



Wanje v County Land Registrar, Kilifi County & 10 others (Environment & Land Petition E8 of 2020) [2023] KEELC 18571 (KLR) (4 July 2023) (Ruling)

Neutral citation: [2023] KEELC 18571 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ENVIRONMENT & LAND PETITION E8 OF 2020**

MAO ODENY, J

JULY 4, 2023

BETWEEN

TSUMA TEZI WANJE PETITIONER

AND

THE COUNTY LAND REGISTRAR, KILIFI COUNTY 1ST RESPONDENT

THE CHAIRMAN, LAND CONTROL BOARD KILIFI 2ND RESPONDENT

THE CHIEF LAND REGISTRAR 3RD RESPONDENT

THE NATIONAL LAND COMMISSION 4TH RESPONDENT

THE NATIONAL POLICE SERVICE 5TH RESPONDENT

THE ATTORNEY GENERAL 6TH RESPONDENT

KIMANI MUTUA 7TH RESPONDENT

KIGURU SURVEYORS 8TH RESPONDENT

SAIDA IBRAHIM YUSUF 9TH RESPONDENT

ZULEKHA IBRAHIM YUSUF 10TH RESPONDENT

REHMATBAI IBRAHIM YUSUF 11TH RESPONDENT

RULING

1. On September 23, 2022, this court delivered a ruling to maintain *status quo* of the suit property identified as Kilifi/Mtwapa/663, following the Petitioner's application dated September 8, 2020. The subsequent orders were issued on September 27, 2022. Barely two months on, the Petitioner filed



the present application dated November 21, 2022 claiming that the 9th, 10th and 11th Respondents disobeyed this court's orders to maintain *status quo*. The Petitioner sought the following orders:-

- a) Spent.
 - b) That this Honourable Court be pleased to issue a temporary order directing the OCS/OCPD Ndongya Police Station to assist the Applicant to effect orders issued on September 27, 2022 to wit, maintain the *status quo* of the land parcel comprising parcel no. Kilifi/Mtwapa/663.
 - c) That this Honourable Court be pleased to issue warrant of arrest against the employees, servants and/or agents of the 9th, 10th, and 11th Respondents herein who have adamantly and willfully disobeyed the orders of this Honourable Court issued on the September 27, 2022.
 - d) That both the 9th, 10th, 11th Respondents be cited for contempt of court and be subsequently imprisoned.
 - e) That the OCS/OCPD Ndongya Police Station be ordered to assist the Applicant to execute the orders of this Honourable Court.
 - f) That costs of this application be provided for.
2. The application is premised on the grounds on the face of the motion and supported by the affidavit sworn by the Petitioner on November 21, 2022. According to the Petitioner, the Respondents' counsel refused to acknowledge receipt of the Orders and despite service of the orders, the 9th, 10th and 11th Respondent instructed some people to encroach on the suit property by carrying out construction works, cultivation and grazing.
 3. In response to the application, the 9th, 10th and 11th filed a joint Replying Affidavit sworn by Rehmatbai Ibrahim Yusuf, the 11th Respondent, on February 10, 2023 wherein he averred that their advocates, the firm of George Kariuki and Associates Advocates were never served with the orders to maintain *status quo* and that the Petitioner together with his son were guilty of disobeying the said orders by invading the suit property to steal and vandalize the Respondents' properties.
 4. He further deponed that they also cut down 20 trees, destroyed the Respondents' farm house, chased away the Respondents' workers and dispersed their livestock. That they reported the Petitioner's actions at Kijipwa Police Station where they were issued with OB No 18/01/12/2022.
 5. The application was canvassed by way of written submissions.

Petitioner's Submissions

6. Counsel identified two issues for determination namely whether the 9th, 10th and 11th Respondents were in contempt of court and whether the Petitioner is entitled to the orders sought.
7. Counsel cited the case of *Kristen Carla Burchell v Barry Grant Burchell*, Eastern Cape Division Case No 364 of 2005, and submitted that the elements required to be proven in a contempt case were the terms of the order, knowledge of the terms by the Respondent and failure of the Respondent to comply with the orders.
8. Counsel cited the cases of *Fatuma Abdi Jillo v Kuro Lengesen and another* [2021] eKLR; *Republic v National Environment Tribunal, Ex-parte Palm Homes Limited and another* [2013] eKLR; *TSS Spinning and Weaving Company Limited v NIC Bank Limited and another* [2020] eKLR; *Kenya*



Airline Pilots Association v Co-operative Bank of Kenya Limited and another [2020] eKLR; *Thugi River Estate Limited and another v National Bank of Kenya Limited and 3 others* [2015] eKLR; *Texaco Limited v Mulberry Limited* [1972] WLR 814. Where the court defined and expounded on the meaning of *status quo* and stated that it is meant to preserve the existing state of affairs. *status quo* must therefore be interpreted with respect to existing factual scenario.

9. On whether the Respondents were duly served, counsel submitted that the Petitioner served the Respondents' former advocates Bosire and Partners Advocates as per Order 5 rule 8 of the [Civil Procedure Rules](#) and an affidavit of service duly served.
10. Counsel further submitted that the firm of George Kariuki and Associates did not serve the Petitioner with notice of change of advocates as required under Order 9 rule 6, until 3rd December 2022. Counsel added that the Petitioner also served the 9th Respondent via his personal WhatsApp number in line with Order 5 rule 22C of the [Civil Procedure Rules](#).
11. It was counsel's submission that the Respondents' actions were deliberate for refusing to terminate their activities on the suit property despite being served with the court orders. According to counsel, the Petitioner was entitled to the orders sought so as to uphold and maintain the dignity of the court as it was stated in *Sheila Cassatt Issenberg and another v Anthony Machatha Kinyanjui* [2021] eKLR where the court cited with approval the case of *Econet Wireless Kenya Limited v Minister for Information and Communication of Kenya and another* [2005] KLR.

9th, 10th and 11th Respondents' submissions*

12. Counsel gave a brief background to the case and stated that the 9th 10th and 11th Respondents are the registered owners of the suit property having gained registration through succession proceedings as beneficiaries of the estate of their late father who purchased the suit property from the petitioner.
13. It was counsel's submission that they have been in lawful possession of the suit property since their father was alive and they did their developments and farming with their father ever since they were young children up to this day. Their father first developed and built all the structures on the suit land.
14. Counsel submitted that contempt of court proceedings being quasi criminal, the burden of proof was beyond reasonable doubt and that the evidence attached to the Petitioner's affidavits were first of all inadmissible for failure to comply with Section 106B of the [Evidence Act](#).
15. According to counsel, there was no evidence to prove the Petitioner's allegations of trespass since the Respondents were the registered owners and occupants of the suit property, the order to maintain *status quo* did not mean that the Respondents vacate the suit property. Counsel argued that there was no proof of service of the court order.

Analysis and Determination

16. The issues for determination are as follows; -
 - a) Whether there are valid subsisting orders.
 - b) Whether the 9th, 10th and 11th Respondents were served with the orders issued on 27th September 2022.
 - c) Whether the 9th, 10th and 11th Respondents disobeyed the said orders.



17. The *Black's Law Dictionary* (9th Edition) defines contempt of Court as follows:-
- “Conduct that defies the authority or dignity of a Court. Because such conduct interferes with the administration of justice, it is punishable usually by fine or imprisonment.”
18. The law guiding the present Application is Order 40 Rule 3(1) of the *Civil Procedure Rules* which reads :-
- In cases of disobedience, or of breach of any such terms, the Court granting an 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.
19. Section 29 of the *Environment and Land Court Act* is clear that :-
- 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.
20. It is also an established principle of law as it was held in the case of *Kristen Carla Burchell v. Barry Grant Burchell*, [supra] cited by the Petitioner, that in order to succeed in civil contempt proceedings, an 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.
21. There is no doubt that the Petitioner filed an application to inter alia restrain the 9th, 10th and 11th Respondents and or their agents, servants or employees from dealing with the suit property pending the determination of the main suit. This court pronounced itself on 23rd September 2022 stating that *status quo* be maintained. The orders issued on 27th September 2022 were to that effect, that *status quo* be maintained to preserve the substratum of the case pending the determination of the main suit.
22. The Petition is yet to be heard and determined, it is therefore clear that there subsists a valid order to maintain *status quo* of the suit property. Suffice it to say that the order is clear and unambiguous.
23. As per the record, the ruling was delivered electronically via email to the Parties' advocates on record. As at that date, the firm of George Kariuki and Associates had already come on record for the 9th, 10th and 11th Respondents vide a Notice of change of advocates dated 14th March 2022. That notwithstanding, the Petitioner deposed that his advocates served the orders to the Respondents' former counsel as per the affidavit of service dated 17th November 2022.
24. The Petitioner also deposed that he served the 11th Respondent via WhatsApp on 18th November 2022 upon realizing the Respondents' actions on the suit property. Having perused the documents annexed to the Petitioner's affidavits, I am satisfied that the 11th Respondent was aware of the orders on 18th November 2022, three days before the present application was filed and therefore hold that the Respondents had knowledge of the terms of the Court's Order.
25. The issue is what was the *status quo* when the order was granted? The ordinary English interpretation of *status quo* is the present situation, the way things stand as at the time the order is made, the existing state of things. It cannot therefore relate to the past or future occurrences or events.
26. The *Black's Law Dictionary*, Butter Worths 9th Ed, defines *status quo* as a Latin word which means “the situation as it exists”. In my understanding, an order for *status quo* merely leaves the situation or things as they stand pending the hearing of a suit.



27. In the present case, the situation on the suit property was that the 9th, 10th and 11th Respondents had already moved in to the suit property even as in the year 2020 when this Petition was filed. The Petitioner himself averred that the Respondents have continued with construction works, meaning that the said Respondents have been in occupation of the suit property. Indeed that occupation prompted filing of the present Petition. In the circumstances, I am not persuaded that the Respondents have disobeyed the court orders issued on 27th September 2022. In any case, the photographs attached by the Petitioner do not substantiate his allegations against the Respondents.
28. The upshot is that the Notice of motion dated 21st November 2022 is unmerited and therefore dismissed with costs.

DATED, SIGNED AND DELIVERED AT MALINDI THIS 4TH DAY OF JULY 2023.

M.A. ODENY

JUDGE

NB: In view of the Public Order No. 2 of 2021 and subsequent circular dated 28th March, 2021 from the Office of the Chief Justice on the declarations of measures restricting court operations due to the third wave of Covid-19 pandemic this Ruling has been delivered online to the last known email address thereby waiving Order 21 [1] of the Civil Procedure Rules.

