



REPUBLIC OF KENYA



**Masinde & another v Kasava & 7 others (Environment & Land Case  
137 of 2015) [2023] KEELC 17986 (KLR) (6 June 2023) (Ruling)**

Neutral citation: [2023] KEELC 17986 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT BUNGOMA  
ENVIRONMENT & LAND CASE 137 OF 2015**

**EC CHERONO, J**

**JUNE 6, 2023**

**BETWEEN**

**CHARLES KW MASINDE ..... 1<sup>ST</sup> PLAINTIFF**

**RICHARD MASINDE ..... 2<sup>ND</sup> PLAINTIFF**

**AND**

**EDWARD OMONDI KASAVA ..... 1<sup>ST</sup> DEFENDANT**

**JANE JUMA OWINO ..... 2<sup>ND</sup> DEFENDANT**

**JUDITH NANJALA SIMIYU ..... 3<sup>RD</sup> DEFENDANT**

**FATIMA HASSAN NUVA ..... 4<sup>TH</sup> DEFENDANT**

**CAROLYNE MARIAM ..... 5<sup>TH</sup> DEFENDANT**

**PAMELA WAMALWA ..... 6<sup>TH</sup> DEFENDANT**

**AGEPTUS MUNIALO ..... 7<sup>TH</sup> DEFENDANT**

**FULL GOSPEL CHURCHES OF KENYA ..... 8<sup>TH</sup> DEFENDANT**

**RULING**

1 This Honourable Court has been called upon to determine the Notice of Motion application dated March 23, 2023 in which the applicants seek the following orders;

1. (Spent)
2. An order of Committal to Civil jail be made against the Respondent, one Mrs Gladys Nanyama Masinde to prison for six months or such period as this Honourable court may deem fit and just that the said Gladys Nanyama Masinde has deliberately interfered with cause of justice



3. The Costs of this application be provided for.
- 2 The application is based on grounds apparent on the face of the said application and the supporting affidavit of the applicant sworn on 17/3/2023. The application is further supported by three annexures to the supporting affidavit.
- 4 In his supporting affidavit in support of the said application, the applicant deposed that by an order issued on May 17, 2016, this Honourable Court stood over this case generally pending the hearing and determination of Bungoma High Court Succession Cause NO 39 of 2004 and Bungoma High Court Succession Cause NO 288 of 2015. The applicant further stated that this Court also ordered status quo obtaining on land parcel NO E BUKUSU/N KANDUYI/699 and 700 shall be maintained as it obtains on the said May 17, 2016 until further orders of the court.
- 5 The Applicant deposed that when this Honourable Court issued the said orders on May 17, 2016, the Respondent was present in Court and was also served with the orders on June 2, 2016. He stated that despite being aware of the said court order, the respondent has totally ignored and /or disregarded the orders of this Honourable court and has continued to plant on land parcel NO E bukusu/n kanduyi/699 and 700 yet at the time this Honourable court issued the orders on May 17, 2016, he was the one using and utilizing the suit properties. the stated that he has been informed by his Advocates on record which information he believes to be true that interference with the cause of justice has undermined the authority and dignity of this Honourable court and brought into disrepute. The Applicant relied on the following decided cases in support of the application; *Republic v National Environment Tribunal, Ex-parte Palms Homes Limite & Another* (2013) KLR; *Anline Pilots Association (KALPA) V Co-operative Bank of Kenya Limited & Another* (2020) KLR; *Mugah v Kungu* (1988) KLR;
- 6 Section 27 of the *contempt of court Act*,
- 7 The Respondent did not file response to the application despite having been served with the application.

### **Analysis And Decision**

- 8 I have considered the Notice of Motion application dated March 23, 2023, the supporting affidavit and submissions by the Advocate for the applicant. I have also looked at the Orders of this Honourable Court issued by Hon Justice S Mukunya on May 17, 2016 which states as follows;
  1. That this case is stood over generally pending the hearing and determination of Bungoma High Court Succession Cause No 39 of 2004 and Bungoma High Court Succession Cause No 288 of 2015.
  2. That in the meantime the status quo obtained on land parcel No.e.bukusu/n.kanduyi/699 and 700 shall be maintained as it obtains on 17<sup>th</sup> day of May, 2016 until further orders of this Court.
- 9 The status quo as it obtained on May 17, 2016 was not given by the Court in the said order. It did not state the person(s) utilizing the two parcels of land at the time of issuance of the said order.
- 10 The principles governing contempt of court are well elaborated in various case law and the applicable law. In the case of *Refrigerator & Kitchen Utensils Ltdv Gulabchand popatlal Shah & Others*, Civil Application No Nairobi 39 of 1990 (UR), the Court of Appeal stated that it is essential for the maintenance of the Rule of law and good order that the authority of and dignity of the Court be



upheld at all times and that the Court will not condone deliberate disobedience of its orders and will not shy away from its responsibility to deal firmly with proved contemnors.

11 The procedure for instituting contempt of court proceedings is provided for in section 5 of the Judicature Act Cap 8 Laws of Kenya which states as follows;

1. The High Court and the Court of Appeal shall have the same power to punish for contempt of Court as is for the time being possessed by the High Court of Justice in England, and that power shall extend to upholding the authority and dignity of subordinate Courts.
2. An order of the High Court made by way of punishment for contempt of Court shall be appealed as if it were a conviction and sentence made in the exercise of the ordinary original Criminal jurisdiction of the High Court.

12 Section 29 of the Environment and land court Act also bestows the Court with powers to punish for disobedience of Court orders and states as follows;

Any person who refuses, fails or neglects to obey an order or direction of the Court given under this Act, commits an offence, and shall, on conviction, be liable to a fine not exceeding twenty million shillings or to imprisonment for a term not exceeding two years or to both.

13 It is imperative that before the contemnor is punished, the order in question must be clear and unequivocal on what the contemnor is required to do or abstain from doing.

In the present case, the court did not define the status quo as it was obtained at the time the orders were issued on May 17, 2016.

In the case of North Tetu Farmers Co Ltd v Joseph Nderitu Wanjobi (2016) eKLR, Justice Mativo stated as follows;

“writing on proving the elements of civil contempt, learned authors of the book Contempt in Modern New Zealand have authoritatively stated as follows

“there are essentially four elements that must be proved to make the case for civil contempt. The applicant must prove to the required standard ( in civil contempt cases which is higher than civil cases –

- a. the terms of the order ( or injunction or undertaking) were clear and unambiguous and were binding on the defendant;
- b. the defendant had knowledge of or proper notice of the terms of the order;
  - a. the defendant has acted in breach of the terms of the order; and
  - b. the defendant’s conduct was deliberate.

14 It is clear that this court issued orders on 17/05/2016 requiring *status Quo* obtaining on land parcels No. E.bukusu/n.kanduyi/699 and 700 shall be maintained as of the said date until further orders of the court. However, the terms of the status of the two properties were not stated. Failure to define the status of the two properties at the time of issuance of the orders in my view makes the terms of the orders not clear and therefore incapable of attracting a criminal liability.

15 The upshot of my finding is that the Notice of Motion application dated March 23, 2023 is devoid of merit and the same is hereby dismissed and since the application is not defended, the applicant will bear his own costs

16 Orders accordingly.



**DATED, READ AND DELIVERED IN THE OPEN COURT/VIRTUALLY THIS 6<sup>TH</sup> DAY OF  
JUNE, 2023**

**HON. E.C. CHERONO**

**ELC JUDGE**

In the presence of;

Mr. Otundo for Applicant

Respondent-absent

Joy C/A

