



**Bivwanda v Ngala & 3 others (Environment & Land Case
291 of 2016) [2023] KEELC 18054 (KLR) (7 June 2023) (Ruling)**

Neutral citation: [2023] KEELC 18054 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ENVIRONMENT & LAND CASE 291 OF 2016**

EK MAKORI, J

JUNE 7, 2023

BETWEEN

NYEVU KALUME BIVWANDA PLAINTIFF

AND

KILIFI DISTRICT LAND REGISTRAR 1ST DEFENDANT

PANDE NYIRO NGALA 2ND DEFENDANT

THE HON ATTORNEY GENERAL 3RD DEFENDANT

THOMAS JOSEPH BAYA 4TH DEFENDANT

RULING

1. The application dated June 14, 2022 seeks: -
 - a. Warrant of arrest to issue to the Plaintiff/Respondent and or her servants, agents, and or persons working under the Plaintiff's authority and to be brought to court to show cause why they should not be committed to civil jail for a term not exceeding six months for disobeying court orders issued on April 22, 2022 since the Plaintiff and her agents were restrained by court orders issued on April 22, 2022 from encroaching, erecting structures on, trespassing, charging, leasing the applicant's two acres portion of land comprised in land parcel Kilifi/Ngereni/132.
 - b. Costs be provided.
2. The record shows that despite service and having representation of counsel, the Respondent never answered or controverted the allegations as leveled in the Notice of Motion under consideration. The court directed parties to file written submissions. From the record, only the applicant managed to do so.



3. The applicant averred that the motion dated June 14, 2022 is brought under the orders issued by this court on April 20, 2022 - Odeny J, and as extracted by the Deputy Registrar of this court on April 22, 2022 and were duly served on the Respondent.
4. The Applicant contended that the Respondent has flagrantly chosen to disobey those orders. Those court orders were meant for obedience on the contrary the Respondent and or her servants have proceeded to carry on activities on the suit property, repeated the same with impunity, and are now busy erecting permanent structures, cutting down trees as per photographs marked Annexure 'C'.
5. The Applicant in submissions has quoted the case of *Mutitika v Baharini Farm* [1982-88] KLR 863 that enunciated that if one knows that there exists lawful court orders/ injunction or stay orders and willfully do something to the contrary one is liable to be cited for contempt. This is so to protect the supremacy of the Rule of Law. (See also *Teachers Service Commission v Kenya National Union of Teachers & 2 others* [2013] eKLR as per Ndolo J And that in *Africa Management Communication International Ltd v Joseph Mathenge Mugo & Another* [2013]eKLR - Mabeya J also held that our courts must punish for contempt to preserve the Rule of Law, which is their duty since time immemorial.
6. The issue that falls for determination then in the present motion is whether the Respondent should be cited for contempt.
7. The averments by the Applicant have not been controverted at all. Significant, that since the issuance of the injunctive orders the Respondent and or her servants or agents have reentered the two acres of land running contra to the restraining orders issued by this court- Odeny J. They have embarked on building, and cutting down trees as per photographs exhibited in Annexure "C". There is no explanation put across why the Respondent does not want to obey lawful court orders. As correctly stated in the authorities cited it is the function of the court to ensure the Rule of Law flourishes without let or hindrance. If courts cannot stamp authority in protecting the Rule of Law, then the rule of the jungle sets in leading to chaos. (See for example the rendition by Mabeya J. in *Africa Management Communication International Ltd v Joseph Mathenge Mugo & another* [2013]eKLR):

“I am of the same persuasion. The reason why power is vested in courts to punish for contempt of court is to safeguard the rule of law which is fundamental in the administration of justice. The law of contempt has evolved over time in order to maintain the supremacy of the law and the respect for law and order. As it was in the time of Chief Justice McKean in 1778, so it is today that courts have a duty to ensure that citizens bend to the law and not vice versa. Indeed, if respect for law and order never existed, life in society would be but short, brutish, and nasty. It is the supremacy of the law and the ultimate administration of justice that is usually under challenge when contempt of court is committed. This is so because a party who obtains an order from Court must be certain that the order will be obeyed by those to whom it is directed. As such, the obedience of a court order is fundamental to the administration of justice and the rule of law. A court order once issued binds all and sundry, the mighty and the lowly equally without exception. An order is meant to be obeyed and not otherwise.”

8. In this case, the Respondent has not bothered to answer to the allegations put across against her by the Applicant on the reentry, working on, and use of the 2 acres of land that this court placed an embargo on and directly injuncted her and her servants or those claiming under her to desist from reentry, working on or use. Since there is no rebuttal from the Respondent, and given the materials and



evidence tendered before this court, the irresistible conclusion is that the Respondent has no intention whatsoever of respecting the subsisting court orders.

9. The application dated June 14, 2022 is hereby allowed to the extent that:
- i. The Respondent be and is hereby cited for contempt.
 - ii. That Notice to Show Cause to issue forthwith for the Respondent to come to court and show cause why she should not be committed to civil jail for a term not exceeding six months.
 - iii. Costs in the cause.

Dated, signed, and delivered at Malindi Virtually in open court on this 7th day of June 2023

EK. MAKORI

JUDGE

In the presence of:

Ms. Bwanaadi Holding Brief for Obaga for Applicant

Ms. Minyazi for 2nd Defendants

Court Clerk: Happy

In the absence of:

Mr. Bwire for the Respondent

MALINDI ELC CASE NO.291 OF 2016 RULING 2

