



**Maalim v Ahamed & 2 others (Environment & Land Case
E001 of 2022) [2023] KEELC 18873 (KLR) (12 July 2023) (Ruling)**

Neutral citation: [2023] KEELC 18873 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE E001 OF 2022**

**LN MBUGUA, J
JULY 12, 2023**

BETWEEN

MOHAMED DAHIR MAALIM PLAINTIFF

AND

FATUMA AHAMED 1ST DEFENDANT

COLONEL FARAH 2ND DEFENDANT

GULED ALIAS PS 3RD DEFENDANT

RULING

1. Judgement was entered in this matter on December 8, 2022. Subsequently, the plaintiff filed an application dated 1.6.2023 which is for determination. He seeks orders directed to the defendants to remove themselves and/or any other persons that they may have placed on property known as Land Reference Number 36/1/50 forthwith and in default they and or such person/s be forcibly evicted and vacant possession be given to him. XCZVZVZCZZHe also seeks orders that the OCS Eastleigh North Police Station do offer security in ensuring compliance and an order that the aforementioned orders be included in the decree.
2. The plaintiff also urged the court to find that the defendants are in contempt of the orders of this court and subsequently fine them.
3. The application is based on grounds on its face and on the plaintiff's supporting affidavit sworn on June 1, 2023. He avers that following the judgement issued in this mater, he extracted a decree dated 7.2.2023 which is a restraining order in form of a permanent injunction. He further avers that despite having been made aware of the said court Order, the defendants have neglected to comply with the same and have proceeded to erect a permanent structure on the suit property, thus denying him access to his own property.



4. He avers that he proceeded to seek police assistance on the implementation of the decree, but they insisted that the decree should specify their involvement by way of an order from this court.
5. The defendants were served with the application as is evident from the affidavit of service sworn on June 21, 2023 by Mary O.G Njue, but they did not file any response.
6. I deem it fit to frame the issues arising for determination as follows;
 1. Whether the decree dated 7.2.2023 should be amended.
 2. Whether the defendants are in contempt of the orders of this court.
 3. Whether the court should issue eviction orders against the defendants and orders that the OCS Eastleigh North Police Station assists with enforcement.
7. On the 1st issues, the plaintiff seeks to correct the decree dated 7.2.2023 and include an order directing the Officer Commanding Eastleigh North Police Station to assist with enforcement of the judgement issued herein.
8. In my considered view, to amend the decree herein and add the orders sought would be going outside the ambit of section 99 of the *Civil Procedure Act* which states:

“Clerical or arithmetical mistakes in judgments, decrees or orders, or errors arising therein from any accidental slip or omission, may at any time be corrected by the court either of its own motion or on the application of any of the parties.”
9. On the 2nd issue, the plaintiff contends that the defendants are in contempt of the orders of this court issued on December 8, 2022. courts have stated that the degree of proof in contempt matters is higher than that of balance of probability. In *Samuel M. N. Mweru & others v National Land Commission & 2 others* [2020] eKLR, the court stated that;

“It is an established principle of law that in order to succeed in civil contempt proceedings, the applicant has to prove (i) the terms of the order, (ii) Knowledge of these terms by the Respondent, (iii) Failure by the Respondent to comply with the terms of the order. Upon proof of these requirements the presence of willfulness and bad faith on the part of the Respondent would normally be inferred, but the Respondent could rebut this inference by contrary proof on a balance of probabilities.”
10. I note that the said judgement was entered in the absence of the defendants. However, they were served with the decree issued herein. They have also been served with the instant application but failed to appear before this court. The plaintiff’s averment that they have commenced construction on the suit land despite this court permanently barring them from interfering with the suit property has not been rebutted. Their conduct in this matter is a show of bad faith and their actions of constructing on the suit land show the length they have chosen to go to willfully disobey the orders of this court.
11. In *Refrigeration and Kitchen Utensils Ltd v Gulabchand Popatlal Shah & another*, Civil Application No. 39 of 1990 cited by the court of Appeal in *Woburn Estate Limited v Margaret Bashforth* [2016] eKLR it was stated that;

“A party who knows of an order, whether null or valid, regular or irregular, cannot be permitted to disobey it.... It would be most dangerous to hold that the suitors, or their



solicitors, could themselves judge whether an order was null or valid-whether it was regular or irregular. As long as it exists it must not be disobeyed.”

12. Having been proven to have willfully and deliberately disobeyed the orders of this court, the defendants should present themselves personally to this court to show cause why they should not be punished.
13. On the 3rd issue, this court spoke in its judgement of December 8, 2022. The defendants must comply with the said orders, hence the prayer for eviction and for the OCS to assist in the implementation of the said order is merited.
14. In the final analysis, the application dated June 1, 2023 is allowed in terms of prayer no. b, c, e, g. The court also directs the defendants to appear in court to show cause as to why they should not be punished for contempt of court.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 12TH DAY OF JULY 2023 THROUGH MICROSOFT TEAMS.

LUCY N. MBUGUA

JUDGE

__ In the presence of:- __

M/s Ndiege and Chelangat for plaintiff

Hosea the Administrator of Estate of 1st defendant

court Assistant: Eddel

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