



**Trimborn Agricultural Engineering Limited v Mwangi & 2 others (Environment & Land Case 206 of 2014) [2023] KEELC 549 (KLR) (7 February 2023) (Ruling)**

Neutral citation: [2023] KEELC 549 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAKURU  
ENVIRONMENT & LAND CASE 206 OF 2014  
FM NJOROGE, J  
FEBRUARY 7, 2023**

**BETWEEN**

**TRIMBORN AGRICULTURAL ENGINEERING LIMITED ..... PLAINTIFF**

**AND**

**LAWRENCE MAINA MWANGI ..... 1<sup>ST</sup> DEFENDANT**

**ALICE WAMUHU CHEGE ..... 2<sup>ND</sup> DEFENDANT**

**CHIEF LAND REGISTRAR, THROUGH THE OFFICE OF THE HON  
ATTORNEY GENERAL ..... 3<sup>RD</sup> DEFENDANT**

**RULING**

1. This is a ruling is in respect of the plaintiff's notice of motion application dated January 31, 2022 brought under section 1A, 1B, 3A of the [Civil Procedure Act](#), section 5 of the [Judicature Act](#), order 51 rule 1 of the [Civil Procedure Rules](#) which seeks the following prayers:
  - a. Spent
  - b. That this honorable court be pleased to order the Land Registrar, Nakuru one Mr Eric Nyamu be committed to civil jail for contempt for disobedience of this honorable court's orders issued on September 18, 2019 in Nakuru ELC No 206 of 2014.
  - c. That the 3<sup>rd</sup> defendant/respondent do pay the costs of this application.
2. The application is supported by the affidavit of David Kerr, the plaintiff's General Manager who deposed that by the consent dated 6/11/2018 and filed on July 15, 2019 the suit was disposed of; the consent was adopted as the judgement of the court on July 23, 2019; the terms of the consent order were that the 3<sup>rd</sup> defendant (Land Registrar Nakuru-Eric Nyamu) was to rectify the registers for land parcel No's Nakuru Municipality Block 4/296 and Nakuru Municipality Block 4/297 by deleting the names of the 1<sup>st</sup> and 2<sup>nd</sup> defendants and re-inserting the name of the Plaintiff on the said registers;



that the said orders were extracted and issued on September 18, 2019; that the 3<sup>rd</sup> defendant failed to honor the said orders; that on July 3, 2020 the plaintiff found out that the 3<sup>rd</sup> defendant had issued titles of the said properties to one Isaac Kipng'etich Arap Lang'at; that upon the said discovery, the plaintiff caused a certified copy of the order to be served upon the 3<sup>rd</sup> defendant on August 5, 2020; that the plaintiff's advocates also lodged Form LRA 9 which was acknowledged by the Land Registrar who gave booking number 8/54/2020; that the 3<sup>rd</sup> defendant did not still register the plaintiff as the owner; that on November 4, 2021 his advocates on record wrote to the 3<sup>rd</sup> defendant to remind him of the court order but he did not respond; that based on the foregoing the 3<sup>rd</sup> defendant acted in willful defiance of the court's orders necessitating the filing of the present application; that the plaintiff is apprehensive that the willful disregard of the orders of the court will further alienate the suit properties to the plaintiff's detriment; that he is advised by his advocates on record that the present application is meritorious as the terms of the orders issued on September 18, 2019 are clear and binding on the 3<sup>rd</sup> defendant who had knowledge of the said order but acted in breach; that it is fair and just that the application be allowed as prayed.

3. In response to the application, the 3<sup>rd</sup> defendant Eric Munene Nyamu filed a replying affidavit sworn on May 6, 2022 and filed on May 11, 2022; he deposed that on June 4, 2020 he received a letter from the Ministry of lands and Physical Planning in Nairobi forwarding lease documents for land parcel No's Nakuru Municipality Block 4/296 and 297; that the lease documents were duly signed, stamped and registration fees paid; that by the mandate bestowed upon him by the law of processing and issuing title deeds, he registered the lease in favor of Isaac Kipng'etich Arap Langat and issued him with the respective Certificates of Lease; that on August 5, 2020 a copy of the court order dated September 18, 2019 was booked for registration; that upon perusal of the same he found out that they were for land parcel No's Nakuru Municipality Block 4/296 and 297; that he noted that the said court order required the Land Registrar to rectify the register of land parcel No's Nakuru Municipality Block 4/296 and 297 by deleting the names of the 1<sup>st</sup> and 2<sup>nd</sup> defendants and replacing the same with that of the plaintiff; that the court order was inconsistent with the records in the lands registry as both the plaintiff and the 1<sup>st</sup> and 2<sup>nd</sup> defendants are not in the original registry records that relate to the suit properties; that after establishing the discrepancy, he sent a letter dated August 28, 2020 to the Kenya Industrial Estates Limited asking them to confirm the legitimate owner of the parcels; that Kenya Industrial Estates Limited responded through the letter dated October 15, 2020 and confirmed that as per their records the suit parcels were allotted to one Laban Kiptui who later provided them with sale agreements between himself and Isaac Kipng'etich Lang'at who is the lessee indicated in the lease documents forwarded to him on June 4, 2020; that the court order issued by the court is not capable of being complied with as the people claiming to be proprietors are not in the original land registry records; that the said Isaac Kipng'etich Lang'at who is the current registered proprietor is not a party to the suit herein; that at the time of the registration of the leases and the subsequent issuance of the Certificate of Leases he had not been served with the court order and neither was he aware of the ongoing court case; that the Certificates of Lease held by Isaac Kipng'etich Lang'at can only be challenged as provided for under the law by taking evidence where the contesting parties are required to prove their respective claims.
4. The plaintiff then filed a supplementary affidavit sworn on June 10, 2022 and filed on June 12, 2022 where he deposed that this suit was instituted in the year 2014 in a bid to resolve the dispute with regard to ownership of the two parcels of land; that it is not improbable that the registration of the said Isaac Kipng'etich Lang'at as the owner of the two parcels of land is part of the fraudulent dealings which were done a few months after the plaintiff obtained a court order declaring it as a sole legally registered owner of the parcels in question; that the deponent should be cited for perjury for lying on oath and alleging that the plaintiff, 1<sup>st</sup> defendant and 2<sup>nd</sup> defendant are strangers to land parcels



Nakuru Municipality Block 4/296 and 297; that the court records show a different picture; that when the plaintiff instituted the present suit it attached its certificates of lease for the two parcels of land; that the 1<sup>st</sup> and 2<sup>nd</sup> defendants in response also presented their own certificates of lease claiming to be the legitimate owners; that the court had to determine the legitimate owner which culminated in the court order issued on July 23, 2019; that based on the foregoing, the plaintiff and the 1<sup>st</sup> and 2<sup>nd</sup> defendants have been in the land records for the two properties; that on the assertion that the Land Registrar was never served with the court order, he is advised by his advocates on record that the Land Registrar has always been represented by counsel from the Attorney General's office and therefore he had knowledge of the case; that he was therefore aware of the issuance of the said court orders and acted in willful defiance of the same; that the court should meet the harshest punishment to Mr Eric Munene Nyamu to serve as a deterrent to other persons with thoughts of disobeying court orders.

5. The plaintiff also filed a further affidavit sworn on September 27, 2022 and filed on the same date where he reiterated that the court issued an order on September 18, 2019 compelling the 3<sup>rd</sup> defendant to rectify the registers of the suit properties in its favour; that on July 3, 2020 the 3<sup>rd</sup> defendant refused to obey the court order; that the plaintiff's advocates on record were instructed to file an application for contempt of court; that the 3<sup>rd</sup> defendant failed to issue an explanation for his failure to obey the court orders.
6. He then also reiterated the contents of the 3<sup>rd</sup> defendant's replying affidavit and indicated that the 3<sup>rd</sup> defendant annexed an alleged sale agreement between Laban Kiptui and Isaac Kipngetch Langat; that in the case of Nakuru HC ELC No 206 of 2014 Trimbora Agricultural Engineering Ltd v Lawrence Maina Mwangi & 2 others, the estate of Laban Kiptui was an interested party; that the legal representative of the estate of Laban Kiptui indicated to the court on May 24, 2018 that they intended to withdraw from the suit as the suit properties do not fall within the estate of Laban Kiptui; that as per the terms of the consent order, the 3<sup>rd</sup> defendant did not have any alternative but to obey the court order and rectify the registers of the suit properties.
7. The application was canvassed by way of written submissions. The plaintiff filed its submissions dated October 27, 2022 on October 28, 2022 while the defendants did not file any submissions.
8. The plaintiff submitted on whether the court order dated July 23, 2019 is binding on the Land Registrar and whether the 3<sup>rd</sup> defendant/applicant is in contempt of the court order dated July 23, 2019.
9. On the first issue, the plaintiff submitted that this court has the jurisdiction to hear and determine disputes that relate to title and ownership of land. The plaintiff also submitted that the court on July 23, 2019 issued an order that the plaintiff is the sole owner of the two parcels of land and until it is set aside, it remains binding on the parties.
10. On the second issue, the plaintiff submitted that the 3<sup>rd</sup> defendant did not comply with the court's order dated July 23, 2019 as he failed to rectify the register of the suit properties to reflect the plaintiff as the owner. The plaintiff also submitted that the order was clear and binding and that the 3<sup>rd</sup> defendant had proper knowledge of the said orders but still acted in breach. The plaintiff cited the decisions in the cases of *Republic v Attorney General & another ex parte Mike Maina Kamau* [2020] eKLR, *Michel Sistus Mwaura Kamau v Director of Public Prosecutions & 4 others* [2018] eKLR among other cases in support of its arguments.
11. The plaintiff concluded its submissions by seeking that the court punishes the 3<sup>rd</sup> defendant by committing him to civil jail.



## Analysis and Determination

12. After considering the application, the affidavits and the submissions, the only issues that arise for determination is whether the Land Registrar, Nakuru Mr Eric Nyamu should be committed to civil jail for contempt for disobedience of the court orders issued on September 18, 2019.
13. The plaintiff's case is that the court issued an order on September 18, 2019 directing the Land Registrar to rectify the register of land parcel No's Nakuru Municipality Block 4/296 and 297 which he failed to do and instead he registered the properties in the name of Isaac Kipngetich Arap Langat. The plaintiff is seeking that he be cited for contempt of court.
14. The respondent on the other hand stated that he received a letter from the Ministry of Lands and Physical Planning forwarding lease documents for the suit properties on June 4, 2022 in favor of Isaac Kipngetich Arap Langat and he registered the suit properties in his favor and issued him with certificates of lease. That it was after the said registration that the court order issued on September 18, 2019 was booked for registration on August 5, 2020. He denied having knowledge of the said court order at the time of the registration of the suit property in the name of Isaac Kipngetich Arap Langat and stated further that even if the order was served before the said registration, it was not possible to comply with it as neither the plaintiff nor the defendants in this matter are registered as the owners.
15. The Black's Law Dictionary 9<sup>th</sup> Edition defines contempt as follows:

The act or state of despising; the conduct of being despised. Conduct that defies the authority or dignity of a court or legislature. Because such conduct interferes with the administration of justice.
16. Section 5 of the *Judicature Act* confers jurisdiction on superior courts to punish for contempt of court. Courts punish for contempt of court to preserve the dignity and authority of the court. The court in the case of *Econet Wireless Kenya Ltd v Minister for Information & Communication of Kenya & another* [2005] KLR 828 stated as follows on the importance of obedience of court orders:

“It is essential for the maintenance of the rule of law and order that the authority and the dignity of our courts are 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 whom an order is made by court of competent jurisdiction, to obey it unless and until the 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 the order believes it to be irregular or void.”
17. The standard of proof in contempt of court proceedings is higher than that of a balance of probability because the liberty of a contemnor is at stake and the plaintiff has to prove willful and deliberate disobedience of the court order if it was to succeed. In the case of *Gatharia K Mutitika v Baharini Farm Limited* [1985] KLR 227 the court stated as follows:

“A contempt of court is an offence of a criminal character. A man may be sent to prison. It must be satisfactorily proved. To use the time-honoured phrase, it must be proved beyond reasonable doubt”.

With the greatest possible respect to that eminent English judge, that proof is much too high for an offence “of a criminal character” and, ipso facto, not a criminal offence properly so defined.”



18. In the *Gatharia* case (*supra*) it was also stated as follows:

“The standard of proof beyond reasonable doubt ought to be left where it belongs, to wit, in criminal cases. It is not safe to extend it to offence which can be said to be quasi – criminal in nature Winn LJ on page 1064 was in our view right in saying that the guilt has to be proved

“with such strictness of proof ... as is consistent with the gravity of the charge ...”

The principle propounded in *Re Maria Annie Davies* [1889] 21 QBD 236, and 239, that

“Recourse ought not to be had to process of contempt in aid of a civil remedy where there is any other method of doing justice. The observations of the later Master of the Rolls in the case of *Re Clement* seem much in point: ‘It seems to me that this jurisdiction of committing for contempt being practically arbitrary and unlimited, should be most jealously and carefully watched, and exercised, if I may say so, with the greatest reluctance and the greatest anxiety on the part of judges to see whether there is not other mode which is not open to the objection of arbitrariness, and which can be brought to bear upon the subject. I say that a judge should be most careful to see that the cause cannot be mode of dealing with persons brought before him.

On accusations of contempt should be adopted. I have myself had on many occasions to consider this jurisdiction, and I have always thought that, necessary though it be, it is necessary only in the sense in which extreme measures are sometimes necessary to preserve men’s rights, that is, if no other pertinent remedy can be found. Probably that will be discovered after consideration to be the true measure of the exercise of the jurisdiction”

19. The plaintiff deposed in its supplementary affidavit that the 3<sup>rd</sup> defendant was represented by counsel for the Attorney General in the proceedings and he therefore had knowledge of this case and the court order dated July 23, 2022.
20. The plaintiff admitted that it was after doing a search and finding out that the suit properties had been registered in the name of Isaac Kipngetch Arap Langat that it served the said court order on the 3<sup>rd</sup> defendant and was given booking number 8/54/2020. The Land Registrar in his replying affidavit equally confirms that he was served with the court order after the registration of Isaac Kipngetch Arap Langat as the owner of the suit properties.
21. Apart from alleging that the Land Registrar was represented during the issuance of the said court order and therefore ought to have known of the same, the plaintiff did not produce any affidavit of service to demonstrate service of the said court order. Though true that one Mr Ondieki for the 3<sup>rd</sup> defendant was in court on 23/7/2019 when the consent which led to the orders said to be breached was adopted, there is nothing to show that the said Mr Ondieki conveyed the order resulting therefrom to the Land Registrar or that the applicant served the order on him. Besides, the documents said to have been registered are said to have emanated from Nairobi Ministry of Lands office. I am not certain, even if the wording of the order dated September 18, 2019 was directed at him to refrain from effecting the transfer to any other person, that it would have had effect on him without service having been made on him.
22. The plaintiff attached LRA 9 to show that they booked the court order for registration on 4/08/2020 after the ownership of the suit property had changed to Isaac Kipngetch Arap Langat.



23. It is my view that the Land Registrar would not have been in a position to comply with the said order as the registration of the suit properties had by already effected into the name of Isaac Kipngetich Arap Langat who, as pointed out by the Land Registrar, was not a party to this suit in which the court order was issued.
24. For the Land Registrar to be held in contempt, the plaintiff must demonstrate that there was willful disobedience of the court order which in my view it has failed to do so for the reasons already set out in this ruling.
25. In conclusion therefore, the plaintiff's application dated January 31, 2022 lacks merit and it is hereby dismissed with no orders as to costs.

**DATED, SIGNED AND DELIVERED AT NAKURU IN OPEN COURT ON THIS 7<sup>TH</sup> DAY OF FEBRUARY, 2023.**

**MWANGI NJOROGI**

**JUDGE, ELC, NAKURU**

**Ruling Read In Open Court In The Presence Of:**

Mr Situma for the applicant and

**In The Absence Of:**

the respondent and his counsel.

