



**Mwenda (Suing as the Administrator of the Estate of Francis Kalunge  
Mwenda) v Mukiamo (Environment & Land Case E008 of 2023)  
[2024] KEELC 13660 (KLR) (4 December 2024) (Ruling)**

Neutral citation: [2024] KEELC 13660 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MERU  
ENVIRONMENT & LAND CASE E008 OF 2023  
CK NZILI, J  
DECEMBER 4, 2024**

**BETWEEN**

**LILIAN GACERI MWENDA ..... APPLICANT  
SUING AS THE ADMINISTRATOR OF THE ESTATE OF FRANCIS KALUNGE  
MWENDA**

**AND**

**JOSHUA KIRIMI MUKIAMA ..... RESPONDENT**

**RULING**

1. On 6.11.2024, the defendant/respondent was found guilty of contempt of court and directed to appear for mitigation before sentencing on 11.11.2024. Miss Muna learned counsel for the respondent submitted that his client was remorseful, having been found culpable by the court, and was making an undertaking, henceforth to comply with the court decree.
2. Learned counsel submitted that the decree initially was not explicit, but since the court has now clarified it through the ruling in the contempt application, she had adequately explained it to her client, who now assures the court that he will not interfere with the suit land.
3. Further, learned counsel submitted that for the five days, her client has been in police custody, he has learned a lesson that disobeying court orders had consequences and therefore pleaded for both mercy and forgiveness for his misdeeds.
4. Again, learned counsel submitted that his client, in the alternative, was pleading for a lenient sentence, probably a non-custodial one; otherwise, he was very sorry for what he did to the applicant.
5. The learned counsel submitted that her client was 42 years old, the sole breadwinner, running a business at Karama market to cater for his family composed of a wife and three children.



6. The learned counsel additionally submitted that her client was an elder in Full Gospel Church at Karama.
7. Mr. Maheli learned counsel for the plaintiff submitted that the respondent was still belligerent since the first thing he did in the morning after disembarking from the prison vehicle and seeing the plaintiff within the court precincts was to utter threatening words as a greeting. Learned counsel termed such behavior as inconsistent with a person who had learned a lesson that crime does not pay and who was willing to reform.
8. Equally, learned counsel submitted that one could not earn bread by harassing other people and that the respondent should understand that the choice to ignore court orders had consequences. The learned counsel submitted that the respondent has been harassing the plaintiff for over 10 years and so, it could not be true that he has learned any lesson during the trial.
9. Similarly, learned counsel submitted that if the respondent had decided to appeal against the judgment, he should have let the process run its course without interfering with the suit land despite a clear order to cease such acts.
10. Learned counsel submitted that since his client had incurred unnecessary costs and expenses because of the conduct of the respondent as per the loss and damage before the court, the court should enforce its orders, for they mean something, to act as a deterrence of such conduct in the future.
11. In a rejoinder, Miss Muna, learned counsel for the respondent, reiterated that her client had learned an enormous lesson and had changed his perspective of the matter.
12. On costs and expenses, learned counsel submitted that the plaintiff was awarded costs for the suit and the application and that the submission was misleading.
13. Section 29 (7) of the *Environment and Land Court Act* provides that upon conviction on contempt of court, the punishment is a fine not exceeding Kshs.20,000,000/= or a term not exceeding two years or both.
14. On 11.11.2024, this court ordered that a proper decree be extracted in line with the court's judgment and be executed in the presence of all the parties with the superintendence of the OCS Muthara Police Station as a way of purging the contempt by the respondent.
15. A report is yet to be filed showing that parties visited the locus in quo and were shown the extent of the decreed land to the plaintiff for compliance purposes, in order to avoid any future breach thereof.
16. The purpose of a sentence in contempt of court is to vindicate the cherished principle of the rule of law and to restore the dignity and authority of the court. See *Miguna Miguna vs Fred Matiangi C.S Ministry of Interior & National Coordination (2018) eKLR* and *B vs AG (2004) 1 KLR 431*. Court orders are not made in vain. I do not believe that the judgment of this court needed any clarifications. It is not true that it was not explicit as submitted by Miss Muna advocate; otherwise, the respondent would have moved the court for clarification.
17. The respondent has appealed against the judgment and, therefore, must have been aware of the contents. It is the respondent who extracted an incorrect decree, which must have misled him. If at all there was no clarity in the judgment, the applicant would not have extracted the decree. The respondent has, however, undertaken to ensure compliance with the judgment, which issued a permanent injunction against interference with the applicant's recorded interests over 12.76 acres of Parcel No. 2591 Karama Adjudication Section acquired under the *Land Adjudication Act*. The land is



said to be at the demarcation/ objection stage by virtue of consent to sue for eviction/trespass and the survey/confirmation reports produced as P. Exh No. 1, 2, 3, 4 & 6.

18. The court made a finding that there was interference or encroachment of the said interests by the respondent, despite a land surveyor's report dated 2.5.2023 and other official documents produced as P. Exh No. 7, 8, 11, 14 & 17, to the extent of 0.302 ha of the recorded size or parcel of land.
19. The said survey reports discounted the defendant's defense purporting to lay a claim that his late uncle's Parcel No. 903 as overlapping the land demarcated for the applicant. Simply put, the court found the defendant's statement of defense dated 29.5.2023 untenable. Parties herein are aware of the interim order dated 31.5.2023, which had also been enforced by the land adjudication officers on the ground pending the hearing and determination of the suit.
20. A decree from the court must accord with the judgment in its entirety as regards the prayers in the suit. A permanent injunction was issued restraining the defendant from in any way whatsoever interfering with the plaintiff's ownership, occupation, and use of Parcel No. 2591 Karama Adjudication Section measuring 12.76 acres and whose dimensions are as per P. Exh No. 8 and D. Exh No. 12.
21. Mesne profits for loss of user were decreed based on the evidence tendered by the land adjudication, surveyors report dated 2.3.2023, on the extent of encroachment onto 1.1336 ha out of the 12.76 acres. These are the only reliefs that were issued by the court in its judgment plus costs.
22. The decree dated 28.11.2024 is, therefore, still inconsistent with the judgment of the court. For instance, the issue of trespass and interment of the deceased took place in 2022-2023 as per paragraphs 7 -11 of the plaint dated 5.5.2023 and not 2013. Unfortunately, the parties herein are not adhering to the law. Interment of the remains of the late Zakaria Kanyi took place in June 2022, contrary to the land surveyors' recommendation as per P. Exh No. 7, 14, 16, 17 & 18.
23. The defendant/respondent cannot benefit from the confusion to which he appears to be a party. Equally, the applicant cannot be heard to say that the respondent should not be pardoned for defying a court decree, yet it is now clear that parties are unable to do the right thing and comply with the judgment as it is by extracting the correct decree.
24. In the premises, I give the respondent the benefit of doubt. He is as a result of this, granted a conditional discharge to desist from interfering with the permanent injunction issued by this court to preserve 12.76 acres of the plaintiff's Parcel No. 2591 Karama Adjudication Section, as per the land adjudication reports and the preliminary maps supplied to this court until his appeal is heard and determined or the interests of the parties are determined otherwise under the adjudication process, whichever comes earlier. Should there be a complaint, raised against the respondent for interference with the decree, the court shall not hesitate to mete out an appropriate sentence. Orders accordingly.

**DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT MERU ON THIS 4<sup>TH</sup> DECEMBER, 2024**

In presence of

C.A Kananu

Maheli for the plaintiff

Miss Muna for the defendant

Contemnror/defendant

Plaintiff/Applicant



**HON. C K NZILI**  
**JUDGE**

