



**Olkeju Ronkai Limited v County Government of Narok (Environment & Land Case E012 of 2022) [2024] KEELC 6560 (KLR) (8 October 2024) (Ruling)**

Neutral citation: [2024] KEELC 6560 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAROK  
ENVIRONMENT & LAND CASE E012 OF 2022  
CG MBOGO, J  
OCTOBER 8, 2024**

**BETWEEN**

**OLKEJU RONKAI LIMITED ..... PLAINTIFF**

**AND**

**COUNTY GOVERNMENT OF NAROK ..... DEFENDANT**

**RULING**

1. Before this court for determination is the notice of motion dated 28<sup>th</sup> November, 2023 filed by the plaintiff/applicant and it is expressed to be brought under Order 40 Rule 3 (1) and (2) of the [Civil Procedure Rules](#) seeking the following orders: -
  - 1 Spent.
  - 2 That the County Secretary of the defendant be detained in prison for a term of six months for disobedience of the confirmed order of injunction issued on the 16<sup>th</sup> day of February, 2023.
  - 3 The defendant to bear the costs of this application.
2. The application is premised on the grounds its face and further as contained in the supporting affidavit of the plaintiff/applicant. The application is supported by the affidavit of Tom Ole Kamwaro, the Director of the plaintiff/ applicant sworn on even date. The plaintiff/ applicant deposed that they filed the notice of motion dated 24<sup>th</sup> October, 2022 where they were granted injunctive orders on 16<sup>th</sup> February, 2023 against the defendant/respondent pending the hearing and determination of the suit. It was deposed further that the orders issued on 16<sup>th</sup> February, 2023 were served upon the County Secretary of the defendant/ respondent personally on 1<sup>st</sup> March, 2023. It was also deposed that the said order contained a penal notice prescribing punishment for disobedience of the same.
3. The plaintiff/ applicant further deposed that despite service of the orders, the defendant/respondent has overseen the continued deposition of building materials on the suit property, and has now



commenced construction on the suit property in disregard of this court's orders. It was further deposed that the acts by the County Secretary has lowered the dignity and honour of this court, and that this court has a duty and responsibility of upholding its honour and dignity. The plaintiff/ applicant deposed that the county secretary of the defendant/respondent should be punished for contempt and committed to jail for a term not exceeding 6 months.

4. The application was opposed vide the replying affidavit of John Mayiani Tuya, the County Secretary of the defendant/ respondent sworn on 2<sup>nd</sup> July, 2024. The defendant/ respondent deposed that he is not a party to these proceedings, and neither has he been sued in his personal capacity, and that the said court orders are issued to the wrong party. Further, the County Secretary deposed that the plaintiff/ applicant in its letter dated 29<sup>th</sup> August, 2022 knew of a third party that encroached onto the suit property, and ought to have sued the said party.
5. The defendant/ respondent further deposed that the plaintiff/ applicant has not demonstrated that he was personally served with the court orders, or that he was aware of the terms of the order. He went on to depose that there is no evidence before this court that he has commenced construction of a lodge on the suit property as alleged, and demonstrated any link of the developments to himself or the defendant/ respondent. It was deposed that there is no report that indicates that the building materials deposited to commence construction of a lodge are within the ten square kilometer radius.
6. The defendant/ respondent further deposed that no evidence has been placed before the court to show any wrongdoing either by itself or the County Secretary, and that the plaintiff/ applicant is aware that the defendant/ respondent has not issued any permits or licences to any third party for the construction. It was also deposed that the allegations against the defendant/ respondent are absurd as it is a government agency that does not conduct business of hotel and camps. For this reason, the defendant/ respondent deposed that it is not in disobedience of the orders of this court issued on 16<sup>th</sup> February, 2023.
7. The application was canvassed by way of written submissions. The plaintiff/ applicant filed its written submissions dated 10<sup>th</sup> July, 2024 where it raised two issues for determination as follows: -
  1. Whether the County Secretary for the defendant/ respondent's actions amount to contempt of court orders.
  2. Who bears the costs of the application.
8. On the first issue, the plaintiff/ applicant submitted that court orders are not meant for cosmetic purposes as they are serious decisions that are meant to be complied with strictly. The plaintiff/ applicant went on to submit that it is not a mere suggestion or an opinion, but a directive that is issued after much thought and circumspection. It was further submitted that no compelling reason has been advanced by the defendant/ respondent as to why the court order issued on 16<sup>th</sup> February, 2023 could not be complied with apart from denying services of the order which was actually effected. While relying on the cases of *Teachers Service Commission versus the Kenya National Union of Teachers and 2 Others, Petition No. 23 of 2013*, and *Moses P N Njoroge and Others versus Rev. Musa Njuguna and Another [2004] eKLR*, the plaintiff/ applicant submitted that in order to ensure proper dispensation of justice and to promote and protect the rule of law, the County Secretary of the defendant/ respondent ought to be punished.
9. The plaintiff/ applicant further submitted that the County Secretary of the defendant/ respondent indirectly admitted contempt as he denies service in his replying affidavit. In conclusion, the plaintiff/ applicant submitted that the County Secretary of the defendant/ respondent had knowledge of the order as well as a demand letter, which was accompanied with a mention notice dated 23<sup>rd</sup> January,



2023. It was also submitted that it is in the interest of justice that this court upholds its dignity and the rule of law by punishing the County Secretary of the defendant/ respondent for contempt as provided by the law.
10. The defendant/ respondent filed its written submissions dated 12<sup>th</sup> September, 2024 where it raised two issues for determination: -
    - a. Whether the plaintiff/applicant has established any basis for the orders sought to be granted.
    - b. Who should bear the costs of this application.
  11. On the first issue, the defendant/ respondent submitted that it is not in dispute that the terms of the orders issued on 16<sup>th</sup> February, 2023 were clear and unambiguous, but the absurdity comes against the County Secretary who is not a party to the suit. That despite service alleging that the County Secretary was served, no evidence has been placed before this court to demonstrate personal service. The defendant/ respondent submitted that no evidence or proof has been placed before this court to link the County Secretary to the developments and deposits of building materials, or any wrongdoing on him. To buttress on this submission, the defendant/ respondent relied on the case of Mutitika versus Baharini Farm Limited (1985) KLR 229,234.
  12. The defendant/ respondent further submitted that the plaintiff/ applicant has not satisfied that there was breach, and that the same was lawful and in disregard of the lawful orders of the court.
  13. On the second issue, the defendant/respondent submitted that the plaintiff/applicant has failed to demonstrate the tests for contempt which are a prerequisite to the grant of the orders, and as such, the instant application ought to be dismissed with costs.
  14. I have considered the application, the replying affidavit and the written submissions filed by the parties herein. In my view, the issue for determination is whether the defendant/respondent is in breach of the injunction orders issued on 16<sup>th</sup> February, 2023.
  15. 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.”
  16. 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.”
  17. Also, Section 29 of the *Environment and Land Court Act* 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.”



18. In the case of *Samuel M. N. Mweru & Others versus National Land Commission & 2 others* [2020] eKLR the court held that

“A Court without contempt power is not a court. [30] The contempt power (both in its civil and criminal form) is so innate in the concept of jurisdictional authority that a court that could not secure compliance with its own judgments and orders is a contradiction in terms, an “oxymoron.” Contempt power is something regarded as intrinsic to the notion of court; even obvious, I would say. In the common lawyer’s eye, the power of contempt “is inherent in courts, and automatically exists by its very nature...”

If courts are to perform their duties and functions effectively and remain true to the spirit which they are sacredly entrusted with, the dignity and authority of the courts has to be respected and protected at all costs. Otherwise the very cornerstone of our constitutional scheme will give way and with it will disappear the Rule of Law and a civilized life in the society. It is for this purpose that courts are entrusted with the extraordinary power of punishing those who indulge in acts whether inside or outside courts which tend to undermine their authority and bring them in disrepute and disrespect by scandalizing them and obstructing them from discharging their duties. When the court exercises this power, it does so to uphold the majesty of the law and of the administration of justice. The foundation of judiciary is the trust and confidence of the people in its ability to deliver fearless and impartial justice. When the foundation itself is shaken by acts which tend to create disaffection and disrespect for the authority of the court by creating distrust in its working the edifice of the judicial system gets eroded.

33. It is essential for the maintenance of the Rule of Law and order that the authority and the dignity of courts is upheld at all times. The court will not condone deliberate disobedience of its orders and will not shy away from its responsibility to deal firmly with proved contemnors. 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 void.<sup>[32]</sup>

34. 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 contemnors.<sup>[33]</sup> The court does not, and ought not be seen to make orders in vain; otherwise the court would be exposed to ridicule, and no agency of the constitutional order would then be left in place to serve as a guarantee for legality, and for the rights of all people.<sup>[34]</sup>”

19. In the case of *Exparte Langely 1879, 13 Ch D/10 (CA)* Thesiger L.J stated at P. 119 as follows: -

“...the question in each case, and depending upon the particular circumstances of each case, must be, was there or was there not such a notice given to the person who is charged with contempt of court that you can infer from the facts that he had notice in fact of the order which has been made” And, in a matter of this kind, bearing in mind that the liberty of the subject is to be affected, I think that those who assert that there was such a notice ought to prove it beyond reasonable doubt.”



20. In this case, the plaintiff/ applicant contended that the defendant/ respondent is in disobedience of the orders of this court issued on 16<sup>th</sup> February, 2023. That despite service of the orders, the defendant/ respondent has overseen the continued deposition of building materials on the suit property, and has now commenced construction on the suit property in disregard of the said orders. The plaintiff/ applicant contended that the acts by the County Secretary have lowered the dignity and honour of this court, and this court has a duty and responsibility to uphold its honour and dignity.
21. On the other hand, the County Secretary of the defendant/respondent argued that he is not a party to these proceedings, and neither has he been sued in his personal capacity, and that the said court orders are issued to the wrong party. Further, the County Secretary argued that the plaintiff/ applicant in its letter dated 29<sup>th</sup> August, 2022 knew of a third party that encroached onto the suit property, and ought to have sued the said party.
22. I have perused the pleadings herein, it is not disputed that the defendant/ respondent is aware of this matter presently in court. By an affidavit of service sworn on 27<sup>th</sup> March, 2023 the process server by the name of William Kibet Kiptoo instructed by the firm hired by the plaintiff/ applicant effected service upon the defendant/respondent. Whereas there is no evidence indicating the stamped copies to show receipt by the defendant/ respondent, it defies logic why the firm of the J. Maritim & Company filed a memorandum of appearance dated 27<sup>th</sup> March, 2023. This shows that the defendant/ respondent was fully aware of this suit and the orders.
23. However, is the County Secretary directly responsible for these? The functions of the County Secretary are outlined in the County Governments Act, Cap 265. Section 44 (3) of the County Governments Act, Cap 265 provides: -
- “The county secretary shall—
- (a) be the head of the county public service;
  - (b) be responsible for arranging the business, and keeping the minutes, of the county executive committee subject to the directions of the executive committee;
  - (c) convey the decisions of the county executive committee to the appropriate persons or authorities; and
  - (d) perform any other functions as directed by the county executive committee.
24. In the case of Katsuri Limited v Kapurchand Depar Shab (Civil Case 25 of 2013) [2016] KEHC 6447 (KLR) (10 March 2016) (Ruling), Mativo J, (as he then was) observed as follows: -

“Although the proceedings are civil in nature, it is well established that an applicant must prove the elements beyond reasonable doubt, at least higher than the standard in civil cases, the fact that the liberty of the defendant could be affected means that the standard of prove is higher than the standard in civil cases. It is incumbent on the applicant to prove that the defendant's conduct was deliberate in the sense that he or she deliberately or willfully acted in a manner that breached the order. The prayer sought is for committal for contempt. The power to commit for contempt is one to be exercised with great care. An order committing a person to prison for contempt is to be adopted only as a last resort. The other important aspect to mention is that the alleged contemnor is a director of the company. He is not a party to these proceedings in his personal capacity. The company is a legal entity. The



proper procedure for the applicant was first to apply to lift the corporate veil then go for the directors in their personal capacities. As matters stand now, the director is not personally liable for debts, actions or omissions of the company, hence the application before me is misdirected.”

25. Upon careful consideration of the evidence before me, the plaintiff/ applicant, in my view, has not proved with clarity, the acts said to have been committed by the County Secretary of the defendant/ respondent in his personal capacity or on behalf of the defendant/ respondent. The notice of motion dated 28<sup>th</sup> November, 2023, is thus dismissed. Costs to be in the cause. Further mention on 23<sup>rd</sup> October, 2024 for further directions. It is so ordered.

**DATED, SIGNED & DELIVERED VIA EMAIL ON THIS 8<sup>TH</sup> DAY OF OCTOBER, 2024.**

**HON. MBOGO C.G. JUDGE**

**08/10/2024.**

In the presence of: -

Mr. Meyoki Pere – C.A

