



REPUBLIC OF KENYA



KENYA LAW
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**Maji Moto Group Ranch & 10 others v Matunke & 14 others; Sankale
& 4 others (Interested Parties) (Environment & Land Petition
268 of 2017) [2023] KEELC 17135 (KLR) (4 May 2023) (Ruling)**

Neutral citation: [2023] KEELC 17135 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAROK
ENVIRONMENT & LAND PETITION 268 OF 2017
CG MBOGO, J
MAY 4, 2023
IN THE MATTER OF ARTICLES
19,29,22,23,24,40,47,60,61,63,64,165,258 & 259 OF THE
CONSTITUTION
IN THE MATTER OF THE LAND ACT, 2012
IN THE MATTER OF THE LAND GROUP REPRESENTATIVES
ACT (REPEALED)
IN THE MATTER OF COMMUNITY LAND ACT, 2016

BETWEEN

MAJI MOTO GROUP RANCH 1ST PETITIONER
TWALA MANKI 2ND PETITIONER
KILETIA SAYIALEL 3RD PETITIONER
SIMON MAISON TONGOYO 4TH PETITIONER
NAGIYO MEIKWAYA 5TH PETITIONER
PARMMOIS NASI 6TH PETITIONER
MEPUKORI NYAYIA 7TH PETITIONER
NCHAO SIOLOLO 8TH PETITIONER
TOPOIKA NTOKOIWUAN 9TH PETITIONER
TIMAYIO TIKANI 10TH PETITIONER
TIAPUKEL NANTEYA 11TH PETITIONER

AND



MAYONE DAVID MATUNKE	1 ST RESPONDENT
JAMES PASHAMAI AHIRE	2 ND RESPONDENT
SENET RIAMIT	3 RD RESPONDENT
MAINKA MUNTET	4 TH RESPONDENT
TUMATE PARMUAT	5 TH RESPONDENT
SALANKAT MERKU	6 TH RESPONDENT
NGERE MOROMBA	7 TH RESPONDENT
ORKUNEE NKONG'ONI	8 TH RESPONDENT
PATRICK KIMURSOI	9 TH RESPONDENT
DAVID NANTEYA	10 TH RESPONDENT
THE DISTRICT LAND REGISTRAR	11 TH RESPONDENT
THE DISTRICT LAND ADJUDICATION & SETTLEMENT OFFICER	12 TH RESPONDENT
THE MINISTRY OF LANDS, URBAN & PHYSICAL PLANNING	13 TH RESPONDENT
THE ATTORNEY GENERAL	14 TH RESPONDENT
THE NATIONAL LAND COMMISSION	15 TH RESPONDENT

AND

OLONANA OLE SANKALE	INTERESTED PARTY
REBECCA PEIYIAI KUDATE	INTERESTED PARTY
LEITA OLE YENKO	INTERESTED PARTY
EQUITY BANK (K) LIMITED	INTERESTED PARTY
OMNIVENTTURES LIMITED	INTERESTED PARTY

RULING

1. Before this court for determination is a notice of motion application dated November 26, 2022 filed by the 1st, 2nd, 3rd, 5th, 7th and 10th respondents and which is expressed to be brought under section 5 (b) and (c), 25 and 28 of the [Contempt of Court Act](#) No 46 of 2016, the [Judicature Act](#) and section 29 of the [Environment and Land Court Act](#) No 19 of 2011 seeking the following orders: -
 1. spent.
 2. That pending the inter-partes hearing and determination of this application, this honourable court do issue summons upon the cited contemnors (Twala Manki, Nagiyo Meikwaya & Maison Tongoyo) to personally appear in court throughout these proceedings until such a time that this court shall deem it necessary to dispense with their attendance.



3. That this honourable court be pleased the cited contemnors to be in contempt of a valid court order and that each of the cited contemnor be punished and jailed for a period not exceeding six months.
 4. That the cited contemnors be ordered to purge their contempt by ordering the 2nd, 4th and 6th petitioners to deposit in this court a sum of Kshs 15,516,960.25 being the amount of money they jointly received from Vittoria Limited (a tenant of Maji Moto Group Ranch) by uttering a stayed decree and judgment and for passing themselves out as the chairman, secretary and Treasurer of Maji Moto Group Ranch in pursuance of a stayed judgment and decree.
 5. That this honourable court be pleased to order the 11th respondent (the District Land Registrar) to purge his contempt by cancelling the following title deeds issued on November 22, 2022 in execution of the stayed decree and judgment and restoring the said title deeds to their original status (pre-judgment on July 8, 2022):-
 - a. Cis-Mara/Maji Moto/2076
 - b. Cis-Mara/Maji Moto/2077
 - c. Cis-Mara/Maji Moto/2078
 - d. Cis-Mara/Maji Moto/2171
 - e. Cis-Mara/Maji Moto/2165
 - f. Cis-Mara/Maji Moto/2085.
 6. That this honourable court be pleased to issue any other or further orders as it may deem appropriate in order to preserve its dignity and authority.
 7. That the costs of this motion be borne by the cited contemnors.
2. The application is premised on the grounds on the face of it and more particularly as set out in the supporting affidavit.
 3. The application is supported by the affidavit of the 1st respondent sworn on even date. The 1st respondent deposed that judgment was delivered in this matter on July 8, 2022 and a decree extracted by the petitioners' *ex-parte* was issued on July 25, 2022.
 4. The 1st respondent further deposed that on August 4, 2022, this court stayed the execution and the decree issued on July 25, 2022 and which orders were served upon the 11th, 12th, 14th respondents, the petitioners and the interested parties.
 5. The 1st respondent further deposed that the stay orders issued by Oundo J, were extended on August 22, 2022 when the matter came up for mention and that the said orders of August 4, 2022 were to remain in force until further directions were given by the court to the contrary. Further, that the cited contemnors being aware of the existence and validity of the orders have disobeyed the orders and have jointly and severally executed the decree and the judgment. The 1st respondent outlined the acts of the cited contemnors in paragraph 10 and 11 of the supporting affidavit.
 6. Further, that the cited contemnors have no regard to court orders and cannot feign ignorance and breach court orders with abandon.



7. The 2nd petitioner filed a replying affidavit sworn on February 13, 2023. The 2nd petitioner deposed that this court has no jurisdiction to entertain the instant application as it was rendered *functus officio* on July 29, 2022 when it vacated the orders for stay obtained as a result of material non-disclosure on the part of the respondents. For this reason, the court can only sit to review its orders issued on July 26, 2022 as the court had already pronounced itself on the issue of stay.
8. The 2nd petitioner further deposed that the orders issued on August 4, 2022 were issued by a court that lacked jurisdiction thus void *ab initio* and that the only remedy for the respondents lied (sic) in the review of the orders dated July 29, 2022. Further, that this court on November 11, 2022 directed parties to regularize their appearance and which according to them, must be by an order of the court. Also, that the orders obtained on August 4, 2022 were granted to a party who was not properly on record which is the bedrock of this application.
9. The 2nd petitioner further deposed that the only active issues before this court would be the applications dated 22nd and July 29, 2022. The 2nd petitioner deposed that in the event this court finds that it has jurisdiction to hear and determine the instant application, then it is his response that there existed no orders stopping the deposit of the monies from the leases. Further, that all the benefits accruing from the cancelled lease cannot form part of the stay orders in the application dated August 3, 2022 as the lease holders were not party to the court and the court cannot issue stay of execution after the titles reverted back to the community by operation of the law on July 22, 2022 after the lapse of 14 day period.
10. The 2nd petitioner deposed that the application dated August 3, 2022 was aimed at hoodwinking the court in granting orders that the court had already lifted *vide* application dated July 29, 2022 and the orders therein cannot be sustained as the duty court sat as a court of first instance and was not sitting on review of the orders lifting the stay issued on July 29, 2022.
11. The 2nd petitioner further deposed that this court did not make a pronouncement on the illegality of the jurisdiction in the preliminary objection dated August 19, 2022 and the issue of sub judice. Further, that the 1st, 2nd, 3rd, 7th and 10th respondents have continuously misrepresented issues before this court and the filing of numerous applications is an abuse of the court process which bring mockery to the finality of litigation.
12. Further, that the respondents recourse lies at the Court of Appeal as they seek to be reinstated to a position they were before judgment. Also, that the said respondents have not rendered accounts of monies they embezzled despite the 30 days period in the judgment which lapsed on August 8, 2022. Further, that they are not keen on pursuing their stay of execution application as they will be required to meet certain conditions of depositing security for costs. Further, that the 1st, 2nd, 3rd, 7th and 10th respondents have not demonstrated any sufficient cause upon which the petitioners can be cited for contempt and that it is the legal position that a party should never be allowed to take advantage of his wrongs at the expense of the other party.
13. The 2nd petitioner further deposed that the 1st, 2nd, 3rd, 7th and 10th respondents are without clean hands and have been seeking to benefit from falsehoods.
14. On the March 13, 2023 the petitioners filed written submissions dated March 10, 2023. The petitioners raised 3 issues for determination as below:-
 - a. Whether this honourable court has jurisdiction to hear and determine the application dated November 26, 2022.
 - b. Whether the applications have satisfied the grounds for an allegation of contempt of court.



- c. Whether the application is an abuse of the court process.
15. On the first issue, the petitioners submitted that this court has no jurisdiction to entertain the instant application as it was rendered *functus officio* when it vacated the orders for stay obtained by the applicants herein. Further, that the petitioners *vide* an application dated July 28, 2022 sought to discharge the *ex parte* orders issued on July 26, 2022 and which was discharged on July 29, 2022.
 16. The petitioners submitted that the *functus officio* principle opines that litigation must come to an end and a court clothed with jurisdiction can only render its decision on the issues raised once and after judgment, the remedy available to a litigant is review or appeal. The petitioners relied on the case of [*Telkom Kenya Limited v John Ochanda \(suing on his own behalf and on behalf of 996 Former Employees of Telkom Kenya Limited\)*](#) [2014] eKLR.
 17. On the second issue, the petitioners submitted that the order dated August 4, 2022 granted stay of execution of the decree issued on July 25, 2022 pending further directions. Further, that on July 22, 2022 the titles namely Cis Mara/Maji Moto/2171, 2078, 2076, 2077, 2086, 461, 2165, 654, 2749 and 730 reverted to the petitioner and by operation of law, the 1st petitioner returned to being the lessor who passed a lease to Vittoria Limited and as such, no contempt proceedings can emanate as against the cited contemnors. The petitioners relied on the cases of [*Nelson N. Obuba v Itira Mokono Nyambwatania; Attorney General \(Interested Party\)*](#) [2022] eKLR, [*Gatharia K. Mutikika v Baharini Farm Limited*](#) [1985] eKLR KLR 227 and [*Sheila Cassatt Issenberg & another v Antony Machatha Kinyanjui*](#) [2021] eKLR.
 18. On the third issue, the petitioners submitted that it is imperative to note that the judgment of this court is a fruition of about six years of litigation and which was a reprieve for the members of the 1st petitioner and the wellbeing of their children. That the 1st, 2nd, 3rd, 7th and 10th respondents have been continuously filing applications marred with material non- disclosure which is an abuse of the court process and which further frustrate the attempt by the petitioners in realizing the fruits of a lawfully obtained judgment.
 19. The petitioners further submitted that the applicants have foregone the well laid down procedures of stay pending appeal and the impression one gets is that the judgment debtor is driven by ill motive. The petitioners relied on the cases of [*Muchanga Investments Limited v Safaris Unlimited \(Africa\) Limited & 2 others*](#) Civil Appeal No 25 of 2002 [2009]eKLR, [*Stephen Somek Takwenyi & another v David Mbutia Githare & 2 others*](#) Nairobi (Milimani) HCCC No 363 of 2009.
 20. I have carefully analysed and considered the application, the replying affidavit and the written submissions of the petitioners and the issue for determination is whether the application merits consideration by this court.
 21. In [*Kenya Human Rights Commission v Attorney General & another*](#) [2018] eKLR, the court held as follows:-
 1. A declaration is hereby issued that sections 30, and 35 of the impugned [*Contempt of Court Act*](#) No 46 of 2010 are inconsistent with the [*Constitution*](#) and are therefore null void.
 2. A declaration is hereby issued that the entire [*Contempt of Court Act*](#) No 46 of 2016 is invalid for lack of public participation as required by articles 10 and 118(b) of the [*Constitution*](#) and encroaches on the independence of the judiciary.”
 22. The above determination removed the [*Contempt of Court Act*](#) from our statutes and is no longer tenable as a basis for the attack on the cited contemnors. The 1st, 2nd, 3rd, 5th, 7th and 10th respondents ought to



apply the law that existed before the impugned Act. I am persuaded by the observation of my brother, Munyao, J in *Danros (K) Limited v Kenya Railways Corporation & another* [2021] eKLR, where he stated as follows: - “Since contempt is quasi-criminal, it is critical, that before a person is found guilty, the proper procedure be followed, to prevent injustice and prejudice to the respondent. Indeed, it would not be prudent to convict a person, via the invocation of a procedure that has already been declared unlawful. In issues of contempt, the means will justify the end.”

23. Arising from the above, it is my finding that the application before me has been brought pursuant to a law that was declared unconstitutional and which cannot be applied. The notice of motion application dated November 26, 2022 is hereby struck out. Each party to bear its own costs. It is so ordered.

DATED, SIGNED & DELIVERED VIA EMAIL ON THIS 4TH DAY OF MAY, 2023.

MBOGO C.G.

JUDGE

4/5/2023.

In the presence of:

CA:T.Chuma

