



REPUBLIC OF KENYA



**Sidi v Muriuki (Environment & Land Case 16 of 2017)  
[2024] KEELC 6817 (KLR) (15 October 2024) (Ruling)**

Neutral citation: [2024] KEELC 6817 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS  
ENVIRONMENT & LAND CASE 16 OF 2017  
CA OCHIENG, J  
OCTOBER 15, 2024**

**BETWEEN**

**ABDULRASUL HASSANI SIDI ..... PLAINTIFF**

**AND**

**MARY GATIMU MURIUKI ..... DEFENDANT**

**RULING**

1. What is before Court for determination is the Plaintiff's Notice of Motion Application dated the 14<sup>th</sup> November, 2023 brought pursuant to Section 1A and 3A of the Civil Procedure Act, Order 51(1) of the Civil Procedure Rules and Section 5 of the Judicature Act. The Plaintiff seeks the following Orders:-
  - a. Spent
  - b. That this Honourable Court be pleased to find that the OCS Matuu Police Station is in Contempt of court orders issued on the 4<sup>th</sup> October, 2021 and in particular Order 1.
  - c. That summons do issue to the OCS Matuu Police Station to appear personally in court and show cause why they should not be committed to civil jail for contempt of court.
  - d. That the Honourable Court be pleased to order for the arrest and detention of the OCS Matuu Police Station in prison for a term not exceeding six months for contempt of court.
  - e. That in the alternative the court be pleased to order the OCS Matuu Police Station to purge all the actions of contempt by enforcing the judgement and decree issued by the Honourable Court on 31<sup>st</sup> May, 2019 and 25<sup>th</sup> July, 2019 respectively as per the Court Order dated 4<sup>th</sup> October, 2021.
  - f. That the costs of this Application be provided for.



2. The Application is premised on the grounds on the face of it and the Supporting Affidavit of ABDULRASUL HASSANI SIDI where he deposes that he obtained Judgment against the Defendant on 31<sup>st</sup> May, 2019 and a Decree was issued on 25<sup>th</sup> July, 2019. He confirms that vide a Court Order issued on 4<sup>th</sup> October, 2021, the OCS Matuu Police Station was to enforce the Judgment and Decree. He claims the OCS Matuu Police Station, despite service of the Court Order and numerous correspondences with the office has continued to be in breach of the said Court Orders and has feigned ignorance of the existence of those Orders. Further, that the OCS Matuu Police Station continues to refuse or neglect to obey the Order issued on 4<sup>th</sup> October, 2021 and thereafter deliberately disobeyed the same to date, despite service. He contends that due to the actions of the OCS Matuu Police Station, the Defendant/ Judgment Debtor's structures are still erected on the public road, which structures encroach on his property being land parcel number Machakos/Matuu/3374 despite eviction orders. He reiterates that he has continued to be deprived of his quiet possession and enjoyment of his premises.
3. The alleged Contemnor opposed the instant Application by filing Grounds of Opposition dated the 6<sup>th</sup> August, 2024 which is premised on the reasons that the Application is fatally defective, incompetent, untenable both in substance and form. He explains that contrary to the allegations by the Applicant, they have failed to demonstrate that he has personally been served with the Court Order dated 4<sup>th</sup> October, 2021 or any other order in respect to this suit. He contends that his role would be providing security in such situations, while the Defendant implements the impugned Court Order by demolishing the construction on the suit property. He insists that the Applicant is guilty of non-disclosure of material facts relevant to this suit since he misleads this court by alleging that it was his role to implement the said Judgment and Decree. He states that the Applicant did not outline the specific instances, actions and/or omissions by himself, to support his claim of disobedience of the Court Orders nor the steps he has taken to ensure implementation of the Judgment as ordered by the Court in the impugned Judgment. He reiterates that a party alleging Contempt proceedings must demonstrate willful disobedience of the Court Orders by establishing beyond any reasonable doubt, conclusive evidence to prove allegations of contempt. Further, that the Applicant has failed to show how he could be guilty of Contempt Proceedings, since the same cannot be brought against an office. He reaffirms that the Application fails to prove that the alleged contempt was willful.
4. The Application was canvassed by way of written submissions.

### **Analysis and Determination**

5. Upon consideration of the instant Notice of Motion Application including the Supporting Affidavit, Grounds of Opposition and rivalling submissions, the only issue for determination is whether the OCS Matuu Police Station should be cited for Contempt of court orders issued on the 4<sup>th</sup> October, 2021 and if the Plaintiff is entitled to the other orders as sought.
6. The Applicant in his submissions reiterated his averments as per the Supporting Affidavit and contended that there is contempt of Court by the OCS Matuu Police Station. He insisted that by virtue of the Court Order issued on 4<sup>th</sup> October, 2021, the OCS Matuu Police Station was ordered to enforce the Judgment and Decree issued on 31<sup>st</sup> May, 2019 and 25<sup>th</sup> June, 2019 respectively. He confirmed that the said Court Order was physically and electronically served upon the OCS Matuu Police Station. To buttress his averments, he relied on Section 5 of the *Judicature Act* as well as the following decisions: Mzee Maina Gathinji & 5 Others v John Mugwe & 2 others (2009) eKLR and Republic v William Ruto & Another (2017) eKLR.



7. The alleged Contemnor in his submissions insisted that this Application does not meet the threshold of contempt proceedings. He argued that no party has been named. Further, that no contempt proceedings can be maintained against a public office with several channels of operations. He claimed that the said Police Station has a new OCS and is therefore a stranger to the alleged court orders and there was no personal service upon him as evident in the Affidavit of Service. Further, that the said OCS is not culpable for contempt of court as there was no willful disobedience of the same. To support his arguments, he relied on the following decisions: *Re Bramblevale Ltd* (1967) 3 All ER 1062; *Gatharia Karanja Mutitika & Others v Baharini Farm Limited* (1985) KLR 227; *Re Maria Annie Davies* (1889) 21 QD; *Ex parte Peter Nyamu Karaguri Muhuri Karaguri v Attorney General of Kenya & 5 Others* (2013) eKLR; *Ochino & Another v Kombo & 4 Others* (1989) KLR 165; *John Mwangi Muhia & 2 others v Justus Gituma t/a Dona Snacks & Another* (2014) eKLR and *James Kanyiita Nderitu v Maries Philotas Ghikas & Another* (2016) eKLR.
8. Black's Law Dictionary (Ninth Edition) describes contempt of court as follows:-

“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.”
9. In Halsbury's laws of England at para 463 Vol 9(1) (Re-issue) 3, it was stated as follows:-

“... and a person not a party against whom any judgement or order may be enforced is liable to the same process for enforcing obedience to it as if he were a party.”
10. While Section 29 of the *Environment and Land Court Act* stipulates 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.”
11. On proof of contempt, in the case of *North Tetu Farmers Co. Ltd v. Joseph Nderitu Wanjohi* (2016) eKLR Justice Mativo (as he then was) stated that:-

“writing on proving the elements of civil contempt, learned authors of the book *Contempt in Modern New Zealand* have authoritatively stated as follows:-' there are essentially four elements that must be proved to make the case for civil contempt. The applicant must prove to the required standard (in civil contempt cases which is higher than civil cases - (a) the terms of the order (or injunction or undertaking) were clear and unambiguous and were binding on the defendant; (b) the defendant had knowledge of or proper notice of the terms of the order; (c) the defendant has acted in breach of the terms of the order; and (d) the defendant's conduct was deliberate.”
12. In this instance, the Plaintiff claims despite physical including electronic service, the OCS Matuu Police Station has declined to implement the Court Order issued on 4<sup>th</sup> October, 2021 by enforcing the Judgment and Decree of this Court. The OCS Matuu Police Station denied service, argued that he is new in the Station and there is no indication if the impugned Judgment and Decree were served upon him. Further, he contends that his role would be providing security in the implementation of the Judgment, while the Defendant is expected to implement the impugned Court Order by demolishing the construction on the suit property.



13. On perusal of the Affidavit of Service, I note there was no personal service effected upon the OCS Matuu Police Station as claimed since his name is not even indicated thereon. Further, there is no confirmation if the OCS Matuu Police Station was indeed served with the Penal Notice. In the case of Augustine Marete Rukunga vs. Agnes Njeri Ndungire & Anor, HCCC 2160 the court held that:-

“The consequence of a finding of contempt is penal. The standard of proof is beyond reasonable doubt. The applicant therefore had to prove service beyond reasonable doubt and I must be satisfied that the respondents disobeyed the court order made on the 9th December 1998 and that they did so willfully or intentionally.”

14. Based on the facts before me while associating myself with the decisions cited above, I am of the view that the Plaintiff has not demonstrated personal service upon the alleged Contemnor. Further, the Plaintiff has not indicated how the alleged Contemnor declined to assist in the implementation of the Court Order, despite his seeking assistance. From the averments in the Supporting Affidavit, in my view there is no demonstration that, there was wilfulness and mala fides disobedience of the orders of this court. Further, the Plaintiff has not indicated what steps he has personally undertaken to implement the Judgment including consequent Decree.

15. It is against the foregoing that I find the Plaintiff/Applicant’s Notice of Motion Application dated the November 14, 2023 unmerited and will disallow it.

16. Costs will be in the cause.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT MACHAKOS THIS 15<sup>TH</sup> DAY OF OCTOBER, 2024**

**CHRISTINE OCHIENG**

**JUDGE**

**In the presence of:**

Ms. Malonza for Plaintiff/Applicant

Kuria for Contemnor

Court Assistant – Simon

