



Halai Concrete Quarries & 4 others v County Government of Machakos & 4 others; Kenya Power & Lighting Co & another (Interested Parties) (Environment & Land Petition 19 of 2020) [2023] KEELC 18601 (KLR) (5 July 2023) (Ruling)

Neutral citation: [2023] KEELC 18601 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS
ENVIRONMENT & LAND PETITION 19 OF 2020**

A NYUKURI, J

JULY 5, 2023

**IN THE MATTER OF: VIOLATION OF ARTICLES 1, 2, 3, 10, 19, 20, 21,
22, 23, 24, 40, 42, 43, 47, 60, 64, 69, 70, 72, 258, 259 AND 260 OF THE
CONSTITUTION OF KENYA AS WELL AS THE FOURTH SCHEDULE THERETO**

AND

**IN THE MATTER OF: SECTIONS 3, 9, 58, 59, 87, 88, 90, 108, 111, 140, 142, 144, AND
145 OF THE ENVIRONMENTAL MANAGEMENT AND CO-ORDINATION ACT, CAP 387**

AND

**IN THE MATTER OF: SECTIONS 116 AND 117 OF
THE COUNTY GOVERNMENT ACT NO. 17 OF 2012**

AND

IN THE MATTER OF: SECTIONS 116, 117 AND 118 OF THE PUBLIC HEALTH ACT 2012

AND

IN THE MATTER OF: THE FAIR ADMINISTRATIVE ACTIONS ACT, 2015

AND

**IN THE MATTER OF: REGULATIONS 4, AND 11 OF THE ENVIRONMENTAL
MANAGEMENT AND COORDINATION (WASTE MANAGEMENT) REGULATIONS, 2016**

AND

**IN THE MATTER OF: REGULATIONS 4 OF THE ENVIRONMENTAL
(IMPACT ASSESSMENT AND AUDIT) REGULATIONS, 2003**

BETWEEN

HALAI CONCRETE QUARRIES 1ST PETITIONER

BLUESTONE LTD 2ND PETITIONER



KAY CONSTRUCTION CO. LTD 3RD PETITIONER
KENYA BUILDERS & CONCRETE CO. LTD 4TH PETITIONER
ORBIT ENTERPRISES LTD 5TH PETITIONER

AND

COUNTY GOVERNMENT OF MACHAKOS 1ST RESPONDENT
COLNET LIMITED KENYA 2ND RESPONDENT
PAULSA BINS LIMITED 3RD RESPONDENT
NEATWORLD SERVICES LIMITED 4TH RESPONDENT
GLEE CLEANING SERVICES LIMITED 5TH RESPONDENT

AND

KENYA POWER & LIGHTING CO INTERESTED PARTY
NATIONAL ENVIRONMENTAL MANAGEMENT
AUTHORITY INTERESTED PARTY

RULING

Introduction

1. Before court is the Chamber Summons dated March 19, 2021 filed by the Petitioners seeking the following orders;
 - (a) Spent
 - (b) That this Honourable Court be pleased to grant leave to institute contempt of court proceedings against the 1st and 2nd Respondents herein.
 - (c) That this Honourable court be pleased to grant all necessary and consequential orders and directions in the best interest of justice.
 - (d) That the costs of this application be provided for.
2. The application is supported by the grounds on its face together with the supporting affidavit sworn on March 1, 2021 by Dhirajlala Ramji Patel a director of the 4th Petitioner. The Applicants' case is that on November 20, 2020, this Honourable Court entered judgment in favour of the Petitioners in the presence of the parties. That in the judgement, this court declared that the Petitioners' rights to a clean and healthy environment had been violated by the Respondents' acts or omissions, a prohibitory injunction permanently restraining the Respondents and their agents from transporting to, dumping and or disposing refuse or waste on quarry road between Kay Group Quarries and Kenya Power Syokimau Substation and the buffer-zone adjacent thereto; a mandatory injunction compelling the 1st Respondent to relocate the dumpsite to a suitable site; an environmental restoration order to restore the degraded dumpsite and a mandatory injunction to ensure no further disposal of waste on the quarry road.



3. The Applicants averred that despite the foregoing orders, the 1st and 2nd Respondents continue to illegally and unlawfully dispose solid waste on the quarry road aforesaid. That the dumping of waste poses a health hazard to the Petitioners and that the Respondents have failed to take steps to relocate the dumpsite and continue to operate the aforesaid dumpsite. They attached copies of photographs of the alleged 2nd Respondent's trucks dumping solid waste on the said quarry road.
4. The application was opposed. The 2nd Respondent filed a replying affidavit sworn on November 25, 2021 by one Chege Kariuki a director of the 2nd Respondent. The 2nd Respondent denied allegations made by the Applicants and averred that the attached photographs failed to show the particulars of time and date they were taken. He deposed that he was a law abiding citizen who respects the authority of this Honourable Court. No response was filed by the 1st Respondent.
5. The application was canvassed by written submissions. On record are the Applicants' submissions dated February 17, 2022.

Applicants' Submissions

6. Counsel for the Applicants submitted that the application raised issues of whether the Respondents were in contempt and what is the appropriate relief. Counsel submitted that the 1st and 2nd Respondents were in contempt of this court's orders. Reliance was placed on Section 5 (1) of the Judicature Act to argue that this court has power to punish for contempt. Counsel also referred to several cases among them; Katsuri Limited v Kapurchand Depar Shah [2016] eKLR, Econet Wireless Kenya Limited v Minister for Information & Communication of Kenya & Another and Samuel MN Mweru & 5 Others v National Land Commission & 2 Others [2020] eKLR for the proposition that a court order is binding on the party against whom it is addressed and the court's authority is maintained when its orders are obeyed.
7. Counsel argued that as this court made orders compelling the Respondents to stop dumping waste on the quarry road, their continued acts of dumping of solid waste thereon amounted to contempt of court order and that by virtue of that disobedience, the Applicants' rights continue to be violated.
8. Counsel submitted that therefore the Applicants were entitled to three orders; namely, that the County Secretary of the 1st Respondent and directors of the 2nd to 5th Respondents be cited for contempt and be committed to prison until the contempt is purged; and further orders that the court may deem fit in the interest of justice and costs.

Analysis and Determination

9. I have carefully considered the application, the response and submissions. I must at this stage point out that although the Applicants sought for leave to institute contempt proceedings, in their submissions, they introduced a new prayer which was not in their application; a pray for committal to prison of the County Secretary of the 1st Respondent and directors of the 2nd to 5th Respondents. Since parties are bound by their pleadings and issues arise from pleadings, it is my considered view that the only issue arising herein for determination is whether the Petitioners are entitled to leave to institute contempt proceedings.
10. The law applicable to contempt proceedings is provided for in Section 5 (1) of the Judicature Act which provides as follows;

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 the subordinate court.



11. Therefore the law guiding contempt proceedings is the law for the time of the application, being applied by the High Court of justice in England. The law on contempt in England for the time being is part 81 of the English Civil Procedure (Amendment No 2) Rules 2012. (Applications and proceedings in relation to contempt of court).
12. On the question of whether a party needs leave to file contempt proceedings, it should be noted that previously the procedure for contempt proceedings were provided for in Order 52 of the Rules of the Supreme Court (RSC) made under the Supreme Court of *Judicature Act* 1873; Part 8 thereof, which referred to applications and proceedings in relation to contempt of court. However, by dint of Part 81 of the Civil Procedure Rules 2012, Order 52 was accordingly replaced. Although under Order 52 of (RSC) there was a requirement for leave before an application for contempt was filed, under part 81 of the Civil Procedure Rules 2012, there was a significant departure. Rule 81: 4 relates to committal for breach of a judgment order or undertaking to do or abstain from doing an act.
Rule 81: 11 relates to committal for interference with the due administration of justice.
Rule 81: 16 relates to committal for contempt in the face of the court and;
Rule 81: 17 relates to committal for false statement of truth or disclosure.
13. Under Rule 81: 4, no leave is required to commence contempt proceedings. In the case of Christine Wangari Gachege Civil Case No 456 of 2011, the Court of Appeal held that leave is not required where committal proceedings relate to a breach of judgment, order or undertaking. However, leave is still required for applications made under Rules 81: 12 and 81: 17.
14. In the instant application, the Applicants seek leave to apply for contempt in regard to a judgment that squarely falls within Rule 81: 4 of the Civil Procedure Rules of England and therefore leave is not necessary. The Applicants ought to have straight away sought for contempt. In the premises, I find and hold that the application dated March 19, 2021 is superfluous and the same is dismissed. As the response did not respond to the prayer in the application, I make no order as to costs.
15. Orders accordingly.

DATED, SIGNED AND DELIVERED AT MACHAKOS VIRTUALLY THIS 5TH DAY OF JULY, 2023 THROUGH MICROSOFT TEAMS VIDEO CONFERENCING PLATFORM

A. NYUKURI

JUDGE

In the Presence of;

Ms Mutuku holding brief for Mr. Nzyuko for the County Government of Machakos 1st Respondent

Mr. Shikanda holding brief for Mr. Okwach for Applicants/Petitioners

Josephine – Court Assistant

