



**Kinyua v Kamenya (Environment & Land Case 186 of 2016)
[2024] KEELC 6576 (KLR) (8 October 2024) (Ruling)**

Neutral citation: [2024] KEELC 6576 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KERUGOYA
ENVIRONMENT & LAND CASE 186 OF 2016**

**JM MUTUNGI, J
OCTOBER 8, 2024**

BETWEEN

JANE WAINOI KINYUA PLAINTIFF

AND

ZAKAYO MWANGI KAMENYA DEFENDANT

RULING

1. The matter before me for determination is the Notice of Motion application dated 11th May 2023. The Plaintiff filed this application seeking the committal of the Defendant to Civil Jail for contempt of Court. The Plaintiff's application is supported by an Affidavit sworn by the Plaintiff/Applicant on 11th May 2023 where she depones that a decree was issued on 31st January 2019, granting a permanent injunction restraining the defendant, his servants, and/or agents from interfering with the land parcel Mutira/Kaguyu/5671 (the suit land). The Applicant deponed that despite the Defendant being aware of the decree he has forcefully been entering into the land and forcefully picking tea leaves from the land in contempt of the order issued by the Court. The Plaintiff alleges that the Defendant and his servants have been using force, including arming themselves with machetes, to enter and pick the tea leaves.
2. In a Replying Affidavit sworn on 9th June, 2023, the Defendant refuted the claim of being served with any decree and clarified that the attached "order/decre" related to a temporary order of injunction that expired after a period of 12 months. The Defendant asserted that the Plaintiff's application was not made in good faith as the Plaintiff filed the application after she had been served with an order issued in Succession Cause No. 349 of 2012 restraining her from in any manner interfering with portions of land parcel Mutira/Kaguyu/5671 (subdivided into parcels 6428 and 6429) occupied and in possession of the Defendant's family. The Defendant stated their family had filed summons for revocation of the grant in the succession cause pursuant to which the Plaintiff was awarded the suit property on the grounds that there was concealment of material facts and that the grant had been obtained fraudulently.



3. The application was canvassed by the parties by way of written submissions. The Defendant filed his submissions dated 9th June 2024. The Plaintiff as at 1st July 2024 when the matter was mentioned to confirm compliance had not filed her submissions.
4. Courts have the inherent power to ensure that their lawful orders are complied with and/or obeyed by using sanctions imposed through contempt of Court. It's important to note that although the Contempt of Court Act was declared unconstitutional in the case of Kenya Human Rights Commission v Attorney General & Another [2018] eKLR on 9th November 2018, the relevant provision remains Section 5(1) of the Judicature Act. This Section grants the High Court and the Court of Appeal the power to punish for contempt.

“5.

- (1) 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.

5. Contempt proceedings are quasi-criminal in nature, and they require a higher standard of proof than in normal Civil cases. One can only be sentenced to Civil jail or penalized based on evidence that leaves no doubt about the person's guilt.
6. This position was reiterated by the Supreme Court of Kenya in the Case of Republic v Ahmad Abolfathi Mobammed & another SC Criminal Application No. 2 of 2018 [2018] eKLR where the Court stated thus:-

“It is, therefore, evident that not only do contemnors demean the integrity and authority of Courts, but they also deride the rule of law. This must not be allowed to happen. We are also conscious of the standard of proof in contempt matters. The standard of proof in cases of contempt of Court is well established. In the case of Mutitika v. Baharini Farm Limited [1985] KLR 229, 234 the Court of Appeal held that:

“In our view, the standard of proof in contempt proceedings must be higher than proof on the balance of probabilities, almost but not exactly, beyond reasonable doubt...The standard of proof beyond reasonable doubt ought to be left where it belongs, to wit, in criminal cases. It is not safe to extend it to an offence which can be said to be quasi-criminal in nature.”

7. In the present matter it is apparent that the Plaintiff/Applicant filed suit against the Defendant vide a Plaint dated 11th November 2016 seeking orders for:-
 - a. A permanent injunction against the Defendant, his servants, and/or agent from interfering with land parcel No. Mutira/Kaguyu/5671.
 - b. Eviction from suit property No. Mutira/Kaguyu/5671 and OCS Commanding Kerugoua Police Station to provide security.
8. The Defendant despite appearing and filing a defence did not attend during the hearing with the result that the hearing proceeded *ex parte* and the Plaintiff obtained Judgment in her favour and was granted the orders as prayed in her Plaint. In his defence the Defendant had averred that he had lived in and was brought up on land parcel Mutira/Kaguyu/1305 which was the subject matter in Succession Cause No. 349 of 2012 and was consequently subdivided without his involvement.



9. The Court record indicates that on 25th January, 2019 when the Judgment was delivered only the Plaintiff's Advocate was present and the Defendant and his Advocate on record were absent. After the delivery of the Judgment, the next action as per the Court record is the filing of a Notice of Appointment of Advocates, by the Firm of Kamuga Mburu & Co. Advocates and the present application dated 11th May, 2023 on the same date. There is no evidence to show the Defendant was served with a copy of the extracted decree. In those circumstances can it be said the Defendant had knowledge and/or was aware of the terms of the order/Judgment?
10. The record further does not show the decree was executed such that the Defendant defied the execution and reverted to the suit property. Under Order (b) of the Decree, the Defendant was ordered to be evicted from the suit property and the OCS Kerugoya Police Station was required to provide security during the exercise. The inference is that the Defendant was in possession of the suit property or part thereof in order for his eviction to have become necessary. If he had not been evicted, the Defendant cannot be said to be in contempt of the Court order. The Plaintiff therefore rather than seek to enforce the decree by way of contempt proceedings should have sought to execute the decree as the law provides.
11. By its nature contempt of Court is a serious indictment against an individual and ought not to be taken casually or lightly as it can result in the incarceration of the individual and his liberty curtailed. Contempt proceedings thereof ought to be resorted to as a last result where there are no other remedies to redress the situation. The facts upon which the proceedings are predicated must be plain and clear and in the Case of alleged disobedience of a Court order there must be proof of service of such order and/or knowledge of the terms of the order which terms must be clear and unambiguous and the Respondent must be shown to have failed to comply with the terms of the order.
12. In a scenario such as in the instant case, where it was anticipated that the decree would be enforced through execution, it is my view that there cannot be any contempt of Court before such execution has been effected. Order 22 of the Civil Procedure Rules has elaborate provisions on execution of decrees and orders and the Plaintiff/ Applicant should have invoked the appropriate provisions to obtain delivery and/or possession of the land occupied by the Defendant.
13. In premises it is my determination that the Plaintiff/Applicants Notice of Motion dated 11th May 2023 is devoid of any merit and is dismissed with costs to the Defendant/Respondent.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY AT KERUGOYA THIS 8TH DAY OF OCTOBER 2024.

J. M. MUTUNGI

ELC - JUDGE

