



**Kiere v Karaithi & 6 others; District Land Registrar, Nakuru
(Interested Party); Githigi (Contemnor) (Environment & Land Case
E84 of 2021) [2023] KEELC 18819 (KLR) (11 July 2023) (Ruling)**

Neutral citation: [2023] KEELC 18819 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT & LAND CASE E84 OF 2021**

**A OMBWAYO, J
JULY 11, 2023**

BETWEEN

PATRICK GITHINJI KIERE PLAINTIFF

AND

NYANDARUA PROGRESSIVE AGENCIES CO. LIMITED 1ST DEFENDANT

MICHAEL MAINA KARAITHI & 5 OTHERS 2ND DEFENDANT

AND

DISTRICT LAND REGISTRAR, NAKURU INTERESTED PARTY

AND

ZACHARIA MAINA GITHIGI CONTEMNOR

RULING

1. The application before me is dated 15th May 2023. The applicant seeks orders that Mr. Michael Maina Karaithi and Mr. Zacharia Maina Gathigi do show cause why they should not be committed to civil jail for disobeying court orders. Mr. Michael Maina Karaithi and Mr. Zacharia Maina Gathigi be committed to civil jail, for a period of six months, for contempt of court.
2. In the alternative, Mr. Michael Maina Karaithi and Mr. Zacharia Maina Gathigi be each fined Kshs1,000,000/= for disobeying court orders.
3. Cost of this application be borne personally by Mr. Michael Maina Karaithi and Mr. Zacharia Maina Gathigi the respondent herein.
4. The application is based on grounds that the plaintiff/applicant herein instituted the current proceedings vide a plaint dated 2nd December 2021. That together with the plaint, the plaintiff/



Applicant also filed a notice of motion application dated 2nd December 2021 in which he sought for a temporary injunction pending hearing and determination of the suit.

5. The plaintiff/applicant has been in possession of the suit property for years immediately preceding the filing of the suit where he has been harvesting, selling and benefitting from its proceeds
6. When the matter came up for directions on 21st March, 2022 the court ordered that due to the fact that the Plaintiff/Applicant has been in possession of the suit property since 2003, the Plaintiff should remain in possession of the suit property, Solai/Arutani Block 1/99 with conditions that he shall not affect any developments of permanent nature. As a condition of the Applicant's possession and use of the property, the honorable court directed that no party shall sell, transfer or charge the property until the suit is heard and determined. The Order was given in the presence of both counsel for the Applicant and counsel for the 1st Respondent virtually.
7. The applicant claims that the 1st Respondent has leased the suit property to one, Mr. Zacharia Maina Gathigi who is now his agent/servant/hireling/proxy.
8. The said Mr. Zacharia Maina Gathigi, on 3rd May, 2023 destroyed/plow up Hay planted by the Applicant on the suit property for over 6 years and which the Applicant has been harvesting and selling the said Hay and using the proceeds therefrom to earn a living over the years.
9. The said Mr. Zacharia Maina Gathigi on 4th May, 2023 further proceeded to plough, plant crops and interfered with the Applicants' use and possession of the suit property while referring to the court order given on 21st March 2022 as worthless pieces of paper.
10. Advocates on record being informed of the 1st Defendant/Respondent acts vide a letter dated 4/5/2023, the 1st Defendant/Respondent has without any color of right and justification, and with total disregard of the law, continue to disobey the court order.
11. The said Mr. Zacharia Maina Gathigi is enjoying beneficial use of the property despite the court making an order that the applicant should remain in possession of the property until the suit is heard and determined.
12. The Respondents have made the applicant's use and occupation of the suit land impossible. The order of injunction required compliance by all. The 1st Respondent is camouflaging his actions by using the 2nd Respondent in order to continue benefitting from the suit property.
13. The applicant contends that the suspected contemnors were and are aware of the orders of this court, as the said orders were given when the 1st Respondent's Advocate on record was present. The Court did not issue orders in vain and the same ought to be obeyed by the parties they are directed to.
14. The applicant laments that the suspected contemnor's' actions are contemptuous and amount to abuse of authority. Punitive measures ought to be taken to restore the Court's dignity and authority and for the rule of Law to be respected.
15. The application is not opposed as there is no replying affidavit despite evidence of service upon the respondent. I do find that the order issued by the court is clear and unambiguous. The same has been disobeyed by the respondents. Contempt of court is that conduct or action that defies or disrespects authority of court. Black's Law Dictionary 9th 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.



16. Moreover, contempt is conduct that impairs the fair and efficient administration of justice. Section 5 of the [Judicature Act](#) confers jurisdiction on the superior courts to punish for contempt.
17. Order 40 rule (3) of the [Civil Procedure Rules](#) (2010) 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. This application has therefore invoked this court's powers in terms of Order 40 rule (3).
18. 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.
19. 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. (emphasis)

20. In [T. N. Gadavarman Thiru Mulpad v Ashok Khot And Anor](#) [2006] 5 SCC, the Supreme Court of India also emphasized on the dangers of disobeying Court orders, thus:

Disobedience of this Court's order strikes at the very root of the rule of law on which the judicial system rests. The rule of law is the foundation of a democratic society. Judiciary is the guardian of the rule of law. Hence, it is not only the third pillar but also the central pillar of the democratic State. If the judiciary is to perform its duties and functions effectively and remain true to the spirit with which they are sacredly entrusted to it, the dignity and authority of the Courts have to be respected and protected at all costs. Otherwise, the very corner stone of our constitutional scheme will give way and with it will disappear the rule of law and the civilized life in the society. That is why it is imperative and invariable that Court's orders are to be followed and complied with.

21. Contempt of Court is in the nature of criminal proceedings and, therefore, proof of a case against a contemnor is higher than that of balance of probability. This is because liberty of the subject is usually at stake and the applicant must prove willful and deliberate disobedience of the court order, if he were to succeed. This was aptly stated in [Gatharia K. Mutikika v Baharini Farm Limited](#) [1985] KLR 227, that:

A contempt of court is an offence of a criminal character. A man may be sent to prison. It must be proved satisfactorily.... It must be higher than proof on a balance of probabilities, almost but not exactly, beyond reasonable doubt. The standard of proof beyond reasonable



doubt ought to be left where it belongs, to wit criminal cases. It is not safe to extend it to offences which can be said to be quasi-criminal in nature.

However, the guilt has to be proved with such strictness of proof as is consistent with the gravity of the charge... Recourse ought not to be had to process of contempt of court in aid of a civil remedy where there is any other method of doing justice. The jurisdiction of committing for contempt being practically arbitrary and unlimited, should be most jealously and carefully watched and exercised with the greatest reluctance and the greatest anxiety on the part of the judge to see whether there is no other mode which is not open to the objection of arbitrariness and which can be brought to bear upon the subject... applying the test that the standard of proof should be consistent with the gravity of the alleged contempt... it is competent for the court where contempt is alleged to or has been committed, and or an application to commit, to take the lenient course of granting an injunction instead of making an order for committal or sequestration, whether the offender is a party to the proceedings or not.

22. Due to the gravity of consequences that ordinarily flow from contempt proceedings, it is proper that the order be served and the person cited for contempt should have had personal knowledge of that order.
23. I do find that Mr Michael Maina Karaithi and Zacharia Maina Gathigi have not controverted the allegations against them and therefore are in contempt of the order made by this court and I do commit each of them to jail for a term of 3 months. I do give them an option of a fine of Ksh500, 000 each. Cost of the application to the applicant.

RULING DATED AND SIGNED DELIVERED AT NAKURU VIRTUALLY THIS 11TH JULY 2023.

A O OMBWAYO

JUDGE

