



**Kariankei (Suing as the Administrator of the Estate of Musana Kariankei) & another v Kamoye & 2 others (Petition 24 of 2019) [2023] KEELC 17762 (KLR) (6 June 2023) (Ruling)**

Neutral citation: [2023] KEELC 17762 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAROK  
PETITION 24 OF 2019  
CG MBOGO, J  
JUNE 6, 2023**

**THE MATTER OF ARTICLE 22 (1) OF THE CONSTITUTION OF KENYA 2010**

**-AND-**

**THE MATTER OF CONTRAVENTION OF ARTICLES  
40 & 47 OF THE CONSTITUTION OF KENYA, 2010**

**-AND-**

**IN THE MATTER OF THE FAIR ADMINISTRATIVE ACTION ACT NUMBER 4 OF 2015**

**-AND-**

**IN THE MATTER OF THE LAW OF SUCCESSION ACT, CAP 160, LAWS OF KENYA**

**-AND-**

**IN THE MATTER OF LAND REGISTRATION ACT NO. 3 OF 2012, LAWS OF KENYA**

**BETWEEN**

**NABARO KARIANKEI (SUING AS THE ADMINISTRATOR OF THE ESTATE  
OF MUSANA KARIANKEI) ..... 1<sup>ST</sup> PETITIONER**

**SANARE OLE KARIANKEI (SUING AS THE ADMINISTRATOR OF THE  
ESTATE OF MUSANA KARIANKEI) ..... 2<sup>ND</sup> PETITIONER**

**AND**

**JANE WAMBUI KAMOYE ..... 1<sup>ST</sup> RESPONDENT**

**THE HONOURABLE ATTORNEY GENERAL ..... 2<sup>ND</sup> RESPONDENT**

**THE DISTRICT LAND REGISTRAR NAROK ..... 3<sup>RD</sup> RESPONDENT**



## RULING

1. Before this court for determination is a notice of motion application dated February 17, 2023 filed by the 1<sup>st</sup> respondent/applicant which is expressed to be brought under Section 1A, 1B, 3,3A, and 63 (c) of the Civil Procedure Act and Order 40 Rule 3 (1) and Order 51 Rule 1 of the Civil Procedure Rules seeking the following orders:-
  1. Spent
  2. That the petitioners/respondents be arrested and committed to civil jail for a term not exceeding 6 months or such period of time that the court may deem fit and just for contempt of court.
  3. Spent
  4. That the orders issued herein be served upon OCS Ololulunga Police Station to ensure compliance.
  5. That the petitioners/respondents herein do bear the costs of this application.
2. The application is premised on the grounds that this court issued orders of status quo pending hearing and determination of the substantive suit vide its ruling delivered on November 10, 2021 but the petitioners/respondents have trespassed onto the land including harvesting the crops belonging to the 1<sup>st</sup> respondent/applicant.
3. The application is supported by the affidavit of the 1<sup>st</sup> respondent/applicant sworn on even date. The 1<sup>st</sup> respondent/applicant deposed that this court delivered a ruling on the November 10, 2021 and issued orders of status quo to be maintained as to the time of filing the suit which orders would subsist until the substantive suit is heard and determined. Further, that this matter has come up in court over four times since delivery of the ruling and thus no party can plead ignorance to the existence of the orders in question.
4. The 1<sup>st</sup> respondent/applicant further deposed that her attempt to use and utilize the subject piece of land has been interfered with by the petitioners/respondents and have caused destruction and chased her away. Further, that she sought assistance from the police who advised her to seek redress in court and has repeatedly been threatened with violence by the petitioners and their representatives. That pursuant to the orders of this court, the petitioners/respondents were prevented from dealing with the suit property until disposal of the suit and to prevent this act of blatant disregard of the law and court orders, the petitioners/respondents be cited for contempt and penalized.
5. The application was opposed by the undated replying affidavit of the 2<sup>nd</sup> petitioner/respondent filed in court on April 27, 2023. The 2<sup>nd</sup> petitioner/respondent deposed that together with the 1<sup>st</sup> petitioner/respondent and their immediate family, they have always utilized and developed parcel number Cis Mara/Ololulunga/3890 which was fraudulently subdivided by the 1<sup>st</sup> respondent/applicant into two giving rise to Cis Mara/Ololulunga/12222 and 12223 and as such, the instant application is seeking to cite him for contempt and which in reality is an attempt to having this court make a decision on status quo which it has already done.
6. Further, that the 1<sup>st</sup> respondent/applicant should have moved this court to interpret the question of status quo to confirm in certain terms which party it favoured if she felt dissatisfied with the orders of this court issued on November 10, 2021. The 2<sup>nd</sup> petitioner/respondent further deposed that in



- their application and petition, they disclosed that they are utilizing the suit property which the court acknowledged in its ruling and the 1<sup>st</sup> respondent/applicant and her husband simply invaded the suit property claiming ownership. Also, that when they commenced succession proceedings, he conducted an official search in the year 2015 which confirmed that Cis Mara/Ololulunga/3890 existed in the entries and was still registered in his late father's name and which existed prior to the filing of the present suit save that they had not constructed shelter on the said property.
7. With regard to parcel no Cis Mara/Ololulunga/7859, the 2<sup>nd</sup> petitioner deposed that this property was allocated to the 1<sup>st</sup> petitioner by her deceased father and the 1<sup>st</sup> respondent/applicant and her husband evicted them leaving them with no alternative but to proceed and occupy Cis Mara/Ololulunga/3890 since the 1<sup>st</sup> respondent/applicant made it clear that they had to vacate and demolish their house built on this parcel of land.
  8. The 2<sup>nd</sup> petitioner/respondent went on to depose that the agreement for sale allegedly executed by his late father was outright forgery which the 1<sup>st</sup> respondent/applicant later lodged complaints with the Director of Criminal Investigations who later wrote a letter to the Director of Public Prosecutions recommending prosecution of the 1<sup>st</sup> respondent for forgery of documents that led to the subdivision of the Cis Mara/Ololulunga/1222.
  9. That their interpretation of the court's orders in the ruling clearly confirm that they occupied the suit land prior to the filing of the suit and if that were the case, they wouldn't have bothered moving this court vide the application dated October 9, 2019.
  10. The 2<sup>nd</sup> petitioner/respondent deposed that together with his immediate family, they are entitled to social economic rights guaranteed under Article 43 of *the Constitution* which rights can only be assured by their continued full occupation of Cis Mara/Ololulunga/3890 until this court determines the ownership dispute between the parties and as such the instant application is not properly grounded in law as this court did not in any way claim that the 1<sup>st</sup> respondent/applicant was entitled to occupy the suit land to their detriment. Also, that it is his contention that status quo was in his favour alongside his immediate family who have always utilized the suit land before commencing the suit.
  11. This application was canvassed by way of written submissions. The petitioners/respondents filed their written submissions dated May 18, 2023.
  12. The petitioners/respondents raised two issues for determination as listed below:-
    1. Whether the petitioners/respondents are in contempt of the court orders issued on November 10, 2021; and
    2. Whether the application is grounded on the correct statutory provisions.
  13. On the first issue, the petitioners/respondents submitted that it is important to note that the petitioners/respondents moved this court vide application dated October 9, 2019 on the basis that the 1<sup>st</sup> respondent/applicant and her husband had invaded the suit property known as Cis Mara/Ololulunga/3890 claiming it constituted 5 acres allegedly bought from his deceased father and being alarmed by the developments, discovered that the 1<sup>st</sup> respondent had fraudulently acquired a certificate of title known as Cis Mara/Ololulunga/12222 which was a subdivision of land that they occupied.
  14. The petitioners/respondents further submitted that when they conducted an official search in the year 2014, there was no subdivision on the suit property they occupy and the 1<sup>st</sup> respondent/applicant did not object to the succession proceedings at the Nakuru High Court. The petitioners/respondents relied on the case of *Samuel M.N. Mweru & Others v National Land Commission & 2 Others* [2020]



- eKLR and submitted that prior to the commencement of the suit, they always occupied Cis Mara/Ololulunga/3890 and which this court simply stated that status quo be maintained as at the time of filing the suit. That there was no clear mention in the said orders that the 1<sup>st</sup> respondent/applicant was in occupation of the suit land and these orders were in their favour devoid of which they will obviously be legally construed as ambiguous for failure to clearly mention in no uncertain terms which party to the suit they favoured. Reliance was placed in the case of *Alken Connections Limited v Safaricom Limited & 2 Others* [2013] eKLR.
15. It was also the petitioners'/respondents' submissions that they were aware of the orders but have not acted in breach of the same and they have not in any way commenced any activities that may be reasonably construed as material alteration of the subject matter of the suit. The petitioners/ respondents relied on the case of *Republic v National Environment Tribunal, Ex-parte Palm Homes Limited & Another* [2013] eKLR.
  16. The petitioners/respondents further submitted that it is baffling how the 1<sup>st</sup> respondent/applicant would allege not to have been in occupation of the suit property yet they seek to administer and distribute parcel no Cis Mara/Ololulunga/3890 as opposed to having sought to evict them before they distributed the estate of their deceased father if she indeed was in occupation. Further, that no evidence has been adduced to show that the petitioners' in any way acted deliberately to disobey court orders and it is their firm contention that the orders of this court issued on November 10, 2021 cannot operate retrospectively and as such, the said orders can only be said to have been violated after they were issued and not prior.
  17. The petitioners/respondents submitted that this court should have been very clear and unambiguous in its orders that any activity conducted after filing of the current suit should be undone and in this case, the houses ought to have been demolished. That it defeats logic for the 1<sup>st</sup> respondent/applicant to expect the petitioners/respondents not to have constructed houses on the suit land yet the orders of this court had not taken effect.
  18. On the second issue, the petitioner/respondent submitted that the application is fatally incompetent and incurably defective as the laws relied on in their application is wrong. While relying on the case of *Michael Mungai v Housing Finance Co. (K) Limited & 5 Others* [2017]eKLR, the petitioners/ respondents submitted that the application is not clear on the laws they have relied on and, Section 5 (1) of the *Judicature Act* being the main provision in contempt cases, should have been relied upon and thus the effect of it being left means that the instant application should be struck off as it does not rely on the correct legal provision or statute.
  19. The 1<sup>st</sup> respondent/applicant did not file written submissions. Be that as it may, I have analysed and considered the application, replying affidavit and the written submissions filed by the petitioners and the issue for determination is whether the application has merit.
  20. *Black's Law Dictionary* 9<sup>th</sup> Edition, defines contempt as:

“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.”
  21. In other words, contempt is conduct that impairs the fair and efficient administration of justice. Section 5 of the *Judicature Act* confers jurisdiction on this court to punish for contempt. The 1<sup>st</sup> respondent cited Section 1A, 1B, 3, 3A and 63 (c) of the *Civil Procedure Act* and Order 40 Rule 3 (1) of the *Civil Procedure Rules*.



22. Order 40 Rule (3) (1) of the *Civil Procedure Rules* provides that “In cases of disobedience, or of breach of any terms of a temporary injunction, the court granting that injunction may order the property of the person guilty of such disobedience or breach to be attached, and may also order such person to be detained in prison for a term not exceeding six months unless in the meantime the court directs his release.”
23. The instant application has invoked this court’s powers in terms of Order 40 Rule (3) among other provisions of the law which by the ruling delivered on November 10, 2021 did not grant any temporary injunction. Paragraph 31 of the said ruling was as follows: - “Arising from the above, I am of the view that the order that recommends itself for issuing is one of status quo. In the circumstances, I hereby direct that an order of status quo as at the time of filing this suit do issue pending the hearing and determination of the substantive suit.”
24. Let me say that the reason why courts punish for contempt is to uphold the dignity and authority of the court, ensure compliance with directions of the court, observance and respect of due process of law, preserve an effective and impartial system of justice, and maintain public confidence in the administration of justice by courts. Without sanctions for contempt, there would be a serious threat to the rule of law and administration of justice. For a party to be cited for contempt, he must have violated and or disobeyed an order that was directed at him.
25. In addition, the application before this court seeks to have the petitioners/respondents cited contempt of this court’s order of November 10, 2021 and to be committed to civil jail and or fined as the court may deem fit on the basis that as at the time of filing of the suit, the 1<sup>st</sup> respondent/applicant was in possession and had even cultivated crops. Also, that the 1<sup>st</sup> respondent’s/applicant’s attempt to utilize the subject piece of land has been interfered with by the petitioners/respondents.
26. On dealing with the question of contempt, in *Econet Wireless Kenya Ltd v Minister for Information & Communication of Kenya & another* [2005] KLR 828, Ibrahim, J. (as he then was), underscored the importance of obeying court orders, stating:
- 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.
27. Whereas this court issued the orders of status quo, the same was not ambiguous as there was indication as correctly noted in the ruling that the petitioners/respondents were in occupation of the suit property. The prevailing scenario therefore was that the situation be as it were as at the time of filing of the suit. I need not elaborate further.
28. But even then, contempt proceedings ought to follow due procedure. In the case of *Danros (K) Limited v Kenya Railways Corporation & another* [2021] eKLR, Munyao J, 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.”(emphasis mine)



29. The 1<sup>st</sup> respondent/applicant in this case, has not invoked the correct procedure in bringing forth the instant application. Due to the gravity of the consequences that flow from contempt proceedings, it is proper that the correct procedure be invoked.
30. Arising from the above, the notice of motion dated February 17, 2023 is dismissed. Costs to abide the outcome of the substantive suit.
31. Mention on 13<sup>th</sup> June, 2023 for parties to take a hearing date. It is so ordered.

**DATED, SIGNED & DELIVERED VIA EMAIL THIS 6<sup>TH</sup> DAY OF JUNE, 2023.**

**MBOGO C.G.**

**JUDGE**

**6/6/2023**

In the presence of: -

CA:T.Chuma

