



**Mavoko Land Development Co Ltd v Kasina Housing Scheme Society & 4 others;  
Thuo (Director of Surveys) & 3 others (Contemnor) (Environment & Land  
Case 366 of 2009) [2024] KEELC 7328 (KLR) (4 November 2024) (Ruling)**

Neutral citation: [2024] KEELC 7328 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS  
ENVIRONMENT & LAND CASE 366 OF 2009  
CA OCHIENG, J  
NOVEMBER 4, 2024**

**BETWEEN**

**MAVOKO LAND DEVELOPMENT CO LTD ..... PLAINTIFF**

**AND**

**KASINA HOUSING SCHEME SOCIETY ..... 1<sup>ST</sup> DEFENDANT**

**PETER MUINDE MBITI ..... 2<sup>ND</sup> DEFENDANT**

**ERICKSON KIMEU MULWA ..... 3<sup>RD</sup> DEFENDANT**

**FRANCIS KIRAGU NGOTHO ..... 4<sup>TH</sup> DEFENDANT**

**HON ATTORNEY GENERAL ..... 5<sup>TH</sup> DEFENDANT**

**AND**

**PATRICK THUO (DIRECTOR OF SURVEYS) ..... CONTEMNOR**

**PUNDEN AMOS (ASSISTANT SUB COUNTY  
COMMISSIONER) ..... CONTEMNOR**

**ERICKSON KIMEU MULWA ..... CONTEMNOR**

**FRANCIS KIRAGU NGOTHO ..... CONTEMNOR**

**RULING**

1. What is before Court for determination is the Plaintiff’s Notice of Motion application dated the 7<sup>th</sup> December, 2023 where it seeks the following Orders:SpentSpentSpentSpentThat in implementation of the Judgement dated 31<sup>st</sup> May, 2019 and Decree of the Court dated 18<sup>th</sup> October, 2019, the Chief Land Registrar and the Director of Surveys be and are hereby ordered to re-survey and show beacons of LR No. 25062 now Athi River/Athi River Block 18 and LR No. 11895/27 now Athi River/Athi



River Block 9 and file its survey report in court. That subject to granting prayer 5 hereinabove, the Honourable Court be pleased to declare null and void all overlapping plots from LR No. 11895/27 now Athi River/Athi River Block 9 and the same be revoked and the Land Registrar Machakos be ordered to rectify the records and the Map respectively and all claims of title thereon. That in compliance with the judgement and court Decree issued on 18<sup>th</sup> October, 2019, and the survey report and established beacons, the OCS Mlolongo Police Station be ordered to provide security for the Applicant to put up permanent beacons and the fence on its boundary as decreed. That this honourable court be pleased to order and punish the 1<sup>st</sup> Contemnor, Mr. Patrick Thuo, Director of Surveys, Mr. Punden Amos, Assistant Sub-County Commissioner, Mlolongo the 3<sup>rd</sup> and 4<sup>th</sup> Contemnors, Mr. Erickson Kimeu Mulwa and Francis Kiragu Ngotho respectively, Secretary and Treasurer, Kasina Housing Scheme Society to be arrested and committed to civil jail for a term not exceeding 6 months for contempt of the court Judgement and Decree or fined for disobedience of the court judgement and Decree issued by the Honourable Court by Honourable Justice Angote.

2. The application is premised on the grounds on the face of it and the supporting affidavit of Jackson Makali Kalolwewhere he deposes that on 31<sup>st</sup> May, 2019 the Court delivered its Judgement in this matter and a resultant Decree was issued on 18<sup>th</sup> October, 2019. He contends that Judgment and Decree was served physically upon the Contemnors on diverse dates for compliance. Further, despite having acknowledged service by stamping the copies of the judgement and decree, the Contemnors proceeded to conduct an illegal and unlawful resurvey on the Applicant's land being LR No. 25062 now subdivided Athi River/Athi River Block 18 contrary to the honourable Court's judgement and decree. He contends that the Applicant in a bid to restrain the 1<sup>st</sup> Contemnor from conducting a resurvey, served the 1<sup>st</sup> Contemnor with copies of the judgement and decree and reminded the 1<sup>st</sup> Contemnor that they were part of the court proceedings. Further, that the impugned Judgement and Decree binds them. He states that the 2<sup>nd</sup> Contemnor was served on 21<sup>st</sup> November, 2023 with the said Judgement and Decree wherein he acknowledged receipt thereof by signing, yet he proceeded to support and conduct the survey with the 1<sup>st</sup> Contemnor, with the assistance of the 3<sup>rd</sup> and 4<sup>th</sup> Contemnors in total disobedience of the court's judgment and decree.
3. The application was opposed by the 2<sup>nd</sup> Contemnor Punden Amos, the Assistant County Commissioner Mlolongo Ward where he deposes that he was not a party to the suit herein when the judgement to the subject application was delivered on 31<sup>st</sup> May, 2019 and Decree issued on 18<sup>th</sup> October, 2019. Further, he denies being served with or notified of the said Judgement and Decree, prior to 21<sup>st</sup> November, 2023. He contends that the alleged survey exercise which is subject of the contempt proceedings was conducted between the 1<sup>st</sup> to 8<sup>th</sup> November, 2023. He insists that the Applicant has not demonstrated that he was aware of the Judgement and Decree prior to the conducting of the survey exercise. Further, that he disobeyed the said Judgement. He reiterates that the role of his office is to maintain law and order. Further, that on 30<sup>th</sup> October, 2023, he received a letter of an even date from the Director of Surveys, requesting for provision of security during the proposed ground survey of Athi River/Athi River Block 18, Block 9 and LR No. 11895/33, which he complied with.
4. The 3<sup>rd</sup> Defendant/Contemnor opposed the instant application by filing a replying affidavit sworn by Erickson Kimeu Mulwa where he confirms being the Secretary of Kasina Housing Scheme Society, the 1<sup>st</sup> Defendant herein. He denies initiating or engaging with the Director of Surveys and or Chief Land Registrar with regard to the survey process referenced in the Director of Surveys' letter dated 30<sup>th</sup> October, 2023. He claims the survey process was initiated at the behest of one Fredrick Muthama Nzioka who wrote to the Principal Planning, who in turn engaged the Director of Surveys vide Report REF: CPC Vol 94/80 dated the 13<sup>th</sup> October, 2023 recommending a ground survey as part of the investigation to resolve the ongoing conflict caused by the existence of two Deed Plans of FR No.



213/82 showing different shapes and sizes of blocks and different positions of the roads between the blocks but having same details, on computation file including registration. He contends that the Plaintiff has not provided cogent evidence to establish that he participated in the survey exercise.

5. The 4<sup>th</sup> Defendant/Contemnor opposed the instant application by filing a replying affidavit sworn by Francis Kiragu Ngotho where he confirms being the Treasurer of the 1<sup>st</sup> Defendant. He denies initiating or engaging with the Director of Surveys and or Chief Land Registrar with regard to the survey process referenced in the Director of Surveys' letter dated 30<sup>th</sup> October, 2023. He claims the survey process was initiated at the behest of one Fredrick Muthama Nzioka who wrote to the Principal Planning, who in turn engaged the Director of Surveys vide Report REF: CPC Vol 94/80 dated the 13<sup>th</sup> October, 2023 recommending a ground survey as part of the investigation to resolve the ongoing conflict caused by the existence of two Deed Plans of FR No. 213/82 showing different shapes and sizes of blocks and different positions of the roads between the blocks but having same details, on computation file and registration. He insists that the Plaintiff has not provided evidence to establish that he participated in the survey exercise.
6. The application was canvassed by way of written submissions.

### **Analysis and Determination**

7. Upon consideration of the instant Notice of Motion application including the respective affidavits and rivalling submissions, the following issues are for determination: Whether Mr. Patrick Thuo, Director of Surveys; Mr. Punden Amos, Assistant Sub - County Commissioner, Mlolongo; the 3<sup>rd</sup> and 4<sup>th</sup> Contemnors, Mr. Erickson Kimeu Mulwa and Francis Kiragu Ngotho being, Secretary and Treasurer respectively, for Kasina Housing Scheme Society should be cited for contempt of this Court's Judgement delivered on 31<sup>st</sup> May, 2019 and Decree issued on 18<sup>th</sup> October, 2019. Whether the Director of Surveys and Chief Land Registrar should be directed to implement the Judgement dated 31<sup>st</sup> May, 2019 and Decree of the Court issued on 18<sup>th</sup> October, 2019, by re-surveying and showing beacons of LR No. 25062 now Athi River/Athi River Block 18 and filing its survey report in court.

As to whether Mr. Patrick Thuo, Director of Surveys; Mr. Punden Amos, Assistant Sub-County Commissioner, Mlolongo; the 3<sup>rd</sup> and 4<sup>th</sup> Contemnors, Mr. Erickson Kimeu Mulwa and Francis Kiragu Ngotho being Secretary and Treasurer respectively, for Kasina Housing Scheme Society should be cited for contempt of this Court's Judgement delivered on 31<sup>st</sup> May, 2019 and Decree issued on 18<sup>th</sup> October, 2019.

8. The Plaintiff claims the Contemnors proceeded to conduct an illegal and unlawful resurvey on its land being LR No. 25062 now subdivided Athi River/Athi River Block 18 contrary to the honourable Court's judgement and decree, which fact the 2<sup>nd</sup> to 4<sup>th</sup> Contemnors deny. For the avoidance of doubt, I wish to reproduce the Judgement delivered on 31<sup>st</sup> May, 2019:

- a. A declaration be and is hereby issued that the 1<sup>st</sup> Defendant's Leasehold Title L.R.No.11895/27 Mavoko Municipality bearing names "Kasina Housing Scheme Society" is fake, null and void.
- b. A mandatory and/or permanent injunction be and is hereby issued directed to the Defendants, their members, servants, employees and agents to stop encroaching, trespassing into, destroying the boundaries, constructing shelters, erecting temporary or permanent structures, or interfering with the Plaintiff's properties and quiet possession in all that parcel of land, L.R No. 25062, Mavoko Municipality.



- c. An independent Surveyor be appointed and directed to show survey beacons of L.R. No. 25062 Mavoko Municipality for the Plaintiff to put a permanent fence on the Plaintiff's parcel of land L.R. No. 25062.
  - d. That the re-survey conducted by the Director of Surveys on land parcel L.R. No. 25062, Grant I.R 84437 with a Deed Plan No. 231422 attached to the said title 25062, and as appearing on the re-survey map registered and dated 14<sup>th</sup> December, 2007 with file Ref. No. CR. 34/52/72, computation No. 55575 and Field No. W.C be and is hereby declared null and void for infringing and violating the Plaintiff's rights of ownership of property.
  - e. That land L.R. No. 25062, Grant I.R 84437 and its attached Deed Plan No. 231422 its size, beacons, boundaries, shape or form be restored and maintained as it was appearing before the re-survey and as appearing in the Deed Plan No. 231422 and attached to the said Leasehold Title No. 25062.
  - f. Costs and interest of this suit to be paid by the Defendants.'
9. In this instance, I note the title held by the 1<sup>st</sup> Defendant was declared fake, null and void. Further, despite the Judgement and consequential Decree of the Court, the representatives of the 1<sup>st</sup> Defendant proceeded to engage the Director of Surveys to purportedly undertake a resurvey of its land, but in turn actually surveyed the Plaintiff's land. I note the Judgement delivered on 31<sup>st</sup> May, 2019 has never been appealed against nor reviewed, which in essence means the said judgement remains valid, hence the 1<sup>st</sup> Defendant's title nor resultant titles emanating therefrom are deemed non-existent. The 2<sup>nd</sup> and 3<sup>rd</sup> Defendants (3<sup>rd</sup> and 4<sup>th</sup> Contemnors) insist that they did not instruct the Director of Surveys but, it was one Fredrick Muthama Nzioka. However, they confirm that there was a resurvey done on their land and the Plaintiff's land. It is worth noting that they are officials of the 1<sup>st</sup> Defendant, were aware of the impugned Judgement where their title was declared fake, were aware of instructions to the Director of Surveys to undertake resurvey on a non existent land, but did nothing. Further, they have not furnished to this court the instructions allegedly issued by Fredrick Muthama Nzioka. The 2<sup>nd</sup> Contemnor has explained that he was not a party to these proceedings, was requested by the Director of Surveys to provide security and only learnt of the impugned Judgement after the survey exercise. The 1<sup>st</sup> Contemnor did not file any response to oppose the instant application.
10. On contempt of Court, Black's Law Dictionary (Ninth Edition) defines it 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.”
11. 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”.
12. 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”



13. 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.”

14. In the current scenario, I note the 1<sup>st</sup> Defendant’s title was declared nonexistent and should hence not have been subjected to any resurvey exercise. Further, I note the 1<sup>st</sup> to 4<sup>th</sup> Defendants were represented during the hearing of this matter and their advocate was present when the judgement was delivered in favour of the Plaintiff and were aware of the issuance of a resultant Decree. It is my considered view that the 3<sup>rd</sup> and 4<sup>th</sup> Contemnors who are officials of the 1<sup>st</sup> Defendant cannot deny having been unaware of the resurvey exercise as claimed. Further, during the hearing, there was a representative from the Director of Surveys PW2 Priscilla Njeri, who testified and this culminated in the 1<sup>st</sup> Defendant’s title being declared fake, null and void.

15. In the case of Augustine Marete Rukunga vs. Agnes Njeri Ndungire & Another, 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 9<sup>th</sup> December 1998 and that they did so willfully or intentionally”

16. Based on the facts before me while relying on the legal provisions I have cited including associating myself with the decisions quoted, I am of the view that the 2<sup>nd</sup> Contemnors is not guilty of contempt as he was not aware of the impugned judgement until after the survey exercise. However, I find the 1<sup>st</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Contemnors guilty of contempt of the court by undertaking the survey exercise knowing fully well that the 1<sup>st</sup> Defendant’s title had been cancelled and hence could not bestow any proprietary interest in land to require a survey. From their actions, I find that there was demonstration of willfulness and mala fides disobedience of the orders of this court.

17. It is against the foregoing that I find the Plaintiff/Applicant’s Notice of Motion application dated the 7<sup>th</sup> December, 2023 merited and will allow it, in the following terms: The Director of Surveys and the Chief Land Registrar be and are hereby directed to implement the Judgement of this Court dated the 31<sup>st</sup> May, 2019 and the resultant Decree issued 18<sup>th</sup> October, 2019 and file their reports in court within sixty (60) days from the date hereof. That in compliance with the Judgement dated 31<sup>st</sup> May, 2019 and Decree issued on 18<sup>th</sup> October, 2019, the OCS Mlolongo Police Station be and is hereby ordered to provide security for the Plaintiff to put up permanent beacons and the fence on its boundary as decreed. The 1<sup>st</sup> Contemnors, Mr. Patrick Thuo, Director of Surveys, 3<sup>rd</sup> and 4<sup>th</sup> Contemnors, Mr. Erickson Kimeu Mulwa and Francis Kiragu Ngotho, Secretary and Treasurer respectively of Kasina Housing Scheme Society be and are hereby cited for contempt of this Court’s Judgement dated the 31<sup>st</sup> May, 2019 and consequential Decree issued on 18<sup>th</sup> October, 2019. This matter be mentioned on 22<sup>nd</sup> January, 2025 for sentencing of the Contemnors. Costs of the application is awarded to the Plaintiff.



DATED, SIGNED AND DELIVERED VIRTUALLY AT MACHAKOS THIS 4<sup>TH</sup> DAY OF NOVEMBER, 2024

**CHRISTINE OCHIENG**

**JUDGE**

**In the presence of:**

Nyawira for 1<sup>st</sup> and 2<sup>nd</sup> Contemnors

No appearance for Respondents

Court assistant – Simon/Ashley

