



**Manoti & another v Manoti (Environment & Land Case
133 of 2016) [2023] KEELC 17337 (KLR) (10 May 2023) (Ruling)**

Neutral citation: [2023] KEELC 17337 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISII
ENVIRONMENT & LAND CASE 133 OF 2016**

M SILA, J

MAY 10, 2023

BETWEEN

JACKLINE MORAA MANOTI 1ST PLAINTIFF

TERESIA K. MANOTI 2ND PLAINTIFF

AND

ALEX MISATI MANOTI DEFENDANT

RULING

1. The application before me is that dated January 20, 2023 filed by the defendant. The substantive prayer is contained in prayer (3) of the application which seeks the following order (slightly paraphrased for brevity) :
 - (3) That the contempt proceedings, judgment and/or any pending sentence or otherwise against the applicant be stayed and/or be set aside.
2. The application is based on grounds that in a ruling delivered on September 30, 2021, the court issued an order of injunction restraining the applicant from the land parcel Wanjare/Bogiakumu/7891 and 7892; that there followed contempt proceedings against the applicant of which he was unaware and he never participated; that the matter is now pending sentencing; that the applicant has never committed trespass or encroachment over the suit land as he has his own parcel of land Wanjare/Bogiakumu/933; that the applicant never committed any contempt of court to warrant punishment and he is innocent; that the properties Wanjare/Bogiakumu/7891 and 7892 do not exist in the Land Registry or on the ground; that the court is engaging in a moot case or an academic exercise since the properties do not exist. The application is opposed.
3. To put matters into context, the plaintiffs/respondents commenced this suit through a plaint which was filed on May 19, 2016. The plaintiffs and the applicant are siblings. In the plaint, the plaintiffs pleaded that up to 2 March 2016, they were jointly registered with the applicant as proprietors of the



land parcel Wanjare/Bogiakumu/933 (parcel No 933) measuring 1.7 Ha. Subsequently in March 2016, the land was subdivided to generate the titles Wanjare/Bogiakumu/7889, 7890, 7891, and 7892 with the parcels No 7891 and 7892 being transferred to the plaintiffs, which parcels were said to measure about 0.425 Ha. The plaintiffs contended that the applicant had trespassed into the said properties particularly in the month of May 2016, and cut down their trees and napier grass, and prohibited them from entering the land. The plaintiffs claimed to have been dispossessed and in the suit, they sought orders of a declaration that they own the parcels No 7891 and 7892 (the suit properties); an order of eviction against the applicant; a permanent injunction; general damages for trespass; and costs.

4. The applicant filed defence wherein he denied that the parcel No. 933 was ever registered in their three names. He denied that this land was ever subdivided and averred that he never attended any Land Control Board nor signed any transfer forms. He pleaded that the transfer of the suit properties in the names of the plaintiffs was fraudulent. He also denied encroaching on the land of the plaintiffs. He contended that the parcel No 933 was given to him and his brother, one Protus Manoti Moracha (deceased) by their late grandfather. He averred that the plaintiffs are married and their claim is malicious. He pleaded that an attempt to get the land through Kisii High Court Succession Cause No 461 of 2015 was declined.
5. On May 16, 2019, the applicant filed an application for an order of injunction to stop the plaintiffs from entering or interfering with his possession of the parcel No 933. That application was never prosecuted. On the other hand, on September 21, 2020, the plaintiffs filed their own application, dated 16 September 2020, asking to have the applicant restrained from the suit properties i.e the land parcels No 7891 and 7892. The application by the plaintiffs was heard by my predecessor, Onyango J, who delivered ruling on 30 September 2021. The application was allowed and the applicant restrained by an order of injunction from entering, encroaching, cultivating, or in any way interfering with the land parcels No 7891 and 7892.
6. On December 9, 2021, there was filed by the plaintiffs an application dated December 8, 2021, whereby the plaintiffs complained that the applicant had disobeyed the order of injunction and asked for him to be found guilty of contempt. The application was again heard by Onyango J, and ruling was delivered on July 14, 2022. The court was satisfied that the applicant had breached the orders issued on September 30, 2021 and was guilty of contempt of court. She directed that the applicant appears personally for sentencing. Shortly thereafter, Onyango J, was transferred from this station and that is how the matter is now before me.
7. The application herein is brought pursuant to the provisions of Sections 1A, 1B and 3A of the *Civil Procedure Act*, Cap 21, Laws of Kenya. I have already set out that the applicant seeks an order to set aside the contempt proceedings. As noted in the grounds in support of the application, the applicant contends that he was never in contempt as he is staying on the land parcel No 933, and that the parcels No 7891 and 7892 do not exist. He also alleges that he was not aware of the contempt proceedings and he never participated in the same. In his supporting affidavit, he reiterates that he has not trespassed into the parcels No 7891 and 7892 and that the order of injunction was not justified. He has raised many other issues, for example, that he owns the land with one Edgar Monoti Taabu (minor), that it is the plaintiffs who have interfered with his land, that the plaintiffs are married, that the suit is res judicata, and such like matters, which, in my opinion, fall completely outside the purview of the subject application as they can only be determined after a full hearing of the suit.
8. The plaintiffs filed Grounds of Opposition to oppose the motion. Inter alia, it is averred that the court has no jurisdiction over the subject application as the applicant has already been found to be in contempt and this court cannot sit on appeal against the said ruling.



9. I took in brief oral submissions, on March 22, 2023, in open court, from the applicant, who is acting in person, and Ms Ochwal, learned counsel for the respondents. After I retired to write the ruling, the applicant wrote a letter dated April 4, 2023 and received in court on April 23, 2023, asking to be allowed to lodge written submissions, which I note were paid for on April 4, 2023. That is irregular since the application was already heard inter partes on March 22, 2023. Nevertheless, despite the irregularity, I have gone through the said submissions and considered them before arriving at my decision, as I have not seen anything particularly new that would need a reply or any prejudice to the respondents. I will be brief in my delivery because I think the issues are clear.
10. The court already issued an order of injunction restraining the applicant from the land parcels No 7891 and 7892. The argument that the said parcels of land do not exist cannot be entertained within this application. That, together with the other matters that I singled out as being irrelevant to this application, are matters that will be subjected to interrogation at a hearing. So too the argument that the applicant has never trespassed on the land parcels No 7891 and 7892. The court in the ruling of July 14, 2022 already found the applicant to be in contempt for failing to abide by the order of injunction. If the applicant was of opinion that the holding therein was wrong, the avenue was to appeal that decision. I do not have jurisdiction to rehear that application and render a different ruling. The applicant has of course also raised issue that he did not participate in the application for contempt. That cannot be true. He was duly served with the application and his erstwhile counsel was represented on February 28, 2022, when Mr Anyona advocate held his brief. If he never filed anything towards that application, that was his choice, and he has to live with the consequences thereof.
11. The long and short of it is that I find no merit in this application and it is hereby dismissed with costs. The position of the matter is that it is pending sentencing subsequent to the finding that the applicant is in contempt. This court will deal with that issue upon delivery of this ruling.
12. Orders accordingly.

DATED AND DELIVERED AT KISII THIS 10 DAY OF MAY 2023

JUSTICE MUNYAO SILA

JUDGE, ENVIRONMENT AND LAND COURT

AT KISII

