



REPUBLIC OF KENYA



**Rutto v Langat (Environment & Land Case E016 of 2023)
[2024] KEELC 1666 (KLR) (4 April 2024) (Ruling)**

Neutral citation: [2024] KEELC 1666 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KERICHO
ENVIRONMENT & LAND CASE E016 OF 2023**

MC OUNDO, J

APRIL 4, 2024

BETWEEN

ANTHONY KIPNGETICH RUTTO PLAINTIFF

AND

NEHEMIAH LANGAT DEFENDANT

RULING

1. Before me for determination and two applications, the first one was filed by the Defendant in person being a Notice of Motion dated 24th July, 2023 brought under the provisions of Section 3A, 63 (c) of the *Civil Procedure Act* Cap 21, Laws of Kenya, Order 40 Rule 1, 3(4) and Order 51 rule 1 of the *Civil Procedure Rules* 2010 and all enabling provisions of law, where the Defendant sought for the transfer of this matter from Kericho ELC Court, to Principle Magistrate's court at Bomet because the court lacked both territorial and monetary jurisdiction over land parcel L.R Kericho/Silibwet/3541. He also sought for the costs of the application.
2. The said application was supported by the grounds therein as well as the supporting Affidavit of an even date, sworn by Nehemiah Kipkorir Kirui, the Defendant herein to the effect that he was one of the beneficiaries of the late Joel Kiprono Langat's estate. That the suit property building herein was built on land situated along Bomet-Silibwet road within Bomet County and not in Kericho County where the suit had been filed. Further that the value of the connecting (path) in the suit property was less than Kshs. 20,000,000/= hence the court lacked both territorial and monetary jurisdiction to hear the instant matter,
3. That the highest-ranking court in Bomet was the Principle Magistrate court gazetted with the monetary jurisdiction to hear the present matter thus the need for the transfer of the matter to the said court which would in turn cushion him from incurring unnecessary losses.



4. That further, on 22nd June, 2023, after the Plaintiff had obtained the interim orders, he was in danger of being forcefully evicted from the suit property which in turn would be converted thus causing him and his family untold suffering. That efforts to resolve the matter amicably had failed wherein the Plaintiff had threatened to unleash violence on him and his family who had been in exclusive possession and use of the suit property.
5. That he stood to suffer irreparably were he to be evicted from the suit property, unless the Plaintiff was restrained by the court.
6. In response and in opposition to the Defendant's application, the Plaintiff through his Replying Affidavit dated 1st December, 2023 deponed that he was the registered owner of land parcel Kericho/Silibwet/3541 (the suit land). That the court had on 20th June 2023(sic) issued an interim order of injunction against the Defendant restraining him from blocking the public access road passing through the tail end of Kericho/Silibwet/3541.
7. That the court had jurisdiction to handle the instant matter as the value of the suit land was way above Kshs. 20,000,000/= a fact which the Defendant was aware of. He conceded that the suit land which was located in Bomet Town along the highway, had buildings on it hence the same could not be handled by the Principal Magistrate's court for lack of pecuniary jurisdiction. That further, there had been no valuation report attached to the Defendant's application.
8. He also deponed that he was a stranger to the allegation by the Defendant that he was a beneficiary of the estate of the late Joel Kiprono Langat who had been the owner of the suit land, as well as the allegation leveled against him of having perpetrated acts of trespass and impediment against the said Defendant from accessing his late father's alleged property.
9. That the Defendant had come to court with unclean hands and should not be granted the prayers sought. Further, that the instant Application did not meet the threshold for granting the orders sought hence the same ought to be dismissed.
10. The second Application is the Plaintiff's Amended Notice of Motion dated 27th July, 2023 and brought under the provisions of Order 51 rule 1, Order 9 rule 9 and 10 of the Civil Procedure Rules, and Section 1A, 1B and 3A of the *Civil Procedure Act* (Cap 21) Laws of Kenya and all other enabling provisions of the law wherein he sought that the Defendant be found in contempt of the court's order issued on 22nd June, 2023 and thereafter be committed to jail for a period not exceeding six (6) months. He also sought for costs of the application.
11. The said application was supported by the grounds therein as well as the supporting Affidavit of an even date, sworn by Anthony Kipngetich Ruto, the Plaintiff herein to the effect that after his application dated 2nd June, 2023 had been allowed and interim orders dated the 22nd June, 2023 issued, he had served the same upon the Defendant who had proceeded to act in defiance of the said court's order by carrying out construction on the access road at the tail end of the suit land.
12. There had been no response to the Application.
13. On 19th October, 2023, direction had been issued that both the Applications be canvassed by way of written submissions. On 14th December, 2023 the court granted the Defendant an extension of a further 14 days to comply. There was no compliance by the Defendant.
14. On the other hand, the Plaintiff's written submission in support of his Application dated 27th June, 2023 and in answer to his framed issue for determination as to whether the Respondent was in contempt of the orders that had been issued on 20th June, 2023 was hinged on the definition of



contempt as stated in the *Black's Law Dictionary 9th Edition* and the holding cited in *North Tetu Farmers Co. Ltd v Joseph Nderitu Wanjohi* [2016] eKLR.

15. The Plaintiff thus submitted that the Defendant herein had been served with the court's order on 23rd June, 2023 as admitted in his Supporting Affidavit to his application dated 24th July, 2023. That further, the Defendant had not disputed that there had been building on the suit land and that he (the Defendant) had also dug a fresh foundation across the access road with the intention of putting up a building as depicted by the photographs annexed to his Application.
16. That contempt was a conduct that impaired the fair and efficient administration of justice. That Court orders needed to be obeyed for the maintenance of the rule of law and for the dignity of the court to be upheld at all material times as was held in the decided case of *Econet Wireless Kenya Ltd v Minister for Information & Communication of Kenya & another* [2005] KLR 828.
17. That the court had been invited to give assurance to the litigants that anyone who received a court's order, should obey it as directed to. That the Defendant had been cited for contempt so as to send a clear warning to those who harbored intentions of desecrating the hallowed corridors of justice as was held in the case of *Teachers Service Commission v Kenya National Union of Teachers & 2 others* [2013] eKLR.
18. His submission was that the authority of the court had been violated by the Defendant hence the court had an obligation and a duty to uphold the rule of law by punishing him. Reliance was placed on the decision in *Republic v The Kenya School of Law & another* Miscellaneous Application No. 58 of 2014. That the court should not condone deliberate disobedience of court orders which hindered the administration of justice. Further, that the court should not shy away from firmly dealing with proven contemnors hence the instant application should be allowed.

Determination.

19. I have considered the Defendants application herein dated the 24th July 2024 wherein he sought for the transfer of this matter to the Bomet Principle Magistrate's court because the court lacked both territorial and monetary jurisdiction over land parcel L.R Kericho/Silibwet/3541.
20. I have also considered the Plaintiff's response to the application, that no evidenced in form of a valuation report had been tendered to prove the value of the property and further considering that there were buildings on the said property and the fact that the Bomet law court's highest-ranking officer was a Principle Magistrate who had no pecuniary jurisdiction to hear the present moment. That Application thus lacked merit and should be dismissed.
21. Pursuant to parties taking directions the application be prosecuted through written submissions there were no submissions filed by both parties.
22. It is now a settled practice under the new constitutional dispensation that filing of written submissions is the norm as written submissions serve the purpose of expedience and amounts to addressing the court on the evaluation of the evidence of each party and analysis of the law. It is therefore trite that an Applicant who fails to file his submissions on an application as ordered by the court is deemed as a party who has failed to prosecute his application and therefor that application is liable for dismissal. The filing of submissions having been ordered by consent, the failure by the Applicant to exercise the leave granted to her to file written submissions clearly demonstrated inertia and inordinate delay, lack of interest and/or seriousness on her part in the prosecution of the matter.
23. The Court of Appeal in *Rowlands Ndegwa and 4 Others vs. County Government of Nyeri and 3 Others; Agriculture, Fisheries and Food Authority & Another (Interested Parties)* [2020] eKLR, citing with



approval the decision of the High Court in, *Winnie Wanjiku Mwai vs. Attorney General & 3 Others* [2016] eKLR, observed as follows:

“With regard to dismissal for want of prosecution, there are indeed no hard and fast rules as to the manner in which the inherent power and discretion to dismiss an action for want of prosecution is to be exercised. It is however generally accepted that dismissal will be invited if there should be a delay in the prosecution of the action and the Respondent is prejudiced by the delay with attention also being paid to the reasons for the inactivity....”

24. The mode of hearing having been adopted by the court, and there having been no compliance to prosecute the same, I am persuaded to dismiss the main motion dated the 24th July, 2023, which I now do.
25. In regard to the second amended Application dated the 27th July 2023, the Plaintiff sought for contempt proceedings against the Defendant for having defied the interim orders issued on the 22nd June 2023. There had not been neither a response nor submissions by the Defendant, as directed and therefore the said application could be deemed as unopposed. However the mere fact that it seeks to curtail the freedom of the Defendant by committing him to civil jail for contempt of court orders, I shall consider it on its merit.
26. The issue to be addressed or determined herein is whether the Defendant is guilty of contempt of Court order issued on 22nd June 2023.
27. The Application stems from orders herein granted on the 21st June 2023 wherein vide an application dated 2nd June 2023, the Plaintiff herein had sought for and obtained interim orders against the Defendant.
28. It is on record that on 13th June 2023, directions had been issued for service of the application dated 2nd June 2023 within seven days and a response thereto be filed. On 21st June 2023 the matter had been mentioned to confirm compliance wherein the court had been informed that there had been no response by the Defendant to the said application despite service. The court had then allowed the Application and directed parties to comply with pre-trial directions.
29. The current amended application of 27th July 2023, is therefore to the effect that upon service of the court order, the Defendant had proceeded to act in defiance of the said order by carrying out construction on the access road at the tail end of the suit land parcel No. Kericho/Silibwet/3541 as depicted in the photographs marked as AKR 3.
30. I have considered the Application, the law and authorities herein cited as well as the submissions by Counsel for both parties. The *Black's Law Dictionary (Ninth Edition)* defines contempt of Court as:-

“Conduct that defies the authority or dignity of a Court. Because such conduct interferes with the administration of justice, it is punishable usually by fine or imprisonment.”
31. The law guiding the present Application is Order 40 Rule 3(1) of the *Civil Procedure Rules* which stipulates as follows:-

“In cases of disobedience, or of breach of any such terms, the Court granting an injunction may order the property of the person guilty of such disobedience or breach to be attached, and may also order such person to be detained in prison for a term not exceeding six months unless in the meantime the Court directs his release.”



32. Section 5(1) of the *Judicature Act* which provided 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.”
33. Section 29 of the *Environment and Land Court* is clear to the effect that;
- “Any person who refuses, fails or neglects to obey an order or direction of the Court given under this Act, commits an offence, and shall, on conviction, be liable to a fine not exceeding twenty million shillings or to imprisonment for a term not exceeding two years, or to both “
34. It is an established principle of law as was held in the case of *Kristen Carla Burchell vs Barry Grant Burchell*, Eastern Cape Division Case No. 364 of 2005 that in order to succeed in civil contempt proceedings, the Applicant has to prove (i) the terms of the order, (ii) Knowledge of these terms by the Respondent, (iii). Failure by the Respondent to comply with the terms of the order.
35. From the sworn affidavit, annexures, submissions by the Plaintiff’s Counsel, the applicable law and the decided cases, the following issues stand out for determination:-
- i. Whether the Defendant was served with or was made aware of the orders of 22nd June 2023.
 - ii. Whether there was any valid Court orders issued by this Court on the 22nd June 2023.
 - iii. Whether the Defendant is guilty of contempt of Court orders issued on 22nd June 2023.
36. On the first issue as to whether the Defendant herein was served with or was made aware of the order of 22nd June 2023, in the case of *Kenya Tourist Development Corporation vs. Kenya National Capital Corporation & Another*, Nairobi High Court Civil Case No. 6776 of 1992, it was held that the knowledge of an order supersedes personal service. On this line of argument, I have considered the Affidavit of service sworn on the 27th June 2023 that confirmed that the Defendant had been served with the court order on 23rd June 2023 at around 11:36 am, at Bomet-Tenwek Junction just opposite Chelsea Academy while he was supervising construction of a structure. I am therefore satisfied that the defendant was served and all made aware of the orders of 22nd June 2023.
37. On the second issue for determination as to whether there had been any valid orders issued by the Court on the 22nd June 2023, I find that on the 21st June 2023, the Plaintiff herein had obtained *ex-parte* orders that ;
- “pending the hearing and determination of the suit an order of temporary injunction be issued restraining the defendant/ respondent by himself, agents, servants employees, proxies or any other party through whom they may be acting from blocking the public access road passing through the tail end of Kericho/Silibwet/3541.
38. I therefore find that indeed the said order of the 22nd June 2023 was a valid order.
39. On the last issue as to whether the Defendant disobeyed the orders of the Court, I have considered the submission by Counsel as well as looked at the annexures herein annexed to the Application herein. It is not in dispute that the photographs annexed marked as ‘AKR 3’ show an activity of dug up trench as well as a construction of a building going on. The terms of the interim orders had been specific that the same was to remain in force pending the hearing and determination of the suit. The alleged impugned



acts according to the Plaintiff at paragraph (5) were committed on 27th July 2023 when the application was dated and when the interim injunctive orders were in force.

40. Romer L.J in *Hadkinson vs. 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”

41. From the foregoing, it is trite that contempt of Court proceedings and Applications are subtle and criminal in nature and would impose criminal sanctions if a conviction followed.

42. It has been held by the Courts that unless and until a Court order is discharged, it ought to be obeyed. Indeed the Court of Appeal in *Central Bank of Kenya & Another vs. Ratilal Automobiles Limited & Others*, Civil Application No. Nairobi 247 of 2006 held that it was a fundamental tenet of the rule of law that Court orders must be obeyed and it is not open to any person or persons to choose whether or not to comply with or to ignore such orders as directed to him or them by a Court of law.

43. In the case of *Awadh vs. Marumbu* (No. 2) No. 53 of 2001 (2004) KLR 458, the Court held that it is the duty of the Court not to condone deliberate disobedience of its orders nor waiver from its responsibility to deal decisively and firmly with the approved contemnors.

44. I find that the Defendant herein willfully and intentionally defied orders of the Court of the 22nd June 2023, despite knowledge of the same. His action of digging a trench and/or engaging in activities within the suit property ran afoul of the terms of the Court orders therein issued which had directed that he refrains from blocking the public access road passing through the tail end of Kericho/Silibwet/3541 pending the hearing and determination of the suit. I thus find that the Defendant herein is in blatant contempt of Court orders and will proceed to punish him for contempt.

45. The Plaintiff's amended Application dated the 27th July 2023 is herein allowed with costs.

DATED AND DELIVERED VIA MICROSOFT TEAMS AT NAIVASHA THIS 4TH DAY OF APRIL 2024.

M.C. OUNDO

ENVIRONMENT & LAND – JUDGE

