



**Barasa v Omusugu & another (Environment & Land Case
E016 of 2021) [2023] KEELC 20636 (KLR) (11 October 2023) (Ruling)**

Neutral citation: [2023] KEELC 20636 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT BUSIA
ENVIRONMENT & LAND CASE E016 OF 2021
BN OLAO, J
OCTOBER 11, 2023**

BETWEEN

PASKALIA ASOKONI BARASA PLAINTIFF

AND

PETER PANYAKO OMUSUGU 1ST DEFENDANT

FRANCIS OMUSUGU 2ND DEFENDANT

RULING

1. By a ruling delivered on 28th February 2022, this Court [A. Omollo J] granted the Plaintiff herein an order of injunction restraining the Defendants by their servants, workers, agents or any other person(s) claiming through them from cutting trees, constructing on, cultivating, planting on, fencing off, ploughing or in any manner whatsoever interfering with the land parcels No South Teso/Apokor/4758 and 4759 (the suit land) pending the hearing and determination of this suit. That order was extracted on 8th April 2022 and signed by the Deputy Registrar.
2. On the same day that the ruling was delivered, the Judge directed the parties to go before the Deputy Registrar for pre-trial on 23rd March 2022. That is yet to be conducted and the main suit therefore remains un-determined.
3. The Plaintiff has now approached this Court vide his Notice of Motion dated 4th July 2023 in which he seeks the following orders:
 1. That the Defendants be held as being in contempt of a Court order dated 8th April 2022.
 2. That if so found, the Defendants be committed to civil jail for a period not exceeding six (6) months and/or be fined an amount not exceeding Kshs.200,000.
 3. That costs of this application be borne by the Defendants.



4. The gravamen of the application is that by its ruling delivered on 28th February 2022, an order of temporary injunction was issued by this Court restraining the Defendants from interfering with the suit land pending the hearing and determination of this suit. However, although the order was personally served upon the Defendants, they have continued to alienate the suit land by selling it to third parties which conduct diminishes the dignity of this Court.
5. When the application came up before me on 4th October 2023 for directions, Mr Odera counsel for the Applicant informed the Court that although the application had been served upon the Defendant's counsel on 23rd September 2023, there was no response. He asked the Court to allow it.
6. Mr Jumba holding brief for Mr Otsiula for the Defendants tried to protest that the application had not been served. However, when confronted with the affidavit of service by Mr Ashioya dated 3rd October 2023 and which confirmed that Mr Otsiula had in fact been served with the application on 23rd September 2023, he changed tact and stated that Mr Otsiula required 7 days to file a response.
7. I did not find it meritorious to allow more time to file a response given the fact that Mr Otsiula had initially denied being served. I therefore directed that a ruling would be delivered by way of electronic mail on 9th October 2023.
8. I have considered the application, un-opposed as it is.
9. It is not in dispute that by a ruling dated 28th February 2022, Omollo J issued an order of temporary injunction restraining the Defendants by themselves, their agents, workers, servants or any other person(s) claiming through them from cutting trees, planting on, fencing, ploughing or in any other manner interfering with the suit land pending the hearing of this suit. The judge then directed the parties to have the pre-trial done by the Deputy Registrar on 23rd March 2022. That was not done and the suit has not been heard some twenty (20) months later following the ruling. That means that the temporary injunction has since lapsed. Order 40 Rule 6 of the Civil Procedure Rules provides that:

“Where a suit in respect of which an interlocutory injunction has been granted is not determined within a period of twelve months from the date of the grant, the injunction shall lapse unless for any sufficient reason the Court orders otherwise.” Emphasis mine

The term lapse is defined in Black's Law Dictionary 10th Edition as:

“The termination of a right or privilege because of a failure to exercise it within some time limit or because a contingency has occurred or not occurred.”

Where an order has lapsed, it ceases to have any force of law. It cannot therefore be the subject upon which any contempt proceedings, indeed any judicial proceedings, can be founded. It is extinguished and does not exist in the eyes of the law or equity. It must also be remembered that contempt of Court proceedings are serious matters which can lead to imprisonment. A person may therefore be fined or imprisoned for a clear violation of an existing order. That the order of injunction issued on 28th February 2022 and extracted on 8th April 2022 lapsed is settled by precedent. In the case of *Erick Kimingichi Wapang'ana & Another -v- Equity Bank Ltd & another C.A.* Civil Appeal No 23 of 2015 eKLR, the Court of Appeal said in relation to Order 40 Rule 6 of the [Civil Procedure Rules](#) that:

“Rule 6 of Order 40 was made in clear cognizance of the preceding Rules in that order. It therefore follows that notwithstanding the working of any of interlocutory injunction, the same lapses if the suit in which it was made is not determined within twelve months unless,



as the Rule further provides, for any sufficient reason the Court orders otherwise.” Emphasis mine.

It follows, therefore, that although the order of injunction was ordered to the effect that it would pend “the hearing and determination of this suit,” it was incumbent upon the Plaintiff to ensure that this suit was heard and determined within twelve (12) months or, alternatively that the order of temporary injunction was extended. None of the above was done.

10. The up-shot of all the above is that the Notice of Motion dated 4th July 2023 is devoid of merit. It is dismissed with no orders as to costs.

BOAZ N. OLAO

JUDGE

11TH OCTOBER 2023

RULING DATED, SIGNED AND DELIVERED AT BUSIA ON THIS 11TH DAY OF OCTOBER 2023 BY WAY OF ELECTRONIC MAIL.

BOAZ N. OLAO

JUDGE

11TH OCTOBER 2023

