerusha Kanario Mwenda deposed that she had included in her bundle to the application dated 2.12.2023, the pleadings in the pending suit from pages 31-64 as well as in the application dated 3.10.2023 from pages 12-28. From the court record, it appears the applicant also filed a supplementary list of documents to the suit dated 29.1.2024, a ruling, and an order in Nairobi HC Misc Application No. 106 of 2017. The 1st defendant has also filed a statement of defense dated 7.2.2024, to which he denied being party to Meru ELC No. 325 of 2017. Additionally, the 1st defendant filed a further affidavit on 7.2.2024.
6. So, when this court resumed further hearing of the contempt proceedings on 8.2.2024, Senior Counsel Dr. Kamau Kuria said that there were two issues before the respondents could take the witness stand. Senior Counsel sought that the further affidavit sworn by Eliud Murungi Mainga be expunged from the record for being filed late and without leave of court.
7. Regarding the application dated 29.1.2024, the Senior counsel submitted that his client needed the documents during the cross-examination of the 1st respondent. Mrs. Mutinda learned Counsel for the respondents told the court her client was not a party to the referenced case and, therefore, was not privy to its contents, proceedings and orders and needed time to peruse the file and perhaps respond to the application and or seek for the consolidation of the two files instead of importing documents to this suit. Regarding the further affidavit the counsel submitted it related to the earlier application and should, therefore, be admitted for a fair hearing.
8. In a rejoinder, Senior Counsel Dr. Kuria, relying on Tony Gachoka v Republic C. Application No. 4 of 1999, submitted the procedure for contempt proceedings was that an affidavit supports an application and, if need be, the deponents are cross-examined, and once directions were given no further affidavits could be filed or documents introduced. In this case, S.C. submitted that once the plaintiff testified an affidavit or could not be introduced to repair the case. Senior counsel further submitted that the applicant would be prejudiced if the further affidavit was admitted, more so when the respondents had been given an opportunity to state how they wished to oppose the contempt proceedings. Similarly, the senior counsel submitted that the 1st respondent was trying to re-open the proceedings by filing the affidavit without leave and or a formal application. Further, it was submitted that the counsel for the 1st respondent was not candid in saying the affidavit related to an earlier application and, was therefore trying to bring the affidavit through tricks. As to the request for consolidation of the two suits and perusal of the file, it was submitted that counsel for the 1st respondent had enough time to do so, did not deserve extra time, and the issue of consolidation had no bearing on the application for contempt, senior counsel urged the court to hold the application dated 29.1.2024 as unopposed and that the 1st respondent was aware of the file and its contents since during cross-examination, he alluded to the issue of miraa proceeds and was therefore privy to the order and the ruling by Hon. L.J Amin who found him guilty for contempt of court.
9. From the record alluded to at the start of this ruling, directions were given by this court on the mode, manner and time for the hearing of the application for contempt. There was no request before the first witness testified for the filing of any further affidavits or documents by either party.
10. PW 1 testified in support of the contempt application and was cross-examined and re-examined by the respective counsels. The record shows the applicant closed her case, and all that was remaining was the



defense or response to the contempt application. Timelines in which to comply and oppose the notice of motion dated 2.12.2023 were issued by this court. The further affidavit filed on 7.2.2024 came too late after the application commenced hearing. It was also filed without leave of court. It ingenuously seeks to answer the application dated 2.12.2023 and the affidavit of Jerusha Kanario Mwendu and Justus Mwijji. It does not refer to the replying affidavit by Abednego Matata Mioro, sworn on 7.12.2023.

11. Eliud Murugu Maingi, who has sworn it is not a party to this application or a citee to the application dated 2.12.2023. He is, therefore, a stranger to this suit and the application before the court. He was not listed as a witness to this application by the 1st defendant in his replying affidavit. I find the affidavit incompetent and is, as a result of this, expunged from the court record.
12. As to the application on adduction of documents in the pending suit, the applicant did not make the request at the time directions were given for the mode of hearing of the application dated 2.12.2023. The applicant cannot purport to introduce documents in support of her application for contempt through cross-examination of the defense witnesses.
13. The applicant closed her evidence and production of exhibits after she called witnesses to the application, whose single issue for determination is whether the orders issued by this court vide a ruling dated 1.11.2023 have been disobeyed by the respondents or not. The orders were forward-looking and not retrospective. If the 1st respondent has disobeyed other orders issued in other files by other courts, this court cannot enforce those orders or decrees in this file and, in a purported enlargement of its mandate, midstream, to change the course of hearing of the application dated 2.12.2023.
14. In any event, the documents in the earlier suit have been attached to the pleadings and the supplementary list of documents filed by the plaintiff. The upshot is that I dismiss the application dated 29.1.2024 as coming too late, lacking merits and prejudicial to the 1st respondent. The court directs parties to restrict themselves to the facts, issues and matters before the court to the application dated 2.12.2023 and the parties involved.

Orders accordingly.

DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT MERU ON THIS 6th DAY OF MARCH, 2024

HON. CK NZILI

JUDGE

In presence of:-

C.A Kananu

Miss Kiyuki for 1st defendant

Mwenda for S.C Dr. Kamau Kuria for the Applicant

HON. CK NZILI

JUDGE

