



Equity Bank (K) Limited v Chief Land Registrar & another; Gatheca (Interested Party) (Environment and Land Miscellaneous Application 69 of 2017) [2023] KEELC 20579 (KLR) (5 October 2023) (Ruling)

Neutral citation: [2023] KEELC 20579 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION 69 OF 2017
JG KEMEL, J
OCTOBER 5, 2023

BETWEEN

EQUITY BANK (K) LIMITED APPLICANT

AND

CHIEF LAND REGISTRAR 1ST RESPONDENT

ERICK KAGONDU MURATHIMI 2ND RESPONDENT

AND

LYDIA WANJIKU GATHECA INTERESTED PARTY

RULING

1. The plaintiff/applicant filed the instant application dated 21/1/2020 seeking orders that;
 - a. Spent.
 - b. That the applicant herein Equity Bank Kenya Limited be allowed to institute contempt proceedings against the 1st respondent for having breached and interfered with the Honourable court orders herein dated the 16/11/2018.
 - c. That the 1st respondent be summoned before this Honourable court to explain why he should not be arrested and committed to Civil jail for a period of six months or as deemed fit by the court for having breached the aforesaid court orders.
 - d. That the court be pleased to order the 1st respondent to pay costs of the application in any event.
2. The application is based on the grounds thereat and supporting affidavit of even date of Samuel Wamaitha, the Senior Legal Officer of the applicant. He deponed that the applicant is the registered as chargor of the suit land IR No 131328 LR No. 24053/3 (the suit land), which title is held as security



- by the bank. That the Interested Party is the legal owner of the suit land. That the charge was registered on the 31/12/2015 as entry No 132328/2 at the Lands Registry. That following the registration of the charge monies were disbursed to the borrower, the 2nd respondent.
3. It was further averred that on the 16/11/2018 the court issued orders against the 1st respondent directing it to cancel the encumbrance registered as entry No 131328/2 in relation to the suit land. That despite booking the said court orders on the 21/2/2019 for registration, the 1st respondent completely refused and or failed to obey the said orders and therefore the 1st respondent is guilty of contempt.
 4. That the interested party has been prejudiced as she cannot make any transaction in relation to the suit land and has threatened to sue the applicant for the delay in registering the orders. That so as not to discredit the court, the applicant urged that the application be granted.
 5. Despite service upon the respondents having been made on the 20/4/2023 the respondents have failed to rebut the application.
 6. The applicant submitted that despite the orders of the court having been duly served upon the 1st respondent, the 1st respondent failed to comply. That the court order was booked for registration on the 21/2/2019. That following the delay in registering the order, the applicant wrote to the 1st respondent on the 17/6/2019 inquiring on the cause of delay. That despite many requests the 1st respondent has refused to obey the orders of the court.
 7. Further, it was submitted that the orders of the court issued on the 16/11/2018 were clear unambiguous and binding on the 1st respondent. The 1st respondent was aware of the orders and notwithstanding acted in deliberate breach of the orders.
 8. The key issue for determination is whether the applicant is entitled to the orders sought.
 9. Black's Law dictionary 10th Edition defines contempt as follows;

“Contempt is a disregard of, disobedience to, the rules, or Orders of a legislative or judicial body, or an interruption of its proceedings by disorderly behaviour or insolent language, in its presence or so near thereto as to disturb the proceedings or to impair the respect due to such a body.”
 10. Section 29 of the Environment and Land court Act provides 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.
 11. Section 63(c) of the Civil Procedure Act provides as follows;-

“In order to prevent the ends of justice from being defeated, the court may, if it is so prescribed —

 - (a)
 - (b)
 - (c) grant a temporary injunction and in case of disobedience commit the person guilty thereof to prison and order that his property be attached and sold.”



12. Order 40 rule 3 of the [Civil Procedure Rules](#) provides the consequences of contempt which includes in case of disobedience or breach of any terms of court order, an order for 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 6 months. This goes to show that the punishment for contempt is not light, other than attachment of the property of the guilty contemnor, the liberty of the contemnor is also at stake.
13. The standard of proving contempt of court was aptly discussed in the case of [Gatharia K. Mutikika Vs. Babarini Farm Limited](#) [1985] KLR 227 that 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 so because the liberty of the alleged contemnor is usually at stake and the applicant must prove willful and deliberate disobedience of the court order, if he were to succeed.
14. In the case of [Republic v Attorney General & Another Exparte Mike Maina Kamau](#) [2020] eKLR the court citing with approval the High court case of South Africa in the case of *Kristen Carla Burchell Vs. Barry Grant Burchell*, Eastern Cape Division Case No. 364 of 2005 case of outlined the ingredients for proving contempt of court that an applicant for contempt of court should prove that the terms of the order were clear and unambiguous and binding on the defendant; that the defendant had knowledge or proper notice of the orders; that he acted in breach of the terms of the order and that his conduct was deliberate.
15. In this case the court issued the orders in this matter to the effect that judgement is entered for the Plaintiff and the Interested Party and an order be made directing the 1st respondent to cancel the encumbrance registered as entry No 131328/2 Land Reference No. 24053/3.
16. It is the applicant's case that the said order was brought to the attention of the 1st respondent by way of booking for registration the said order in the register. A booking form dated the 22/2/2019 has been annexed in evidence. Alongside the booking form is the letter dated the 17/6/2019 addressed to the Land Registrar, Nairobi complaining of the delay in registering the said orders on the suit land.
17. It is not clear from the preceding paragraph how the orders of the court were served upon the 1st respondent. The 1st respondent is the Chief Land Registrar but the letter complaining about the delay is addressed to the Land Registrar, Nairobi. The applicant has not demonstrated that the 1st respondent was duly served with the orders and elected to disobey the same. Given the severity of contempt of court orders, it behooved the applicant to serve the orders. Moreover it is unclear who the contempt proceedings are brought against, is it the Chief Land Registrar or the Land Registrar? In the state in which the proceedings are brought any orders to be issued by the court would be impractical to implement hence would have been issued in vain.
18. For the above reasons the application is found to be devoid of merit. It is struck out with no orders as to costs.
19. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA THIS 5TH DAY OF OCTOBER, 2023 VIA MICROSOFT TEAMS.

J G KEMEI

JUDGE

Delivered online in the presence of:

Ms. Karimi for applicant



Interested Party – Absent but served

1st and 2nd respondents – Absent but served

court Assistants – Phyllis & Lilian

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