



**Ogola v Alila (Environmental and Land Originating Summons
E025 of 2022) [2024] KEELC 13616 (KLR) (5 December 2024) (Ruling)**

Neutral citation: [2024] KEELC 13616 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT SIAYA
ENVIROMENTAL AND LAND ORIGINATING SUMMONS E025 OF 2022
AY KOROSS, J
DECEMBER 5, 2024**

BETWEEN

JOHN OWITI OGOLA PLAINTIFF

AND

JARED ODONGO ALILA DEFENDANT

RULING

1. By way of a notice of motion dated 16/09/2024 that was filed within the provisions of Sections 1A, 3, 3A, and 63 of the [Civil Procedure Act](#) and Section 5 of the [Judicature Act](#), the appellant moved this court seeking the following reliefs:
 - a. Spent.
 - b. That an order of committal to civil jail for 6 months should be made against the respondents or they be penalized on such terms as the Hon. Court may determine for having deliberately disobeyed court orders issued on 26/02/2024.
 - c. That in the execution of this court's orders, an order be issued directing the officer in charge of Yala Police Station to arrest the respondents.
 - d. That an order does issue restraining the respondents from seeking audience with the Hon. Court until and unless they comply with orders of the court.
 - e. Any other or further orders of the court be issued towards protecting the dignity and authority of the court.
 - f. Costs be borne by the respondents.



g. Spent.

2. The motion was premised on the grounds enumerated on its face and the affidavit of the appellant sworn on 16/09/2024.
3. In the grounds and affidavit, the appellant contended that despite both parties' counsel being privy to the orders issued on 26/02/2024 which amongst other orders directed that an order of status quo that was currently prevailing on land parcel no. South Gem/Kanda 2083 and 2084 (suit properties) be maintained, the respondents had disobeyed these said orders.
4. She asserted on 15/08/2024, the respondents and their agents invaded the suit properties, cleared, and ploughed the same without permission from the appellant. Further, they had pulled down the fence and brought surveyors and buyers to the suit properties. She urged the court to grant the orders sought.
5. From the record, the appellant's counsel filed a return of service dated 19/09/2014 which allegedly shows counsel Mr. Oduor Aluoch served the motion and written submissions as directed by the court on 19/4/2024, this court will come back to this.
6. Despite directions for counsel to only canvass the motion by written submissions, he also filed written submissions on the substantive appeal yet directions on the disposal of the appeal have not been made. Consequently, the submissions dated 5/10/2024 are hereby expunged from the court record.
7. Turning to the submissions on the motion, counsel Mr. Oduor Aluoch filed written submissions dated 19/09/2024. This court has considered these submissions.
8. Having carefully considered the motion, grounds in support, affidavit, and written submissions dated 19/09/2024, the following 3 issues that arise for resolution shall be dealt with in a seriatim manner: -
 - a. Whether the respondents were served with the motion.
 - b. Whether the respondents are in contempt of court.
 - c. What orders should this court issue?
9. On the 1st issue, the law governing contempt proceedings is found in Section 5(1) of the *Judicature Act*. The decision of Kenya Human Rights Commission v Attorney General & another [2018] eKLR declared the *Contempt of Court Act* unconstitutional and on nullification, our regime reverted to Section 5(1) of the *Judicature Act*. This provision states: -

“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 that power shall extend to upholding the authority and dignity of subordinate courts.”
10. The authority of this court to deal with contempt proceedings is derived from Section 29 of the *Environment and Land Court Act*.
11. It must be noted Section 5 of the *Judicature Act* is bereft of the procedure for instituting such contempt proceedings and consequently, this court has to seek recourse in the procedure applicable in the High Court of Justice in England and Wales.



12. The Civil Procedure Rules of England and Wales was considered in detail by the Court of Appeal in *Christine Wangari Gachege v Elizabeth Wanjiru Evans & 11 others* [2014] eKLR when in this decision, the court stated: -

“The procedure to be followed in commencing, prosecuting and punishing contempt of court cases was, until 2012, provided for by Order 52 Rules 1 to 4 of the Rules of the Supreme Court RSC), made under the Supreme Court of *Judicature Act*, 1873 (or simply the *Judicature Act*, 1873)...Following the implementation of the famous Lord Woolf’s “Access to Justice Report, 1996”, The Rules of the Supreme Court of England are gradually being replaced with the Civil Procedure Rule, 1999. On 1st October, 2012 the Civil Procedure (Amendment No. 2) Rules, 2012 came into force and PART 81 thereof effectively replaced Order 52 RSC in its entirety.”

13. PART 81 of these England and Wales Civil Procedure Rules elaborately states the ingredients of contempt applications, the definition of terms, service of applications, and proceedings thereof, and this procedure was concisely summarized in *Christine Wangari Gachege* (Supra).

14. Rule 81.5 of this England and Wales Civil Procedure Rules elaborately deals with service of contempt applications and it provides: -

“(1) Unless the court directs otherwise in accordance with Part 6 and except as provided in paragraph (2), a contempt application and evidence in support must be served on the defendant personally.

(2) Where a legal representative for the defendant is on the record in the proceedings in which, or in connection with which, an alleged contempt is committed—

(a) the contempt application and evidence in support may be served on the representative for the defendant unless the representative objects in writing within seven days of receipt of the application and evidence in support;

(b) if the representative does not object in writing, they must at once provide to the defendant a copy of the contempt application and the evidence supporting it and take all reasonable steps to ensure the defendant understands them;

(c) if the representative objects in writing, the issue of service shall be referred to a judge of the court dealing with the contempt application; and the judge shall consider written representations from the parties and determine the issue on the papers, without (unless the judge directs otherwise) an oral hearing.”

15. It is evident from the very clear provisions of the law that service upon the respondents or their representatives is mandatory. It must also be borne in mind that contempt proceedings are quasi-criminal and the right of a party to be heard is pertinent.



16. Further, I also draw guidance from the rendition by the recent Court of Appeal decision of *Jobo v Doshi & 4 others [2024] KECA 1569 (KLR)* where the court stated:-

“In matters of contempt, it is important for the court to be certain that the person intended to be cited for contempt was served with the application and that those purporting to represent him are properly on record for him.”

17. The affidavit of service dated 19/09/2014 is self-evident that Mr. Oduol Aluoch served the respondents’ counsel with the motion and submissions thereof on 19/04/2024. The motion was filed on 17/09/2024 meaning the motion was purportedly served close to 5 months before the motion was filed. Obviously, this is not tenable.

18. There is a possibility this could have been a typographical error as the annexure thereof shows the said respondents’ law firm was served on 19/09/2024 at 6:22 pm. However, this cannot be overlooked. I must conclude and find the motion was never served. This renders the determination of issue (b) unnecessary.

19. The upshot on issue (c) is that I find the motion was never served. I hereby strike out the motion. Costs shall abide by the outcome of the appeal. The matter shall be mentioned for directions on the hearing of the main appeal on 10/02/2025. Registry to serve.

ORDERS ACCORDINGLY.

DELIVERED AND DATED AT SIAYA THIS 5TH DAY OF DECEMBER 2024.

HON. A. Y. KOROSS

JUDGE

5/12/2024

Ruling delivered virtually through Microsoft Teams Video Conferencing Platform in the Presence of:

In the Presence of:

N/A for the appellant

N/A for the respondent

Court assistant: Ishmael Orwa

