



**Mwangih & another v Ngui & 4 others (Environment and Land Case Civil Suit E119 of 2023) [2024] KEELC 1185 (KLR) (6 March 2024) (Ruling)**

Neutral citation: [2024] KEELC 1185 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT AND LAND CASE CIVIL SUIT E119 OF 2023**

**JA MOGENI, J**

**MARCH 6, 2024**

**BETWEEN**

**CATHERINE WANGUI MWANGIH ..... 1<sup>ST</sup> APPLICANT**

**SAMUEL MAINA NJARIA ..... 2<sup>ND</sup> APPLICANT**

**AND**

**FELIX MAINGI NGUI ..... 1<sup>ST</sup> RESPONDENT**

**DRUMVALE FARMERS CO-OPERATIVE SOCIETY LIMITED .... 2<sup>ND</sup>  
RESPONDENT**

**DIRECTOR OF SURVEYS ..... 3<sup>RD</sup> RESPONDENT**

**NATIONAL POLICE SERVICE ..... 4<sup>TH</sup> RESPONDENT**

**ATTORNEY GENERAL ..... 5<sup>TH</sup> RESPONDENT**

**RULING**

1. On 05/02/2024, the applicants herein brought a notice of motion dated 30/01/2024, seeking the following orders;
  - a. Spent
  - b. That the 1<sup>st</sup> and 2<sup>nd</sup> Respondents /Contemnors herein be and are hereby cited for contempt of the court orders given on November 6, 2023 in the presence of Counsel for the 1<sup>st</sup> and 2<sup>nd</sup> Respondents and issued on November, 2023.
  - c. That this Honorable Court be pleased to impose on the 1<sup>st</sup> and 2<sup>nd</sup> Respondents an appropriate sanction in the form of committal to civil jail and fine against the 1<sup>st</sup> and 2<sup>nd</sup> Respondents for such period and such amount as this Honorable Court may deem fit for disobedience of the Orders given by this Honorable Court on November 6, 2023.



- d. That an order for Notice to Show Cause be and is hereby issued to the Officer Commanding Station (OCS) Kamulu Police Station for failure to enforce the court order of November 6, 2023 issued on November 8, 2023 to ensure that there is no development and interference and the *status quo* is maintained till the suit is heard and determined.
  - e. That all steps, actions, dealings, sub-divisions, transfers, sale, lease, titles, interference, development, construction or any other adverse action whatsoever caused, created, taken, done or performed by the Respondents or any other person whomsoever on the suit properties herein including Title No. Nairobi / Block 118/1553 and any resultant sub-divisions thereof after and in contravention of the status quo order given on November 6, 2023 and issued on November 8, 2023 be and are hereby declared illegal ab initio and are hereby cancelled, revoked and nullified forthwith.
  - f. That costs of the Application be provided for.
2. The application was supported by an affidavit sworn on 30/01/2024 by Catherine Wangui Mwangih. She deposed that she was the 1<sup>st</sup> applicant and that together with the 2<sup>nd</sup> applicant they are duly registered and/or beneficial owners and proprietors of the properties known as Title Numbers Nairobi / Block 118 / 1544, Nairobi / Block 118 / 1545, Nairobi/ Block118/ 1546, Nairobi / Block118/1547, Nairobi / Block118/ 1548, Nairobi / Block118 /1549,Nairobi / Block 118/1550,Nairobi / Block 118/1551, Nairobi / Block 118/1552and Nairobi / Block 118/1553.
  3. That court issued *status quo* orders to preserve the suit property as it is with no interference from any respondents. The Officer Commanding Station (OCS) Kamulu Police Station was to ensure that there is no development and interference, and the *status quo* is maintained till the suit is heard and determined.
  4. She contended that in utter flagrant disregard of the said orders, the 1<sup>st</sup> and 2<sup>nd</sup> respondents purporting to be the owners of parcel known as Nairobi / Block 118/1553 purporting to have sold it to third parties and that they were surrendering the said property's vacant possession to the said third parties.
  5. Further the 1<sup>st</sup> and 2<sup>nd</sup> respondent have erected a site office, fenced the said suit property with barbed wire and fixed beacons on the suit property ignoring the *status quo* orders issued.
  6. The Defendant swore a Replying Affidavit by Felix Maingi Ngui on 19/02/2024 in opposing the application. He stated that the titles/leases presented by the applicant are forged and that when the alleged titles were obtained there were stay orders in place issued in Cooperative Tribunal CTC No. 720/2016. A copy of the said order was annexed marked as FMN1.
  7. That the 1<sup>st</sup> and 2<sup>nd</sup> respondents have not defied court orders and neither did the chairman of the Society defy the court orders as alleged. That the applicants have obtained ownership rights fraudulently against the Tribunal Orders earlier issued in CTC No. 720/2016. The matter which is pending before the tribunal and it will be mentioned on 14/05/2024.
  8. Any transfer orders made by the former liquidator are null and void due to the existing Tribunal orders. Further that the titles to the property known as Nairobi Block 118 is in the name of Drumvale Farmers' Cooperative Society Limited and any transfer must be effected by the management of the 2<sup>nd</sup> respondent and not directly by the government of Kenya as done by the applicant. That in fact there is no evidence of who transferred the purported titles to the applicants.



9. That there are no sale agreements which were produced by the applicants and therefore there is no clarity on who sold the suit property to the applicants and that the attached copies of certificates of lease are forgeries.
10. The 1<sup>st</sup> and 2<sup>nd</sup> respondent contend that the allegation of invasion of the suit property and verbal threats are falsehoods since there is no evidence produced to support the allegations. Further that the allegations that the suit property has been sold to 3<sup>rd</sup> parties who are not cited for contempt are also falsehoods.
11. It is the contention of the 1<sup>st</sup> and 2<sup>nd</sup> respondents that they have a duty to protect the property of the society as trustees. They contend that the applicants/plaintiffs have not presented any sale agreements, proof of payments, acknowledgment of payments by the management of the 1<sup>st</sup> and 2<sup>nd</sup> respondents, minutes of the society of alleged sale, evidence of who authorized transfer in 2020 when stay orders in CTC 720/2016 are still in force to date and evidence of why the delay of the transfer since the applicants allege to have bought the plots in 1995.
12. The respondents have stated that the applicants have not disclosed having filed ELC 300/2019, ELC MCC 450/2022 which the respondents will seek to have consolidated.
13. The respondent averred that proof of ownership of property does not rely on title documents only but also the process leading to the issuance of the said title. He further averred that the applicants only have title documents but cannot provide evidence on how they acquired the titles.
14. The application is therefore opposed in the interest of justice and fairness.
15. The parties filed their respective submissions. The plaintiff submits that:-
  1. The court gave directions on filing of written submissions.
  2. The parties duly submitted and I have considered them.
  3. The 1<sup>st</sup> and 2<sup>nd</sup> Respondents filed submissions dated 1/03/2024 and the Applicant's filed written submissions dated 29/02/2024.

### **Analysis and Determination**

16. On 6/11/2023 following the filing of the Notice of Motion application dated 13/10/2023 the court in the presence of counsels for both the plaintiff/applicant Mr Gitonga and the 1<sup>st</sup> and 2<sup>nd</sup> Defendant/ Respondents, Ms Karue holding brief for Mr Chimei issued the following order:
 

“I note that the parties who are on the suit property are the plaintiffs, I therefore issue an order for *status quo* to preserve the suit property as it is with no interference from any respondents. I also grant prayer 5 of the application for the OCS Kamulu to ensure that there is no development and or interference and the *status quo* is maintained till this suit is heard and determined.....”
17. The substantive law that applies is the English law on committal for contempt of court by virtue of section 5(1) of the [Judicature Act](#) which provides that:
 

“The High Court and the Court of Appeal shall have the same power to punish for contempt of court as is for the time being possessed by the High Court of Justice in England, and that power shall extend to upholding the authority and dignity of subordinate courts.”



18. The applicable English Law in this respect is Part 81 of the English Civil Procedure Rules of 1998 as variously amended, which part repealed in most part the Rules of the Supreme Court that previously applied, including Order 52 and parts of Order 45 of the Rules of the Supreme Court.
19. The Court of Appeal in the case of *Shimmers Plaza Limited v National Bank of Kenya Limited* (2015) eKLR defined “*status quo*” as follows:

“*status quo* in normal English parlance means the present situation, the way things stand as at the time the order is made, the existing state of things. It cannot therefore relate to the past or future occurrences or events... All it means was that everything was to remain as it was as at the time the order was given. If there was any transaction that was going on in respect of the land in question, it had to freeze and await the discharging of the court order.”
20. Since the Counsels for both parties were in court it means that they are being aware of the orders of the court, and on the basis of the decision of *Shimmers Plaza Limited* (*supra*), the Defendants’ advocate was under a legal obligation to inform the Defendants about the said orders. Whether indeed the Defendants’ advocate informed the Defendants about the orders or not, for the purpose of an Application for contempt, is inconsequential.
21. The Court of Appeal in the above *Shimmers Plaza case* cited with approval Hon Lenaola J(as he then was) in *Basil Criticos v Attorney General & 8 Others* (2012) eKLR where the learned Judge pronounced himself thus:-

“...the law has changed and as it stands today knowledge supersedes, personal service.....where a party clearly acts and shows that he had knowledge of a court order, the strict requirement that personal service must be proved is rendered unnecessary.”
22. This court finds that the respondents had knowledge of the court’s orders and therefore personal service was therefore unnecessary. On their part 1<sup>st</sup> and 2<sup>nd</sup> respondents have stated that they have not acted contemptuously and gone ahead to state that there was a *status quo* order in place issued by the Cooperative Tribunal which the plaintiff/applicant disobeyed. I perused the records provided and the noted that the order was a temporary injunctive order. Further they have not shown any action they took to hold the plaintiffs accountable if they disobeyed the said lawful order of the court.
23. Even if this were the case this does not absolve them from obeying a lawful order issued they had an obligation to obey the order issued on 6/11/2023 and they had a choice to approach the court for the tribunal order and hold the plaintiff/applicants accountable. Two wrongs do not make a right.
24. The applicants have attached photographs of destruction of the suit property by people they are calling mobs. It is not clear how the so called mobs could be associated with the 1<sup>st</sup> and 2<sup>nd</sup> defendants. They have also shown photographs of barbed wire fence which they allege that the 1<sup>st</sup> and 2<sup>nd</sup> respondents erected as a fence to the suit property.
25. The plaintiffs have also attached copies of the Occurrence Book report stating that to date no action has been taken by the police against the contemnors. The 4<sup>th</sup> respondent did not file any response to the application.
26. According to the annexed copies of the subdivision scheme approval dated 2/03/2021, the written acceptance and payment receipts dated 9/04/21 of parcel number Nairobi / Block 118/1553, the suit property was purchased way back in 1995. A fact that is vehemently denied by the 1<sup>st</sup> and 2<sup>nd</sup> respondents in the averments in the replying affidavit.



27. The allegation and counter-allegations made relate to the substantive issues that will be canvassed at the hearing of the main suit. At this stage what I am keen to follow through is whether a party before this Honorable Court has disobeyed or not disobeyed lawfully issued orders of this court.
28. In view of the *status quo* orders issued on 6/11/2023, the respondents should have observed and respected the *status quo* orders issued and fast tracked the hearing of the suit by complying with pre-trial directions. Better still they should have filed for stay, review, set aside or sought to appeal the decision of this Honorable Court regarding the *status quo* orders issued. Having gone ahead to fence the suit property alleging that the applicants got the titles fraudulently was not the right cause of action. I find that the Defendants are in contempt of the order of 6/11/2023.
29. As was held by the Court of Appeal in the case of *Refrigeration and Kitchen Utensils Ltd v Gulabched Popatlal Shah & Another*, Civil Application No. 39 of 1990, it is essential for the maintenance of the rule of law and good order that the authority and dignity of our courts is upheld at all times.
30. The rules embodied in the law of contempt of court are intended to uphold the dignity of the court, and not personal dignity or the private rights of parties or litigants. That is why contempt of court is only restricted to actions that disrupt or interfere with court proceedings and the administration of justice, and those that consist of disobedience of court orders and breaking of undertakings given to the court (see *The Law of Contempt, Third Edition by Nigel Lowe and Brenda Sufrin, Butterworth's, 1996 at pp 1-2*).
31. The standard of proof for contempt is above a balance of probabilities. In the light of the outright disobedience of the court order issued on 06/11/2023, I find the 1<sup>st</sup> and 2<sup>nd</sup> Respondents are guilty of contempt of court order issued on 6/11/2023. My decision is guided by the Scottish case of *Stewart Robertson v Her Majesty's Advocate*, 2007 HCAC 63, Lord Justice Clerk stated that:
- “contempt of court is constituted by conduct that denotes willful defiance of or disrespect towards the court or that willfully challenges or affronts the authority of the court or the supremacy of the law, whether in civil or criminal proceedings”
32. Further, Romer L.J in *Hadkinson v Hadkinson*(1952) ALL ER 567 stated that:
- “It is the plain and unqualified obligation of every person, against, or in respect of, whom an order is made by a court of competent jurisdiction to obey it unless and until that order is discharged. The uncompromising nature of this obligation is shown by the fact that it extends even to cases where the person affected by an order believes it to be irregular or even void”
33. In order to protect the dignity and authority of the court of law, this court, shall be firm on any person who deliberately disobeys court orders or attempts to scuttle the court process.
34. Given the foregoing I do find that the 1<sup>st</sup> and 2<sup>nd</sup> Respondent/ Contemnors herein are in contempt of court orders and proceed to punish them for contempt. The application dated the 30/01/2024 is herein allowed as against the 1<sup>st</sup> and 2<sup>nd</sup> Respondent/Contemnors, who are condemned to pay a fine of Ksh. 100,000/- in default to serve a term of 2 months in civil jail effective immediately.

It is so ordered.

**DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 6<sup>TH</sup> DAY OF MARCH 2024.**

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**MOGENI J**

**JUDGE**

In the virtual presence of: -

Mr. Mikwa holding brief for Mr. Gitonga for the Plaintiffs/Applicants

Ms. Kemunto holding brief for Mr. Chemei for the 1<sup>st</sup> and 2<sup>nd</sup> Respondents Contemnor

Ms. Fatma for the 3<sup>rd</sup> to 5<sup>th</sup> Respondents

Ms. Caroline Sagina: Court Assistant

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**MOGENI J**

**JUDGE**

