



**Okoti & 3 others v Ministry of Lands & Physical Planning & 4 others  
(Petition 9B of 2019) [2024] KEELC 6789 (KLR) (9 October 2024) (Ruling)**

Neutral citation: [2024] KEELC 6789 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT THIKA  
PETITION 9B OF 2019  
BM EBOSO, J  
OCTOBER 9, 2024**

**BETWEEN**

**OKIYA OMTATAH OKOITI ..... 1<sup>ST</sup> PETITIONER  
RUFUS MUTAHI KANYUA [FOR NDEIYA LAND OWNERS] .... 2<sup>ND</sup>  
PETITIONER  
ROSE NJERI MWANGI [FOR NDEIYA LAND OWNERS] ..... 3<sup>RD</sup> PETITIONER  
ISAACK KANYI NJOKA [FOR NDEIYA LAND OWNERS] ..... 4<sup>TH</sup> PETITIONER**

**AND**

**MINISTRY OF LANDS & PHYSICAL PLANNING ..... 1<sup>ST</sup> RESPONDENT  
THE HONOURABLE ATTORNEY GENERAL ..... 2<sup>ND</sup> RESPONDENT  
NATIONAL LAND COMMISSION ..... 3<sup>RD</sup> RESPONDENT  
KENYA RAILWAY CORPORATION ..... 4<sup>TH</sup> RESPONDENT  
COUNTY GOVERNMENT OF KIAMBU ..... 5<sup>TH</sup> RESPONDENT**

**RULING**

1. The Petitioners brought this petition under the Bill of Rights in 2019. They alleged that the Kenya Railways Corporation and the National Land Commission had compulsorily acquired land belonging to various land owners in Ndeiya Area, Kiambu County, but had failed to promptly compensate the land owners. They faulted the duo for categorizing private lands as “Western Grazing Area.” They sought the following reliefs:
  - a. An order quashing the reference in the undated Kenya Gazette Notice No 12526 published on 22nd December 2017, in the Kenya Gazette Vol CXIX No 19 to the 146.3878 hectares parcel of land as Kiambu Western Grazing Area.



- b. An order compelling the NLC to issue a new gazette notice of the acquisition of the land indicating the individual owners of the parcels of land erroneously referred to collectively as “Kiambu Western Grazing Area.”
  - c. An order compelling Kiambu County Government to within 7 days of the judgment release Ndeiya sub division maps and the scheme plans (maps) for Nachu/Mikunyuini, Nachu/Ndcha, Nguirubi/Thigio and Nguirubi/Ndiuni to survey of Kenya for the updating of national land maps.
  - d. An order compelling the NLC to make prompt, full, fair and immediate compensation of all persons affected by the SGR phase 2A.
  - e. An order compelling the NLC to make prompt, full, fair and immediate compensation of all persons affected by the SGR Phase 2A.
  - f. The Honorable Court be pleased to issue any other or further remedy that the Honorable Court shall deem fit to grant.
2. This court [Gacheru J] heard the petition and allowed it on 8/10/2021 in the following terms;
    - a. That an order be and is hereby issued quashing the reference in the undated Kenya Gazette Notice No 12526 published on 22nd December 2017, in the Kenya Gazette Vol.CXIX No 19 to the 146.8878 Hectares parcel of land as Kiambu Western Grazing area.
    - b. That an order be and is hereby issued compelling the National Land Commission to issue a new Gazette Notice of the acquisition of the land indicating, the individual owners of the parcels of land erroneously referred to collectively as Kiambu Western Grazing area.
    - c. That an order be and is hereby issued compelling Kiambu County Government to within 7 days of the Judgment release Diya Subdivision maps and scheme plans (maps) for Nachu/Mikunyuini, Nachu/Ndacha Nguirubi/Thigio and Nguruibi/Ndiuni to survey of Kenya for the updating of the National Land Maps.
    - d. That an order be and is hereby issued compelling the National Land Commission to make prompt full fair and immediate compensation of all persons affected by the SGR Phase 2A.
  3. About 9 months later, Rufus Mutahi Kanyua [the 2nd petitioner] brought a notice of motion dated 1/7/2022 seeking, among other reliefs, leave of the court to initiate contempt proceedings against the National Land Commission and the County Government of Kiambu for disobeying the Judgment and Decree of the court. The notice of motion was amended on 5/11/2023. The amendments brought on board specific serving public officers of the two respondents.
  4. Through the amended notice of motion, the 2nd petitioner sought the following verbatim reliefs:
    1. That this application be certified as urgent and fit to be heard forthwith, and be granted *ex-parte* orders, and in priority to any other matter herein.
    2. That pending the interparties hearing and determination of this application, the honourable court be pleased to issue an order restraining the 6th and 7th respondents from issuing title deeds before the release of the Ndeya subdivision maps and scheme plans (maps) for Nachu/Mikunyuini, Nachu/ Ndacha, Nguirubi/ Thigio and Nguirubi/ Ndiuni to Survey of Kenya for the updating of the National land maps as per the judgment of the Honourable Court delivered on 8/10/2021.



3. That the honourable court be placed to issue an order to initiate contempt proceedings against the 3rd, 4th, 6th and 7th Respondents for disobeying the Judgment and orders delivered on 8/10/2021 by this Honourable Court.
  4. That this honourable be pleased to issue an order of execution of the said judgment and orders of the 8/10/2021.
  5. That the cost of this application be borne by the 3rd, 4th, 6th and 7th respondents.
  6. That such other/further order and/or direction the honourable court may deem fit and just to issue.
5. The application was canvassed through writing submission dated 22/1/2024. The case of the applicant is that the respondents have deliberately ignored and/or failed to comply with the Judgment and Decree of the Court and are therefore in contempt of court.
  6. The Ministry of Lands did not respond to the application. The National Land Commission filed a replying affidavit sworn by Mr Brian Ikol on 29/1/2024 in which the deponent stated that delay to comply with the decree of the court had been occasioned by the Kenya Railways Corporation's delay to furnish the Commission with the requisite list of the affected parcels to enable compliance by the Commission.
  7. The court has considered the application. The gist of the application is that the applicant seeks leave of this court to initiate contempt proceedings against officers of the National Land Commission and the County Government of Kiambu. Is such leave necessary in the circumstances of the alleged contempt?
  8. First, the Court is alive to the fact that the Contempt of Court Act 2016 which was enacted by Kenya's Parliament was declared unconstitutional in its entirety. Consequently, our courts have gone back to the pre-2016 legal framework on contempt, namely, Section 5(1) of the Judicature Act. The said Section provides as follows:
 

“(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 such power shall extend to upholding the authority and dignity of subordinate courts.”
  9. What is the current practice in England? Kenya's Court of Appeal examined at length the prevailing practice in England in Christine Wangari Gachenge v Elizabeth Wanjiru Evans & 11 others [2014] eKLR and came to the following conclusion:
 

“It is clear from this summary leave, now called permission, is not required where committal proceedings relate to a breach of a judgment order or undertaking.”
  10. The Court of Appeal further stated as follows:
 

“We find on the basis of the new Civil Procedure Rules [of England] which are now contained in the second supplement to the 2012 White Book that no leave is required before bringing an application like the one before us, for committal for contempt relating to breach of this court's order. The application is for that reason, incompetent and is struck out with costs.”
  11. That is not all. This cause is a petition that was brought under the provisions of the Bill of Rights under the Constitution of Kenya 2010 and the Rules made thereunder. There is no requirement for such leave under the Constitution of Kenya 2010 and the Rules made thereunder. Put differently, a



party aggrieved by another party's contempt in relation to an order made under the Bill of Rights has unhindered access to the seat of justice. It is therefore the finding of this court that the 2nd petitioner is at liberty to initiate the contemplated contempt proceedings. He does not require prior leave of the court in order to initiate contempt proceedings against the alleged contemnors.

12. The result is that the amended application dated 5/11/2023 is struck out for being unnecessary. Taking into account the background leading to the application, there shall be no award of costs.
13. Lastly, the applicant is directed to desist from redesignating or altering the designation of the substantive parties to this concluded petition. A contempt application is a cause within another cause. The designation of the substantive parties to the petition must at all times be maintained. Parties to the contempt motion are to be captured and designated after the substantive parties to the substantive cause have been clearly captured in the motion.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA ON THIS 9TH DAY OF OCTOBER 2024**

**B M EBOSO**

**JUDGE**

