



Chege v Johnson Sakaja The Governor; Nairobi City County & another (Environment & Land Case 1503 of 2014) [2023] KEELC 18787 (KLR) (6 July 2023) (Ruling)

Neutral citation: [2023] KEELC 18787 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 1503 OF 2014**

**LN MBUGUA, J
JULY 6, 2023**

BETWEEN

FRED KAMAU CHEGE APPLICANT

AND

**MR JOHNSON SAKAJA THE GOVERNOR; NAIROBI CITY
COUNTY 1ST RESPONDENT
THE COUNTY EXECUTIVE OFFICER; LANDS, URBAN PLANNING,
URBAN RENEWAL, HOUSING AND PROJECT MANAGEMENT COUNTY
GOVERNMENT OF NAIROBI 2ND RESPONDENT**

RULING

1. Judgment herein was delivered in this matter on July 11, 2019 in the following terms:
 - i. It is hereby declared that the plaintiff is the leasehold proprietor of Land Title Number Nairobi/Block 107/382 and is entitled to quiet possession of the property.
 - ii. The defendant is restrained against interfering with the plaintiff's quiet possession and ownership of the said property.
 - iii. Each party shall bear own costs of this suit.
2. The plaintiff filed a notice of motion application dated September 30, 2021 and amended on January 25, 2023 seeking the following orders;
 - i. That this Honourable Court do issue summons to Mr Johnson Sakajathe Governor, Nairobi City County and The Chief Executive Officer; Lands, Urban Planning, Urban Renewal, Housing and Project Management, the 2nd Respondents to attend court on a date to be determined, to show cause why they should not be committed to civil jail or penalized for contempt of the court orders of July 11, 2019.



- ii. That the 1st and 2nd Respondents be committed to civil jail for six (6) months or penalized on such terms as the Honourable Court may determine, for contempt of this Honourable's court orders of July 11, 2019.
 - iii. That the Respondents be cited for contempt of court and committed to civil jail for a term of Six (6) months and/or be ordered to purge the contempt of court on terms this court will deem fit.
 - iv. That the Respondents do cater for the costs of this application.
3. The application is premised on grounds on its face and on the supporting affidavit and further affidavit of the plaintiff, where he contends that after the delivery of the judgment, the respondents commenced serious construction on the suit property and have refused to vacate the same.
 4. Vide his main submissions dated March 1, 2023 and supplementary ones dated May 19, 2023, the plaintiff contends that the judgment was extracted and duly served upon the respondents. However, they persisted in the contempt which they have refused to purge.
 5. In support of his case, the plaintiff relied on the cases of; [Tabitha Muthoni Mwangi vs County Government of Laikipia & 2 Others \(2021\) eKLR](#), [MNN VS JMM \(2022\) eKLR](#), [DKG vs EG \(2021\) eKLR](#), [Tom Ojienda & Associates vs County Secretary Nairobi City County & Another \(2022\) eKLR](#) and [Republic vs Town clerk of Webuye County Council & Another \(2014\)](#).
 6. The 1st respondent has opposed the application vide his grounds of opposition dated April 25, 2023 where he avers that the application is bad in law, an abuse of the court processes and is a waste of judicial time. He has also filed a replying affidavit dated May 10, 2023 averring that he was never served with the relevant order. He urges the court to take judicial notice that he was sworn into office of the Governor on August 25, 2022, and as such, he could not have been aware of these proceedings.
 7. The submissions of the 1st respondent are dated 08.06.2023 where he reiterates that he cannot be found to have been in contempt of proceedings he was not aware of. He further stated that the Nairobi County Government is a government within the meaning of the [Government Proceedings Act](#), hence the procedure of execution should be as provided under Order 53 of the [Civil Procedure Rules](#).
 8. In support of his case, the 1st respondent has relied on the cases of; [Republic v Attorney General & another ex-parte Stephen Wanyee Roki \(2016\) KLR](#), [Judicial Review Miscellaneous Application No 44 of 2012 between the Republic vs The Attorney General & Another ex parte James Alfred Koroso, Miscellaneous Civil Application 350 of 2015, Republic v County Secretary, Nairobi City County & another Ex Parte Wachira Nderitu Ngugi & Co Advocates \[2016\] eKLR](#) and [Republic vs Permanent Secretary, Ministry of State for Provincial Administration and Internal Security Exparte Fredrick Manoah Egunza \[2012\] eKLR](#).
 9. The issues for determination are;
 - i. Whether the Respondents are in contempt of court.
 - ii. If yes to the above, should the Respondents be punished for the same and be directed to purge the contempt?.



10. In the case of *Christine Wangari Gachege vs Elizabeth Wanjiru Evans & 11 Others*, [2014] eKLR, the court found that the English law on committal for contempt of court was applied by virtue of Section 5(1) of the *Judicature Act* which provides that:

' 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'.
11. In the case of *Samuel MN Mweru & Others v National Land Commission & 2 others* [2020] eKLR Mativo J stated that;

' The test for when disobedience of a civil order constitutes contempt has come to be stated as whether the breach was committed 'deliberately and mala fide.'
12. In the case of *Sophinah Kalondu Mbiti v Arun Mabendra Adalja & 3 others* [2021] eKLR, I held thus on matters of contempt of court;

' The courts have on several occasions pronounced that contempt proceedings are quasi criminal in nature due to the committal to civil jail element. As such, for courts to hold persons in contempt, it ought to be crystal clear that court orders were disobeyed'.
13. This court therefore opines that contempt cases which can be punished by committal to civil jail, as prayed by the plaintiff, ought to be decided on incontrovertible facts that the contemnors deliberately failed to adhere to court orders.
14. What then are the actions and or omissions of the respondents that constitutes contempt?. The plaintiff states that the respondents are in contempt of court for commencing construction on the suit property. At paragraph 8 of his supporting affidavit dated January 25, 2023, he contends that he visited the suit property and found a lot of activities going on and upon inquiry, he found that the respondents were putting up a social hall and other amenities on the suit property in blatant disregard of the judgement delivered herein on July 11, 2019.
15. I have keenly gone through the judgement delivered on July 11, 2019, of which the defendant who is the Nairobi City County had apparently admitted that the plaintiff was the owner of the suit property. However, the court had found that the defendant was not the one on the suit property.
16. At this juncture, I find it expedient to extract the contents of paragraph 10 of the said judgement as follows;

' It is however noted from the evidence of the plaintiff that there is a chief's camp on the suit property. A chief's camp, in my understanding, is a national government office; it is not a county government office. Secondly, neither the plaintiff nor the valuer led any evidence to demonstrate that the defendant had erected any structure on the suit property or that the structures which are on the suit property (if any) belong to the defendant.'
17. What resonates from the above extract is that a chief's camp which belongs to the National Government is the one which was on the suit property, and the County Government was found not to have trespassed on plaintiff's land. That being the case, the issue of 'persistent contempt of the judgment' as alleged by the applicant does not arise.



18. In the circumstances, this court is not persuaded that the respondents have failed to obey the court orders. Any actions of invasion of the suit property by the respondents post judgement would in the view of this court amount to a new cause of action requiring proof in the usual manner.
19. Finally, it is not lost to this court that the respondents were not party to the proceedings, since the only defendant was the Nairobi City County government. It was therefore crucial to indicate in the body of application that the respondents have been brought in these proceedings as contemnors.
20. In the final analysis I find that the application dated January 25, 2023 is not merited, the same is hereby dismissed with no orders as to cost.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 6TH DAY OF JULY, 2023 THROUGH MICROSOFT TEAMS.

LUCY N. MBUGUA

JUDGE

In the presence of:

M/s Irungu for Plaintiff/Applicants

M/s Omollo holding brief for Mr. Okatch for 1st Respondent

Court Assistant: Betsy

