



**Kolile v Equity Bank (K) Limited & another (Environment & Land
Case 615 of 2013) [2024] KEELC 5243 (KLR) (4 July 2024) (Ruling)**

Neutral citation: [2024] KEELC 5243 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT & LAND CASE 615 OF 2013**

MAO ODENY, J

JULY 4, 2024

BETWEEN

NATHAN MUTUA KOLILE PLAINTIFF

AND

EQUITY BANK (K) LIMITED 1ST DEFENDANT

STEPHEN NZULA MULI T/A GENERATION HIGHWAY

ENTERPRISES 2ND DEFENDANT

RULING

1. This ruling is in respect of the application dated 23rd November, 2023 by the Plaintiff/Applicant seeking the following orders:
 - a. Spent.
 - b. That Equity Bank (K) Limited the 1st Defendant/Respondent herein be ordered to attend court to show cause why it should not be cited and punished for contempt/disobedience of the court by reason of its failure/default to comply with the judgment delivered by the court on 29th June, 2022 together with the decree issued on 14th July, 2022 within the stipulated timelines of three (3) months.
 - c. That the Honourable court be pleased to order Equity Bank (K) Limited, the 1st Defendant/Respondent to deposit into court the original title in respect of the suit land parcel number Nakuru/Municipality Block 21/66 together with a discharge of charge/guarantee for onward release to the Plaintiff/Applicant.
 - d. The costs of this application be borne by the 1st Defendant/Respondent.



2. The application is grounded on the supporting affidavit of Nathan Mutua Kolile who deponed that the court issued a decree on 14th July, 2022 which was served upon the Defendants/Respondents who have failed to implement the same within the three months' timeline hence are in contempt of court.
3. The Applicant deponed that he has visited 1st Defendant/Respondent's Nakuru Equity branch but the respondent has not released the title to the suit land. The applicant therefore urged the court to find that the 1st Defendant/Respondent is in contempt of the decree and deposit the original title in court together with a discharge of charge.

1st Respondent's Response

4. The 1st Respondent filed a replying affidavit dated 30th January, 2024 sworn by Beatrice Muraguri, the Legal Officer of the 1st Respondent who deponed that in the event that there was delay in compliance with the court's decree, the same was occasioned by the Plaintiff/Applicant delay of a whole year to effect service upon their advocates on record.
5. She further averred that the Applicant never visited their offices and added that upon service of the decree in July, 2023 the 1st Respondent computed the amount due and payable as directed in the judgment. It was her averment that the notice period was still running which would expire on 10/2/2024 when the Applicant was expected to have paid as the court gave a conditional release and discharge of title upon the applicant paying the computed sums which he is yet to pay.
6. It was the 1st Respondent's case that they can neither discharge the property nor be cited for contempt as the Applicant has not paid the balance hence in contravention of the court orders.

Applicant's Further Affidavit

7. The Plaintiff/Applicant in response to the 1st Respondent's Replying Affidavit filed a further affidavit dated 28th February, 2024 and stated that the decree was served upon the firm of M/s Karanja Mbugua & Co. Advocates on 15th July 2022 and to M/s Ikua Mwangi & Co. Advocates for the 1st Defendant/Respondent on 19th July 2022.
8. It was the respondent's case that the 1st Defendant was to compute the appropriate amount due within 3 months from the date of judgment which it failed to do with a notice dated 31/10/2023 which was made 16 months from the date of judgment translating to a delay of 13 months.
9. The Applicant contends that the 1st Respondent in demanding Kshs. 2,000,000 outstanding debt without a computation of the same thus is in contravention of the judgment.

Applicant's Submissions

10. Counsel for the Applicant submitted that the 1st Respondent is in contempt of the court's decision as it failed to implement order (b) within the 3 months as decreed by the court and relied on Order 50 Rule 1 of the *Civil Procedure Rules*.
11. It was counsel's further submission that the alleged debt of Kshs. 2,000,000 is unsubstantiated as the 1st Respondent failed to disclose to this court how much of the debt the borrower has repaid to date.
12. Counsel submitted that under the doctrine of forfeiture, the 1st Respondent by perpetuating its acts of contempt of the judgment/decreed, lost any claim against the Applicant under the letter of guarantee dated 19/9/2006.



13. Counsel relied on the cases of *Econet Wireless Kenya Limited v Minister for Information & Communication of Kenya & Another* [2005], *Hadkinson v Hadkinson* (1952) 2All ER 567, *Teachers Service Commission v Kenya National Union of Teachers & 2 Others* [2013] eKLR and *Kenya Tea Growers Association v Francis Atwoli & 5 Others* and urged the court to allow the application as prayed.

Analysis And Determination

14. The main issue for determination is whether the 1st Defendant is in contempt of the order issued by the court on 29th June, 2022 which were as follows:
- a. The 1st Defendant shall within 3 months of the date of this judgment compute the appropriate amount due from the Plaintiff under the letter of guarantee dated 19/9/2006 and in doing so pro-rate only against the guaranteed sum, outstanding interest, fees, commissions, charges, costs and expenses which are due to the 1st Defendant from the 2nd Defendant on the basis of the total indebtedness of the principal debtor at the date of the first notice of intention to exercise statutory power of sale issued to the Plaintiff under the guarantee and charge instruments he executed.
 - b. The 1st Defendant shall not under any circumstances in the first 3 months after the date of this judgment exercise that power of sale and in any event, shall not exercise or attempt to its statutory power of sale thereafter unless the proper amount has been computed and demanded from the Plaintiff as ordered above.
 - c. The Plaintiff shall pay the new sum calculated and formally demanded under the guidelines set out above and upon doing so his title LR No Nakuru Municipality Block 21/66 shall be discharged.
15. In the Court of Appeal case of *Micheal Sistu Mwaura Kamau v Director of Public Prosecutions & 4 others* [2018] eKLR the court held as follows:
- “It is trite that to commit a person for contempt of court, the court must be satisfied that he has wilfully and deliberately disobeyed a court order that he was aware of...secondly, as this Court emphasized in *Jihan Freighters Ltd v Hardware & General Stores Ltd* and in *AB & another v R B* [2016] eKLR, to sustain committal for contempt of court, the order of the court that is alleged to have been deliberately disobeyed must be clear and precise so as to leave no doubt as to what a party was supposed to do or to refrain from doing. Lastly, the standard of proof in committal proceedings is higher than proof on a balance of probabilities, though not as high as proof beyond reasonable doubt.”
16. Section 29 of the *Environment and Land Court* provides as follows:
- “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.”
17. It is the Applicant’s case that the 1st Respondent failed to compute the appropriate amount due from the Plaintiff under the letter of guarantee dated 19/9/2006 within the 3 months as directed by this court.
18. The 1st Respondent on the other hand contends that it computed the amount due upon receipt of the decree in July, 2023 after which served the Applicant vide a notice dated 31st October, 2023. It is not



in dispute that the 1st Respondent did compute the appropriate amount due but outside the time that the decree had prescribed.

19. From the evidence on record, it is clear that the 1st Respondent did not comply with the order issued by the court which required it to compute the amounts owing within a period of three months. It is also on record that the decree or order was served on the respondent but they sent a notice after 16 months, which was outside the stipulated period.
20. When a party is ordered to do a certain act by the court within a specified period, does not comply, and does not give a proper reason for the difficulty in compliance, then such party is in contravention of the court order.
21. This is a case where the order/decreed was unambiguous of what action was to be taken by the respondent but they failed to do so within the stipulated period. Litigation must come to an end and the court cannot ignore injustice and dwell on technicalities. An injustice anywhere is injustice everywhere as Martin Luther King Jnr said.
22. The court therefore finds that the respondent did not comply with the terms of the decree and orders that the 1st respondent compute the amount payable as at 29th June 2022 when the judgment was delivered within 30 days. The parties to appear in court on a date appointed by the court after the lapse of the 30 days.
23. Each party to bear their own costs of the application.

DATED, SIGNED AND DELIVERED AT NAKURU THIS 4TH DAY OF JULY 2024.

M. A. ODENY

JUDGE

