



**Kariuki & another v Njau & another (Environment & Land Case
232 of 2010) [2023] KEELC 20787 (KLR) (12 October 2023) (Ruling)**

Neutral citation: [2023] KEELC 20787 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 232 OF 2010**

**AA OMOLLO, J
OCTOBER 12, 2023**

BETWEEN

ROSEMARY NJERI KARIUKI 1ST PLAINTIFF

FRANCIS MBUGUA KAMAU 2ND PLAINTIFF

AND

JOSEPH MWAURA NJAU 1ST DEFENDANT

**WANJIRU MATHERI, TABITHA WANGUI GACHOMBA, TERESIAH
WANJIRU WAMAE & KANYI KURIA (SUED AS THE TRUSTEE FOR AND
ON BEHALF OF MWICHOKANIRIA ALIAS MWICHOKANIRIRIA WOMEN
GROUP) 2ND DEFENDANT**

RULING

1. The 1st Plaintiff filed an application dated 25th October 2022 supported by an affidavit and further affidavit both sworn by Joseph Mwaura Njau seeking for the following orders;
 1. That the Honourable Court be pleased to order the issuance of summons to Francis Mbugua Kamau to appear personally before this honorable court and show cause why he should be cited for contempt and committed to civil jail for such a term or condemned to such other penalties as the court may deem fit.
 2. That the Honourable Court be pleased to cite Francis Mbugua Kamau for contempt of court or commit him to civil jail for a term of 6 months and or order him to immediately purge the on-going contempt of court by releasing to the 1st Defendant Joseph Mwaura Njau who is the secretary of the second defendant the deed plans in his possession or in following a survey and subdivision exercise that was carried out by F.O Oduor licensed surveyor in respect of LR. No.8226/21.



3. That in the event that the contemnor does not purge the ongoing contempt of court the O.C.S Ruiru Ploice Station be strictly directed by this Honourable Court to personally arrest Francis Mbugua Kamau without seeking the direction, approval or permission of any other officer in the national police or any other person whatsoever and to present the said Francis Mbugua Kamau before this Honourable court for the purpose of his committal to civil jail.
4. That costs of this application be granted to the applicant.
2. The motion was based on the grounds that the 2nd Plaintiff, the contemnor, in this suit whose judgement was delivered on 5th May 2020 was a purchaser of a plot in LR No.8226/21 herein referred to as “the land” which is in the hands of the 2nd Defendant as the legal owner. That the land was surveyed by the 2nd Defendant’s surveyor but the deed plans got lost at the survey of Kenya after the same were submitted to the Director of Surveyors for approval.
3. The Applicant stated that the 2nd Plaintiff wrongly intercepted the said survey works through their surveyor F.O Oduor and were issued with the deed plans that are meant for processing title deeds to individual buyers of the surveyed plots and the court ordered the 2nd Plaintiff to surrender to the secretary of the 2nd Defendant within 30 days from judgement date all the deed plans in his possession or in the possession of the group that he leads known as Plot Owners and subdivision exercise that was carried out by F.O Oduor licensed surveyor in respect of the land.
4. The Applicant stated that the court further ordered that upon receipt of the said deed plans, the 2nd Defendant which has the possession of the original certificate of the land was to take immediate steps to process titles for the persons who have acquired land within the land including the 2nd Plaintiff.
5. That the court also ordered that the 2nd Defendant was at liberty to levy such fees from the plot owner as may be necessary for the processing of the said titles such as legal and statutory charges, handling charges and any other disbursements that may be incurred in the entire process and that incase a dispute arises over the quantum of chares or fees levied by the 2nd Defendant, the dispute shall be resolved by County Director for Social Development of Social Development Coordinator, Kiambu County, whose decision on the matter shall be final.
6. The Applicant stated that after the judgement was delivered, on 20th August 2020, the defendant advocates wrote to the 2nd Plaintiff’s advocates asking for the deed plans but only a partial compliance was done. That the contemnor is using the office of Ministry of Public Service, Gender, Senior Citizens Affairs and Special Programmers Department of Social Development, Kiambu Sub-County and continues to disobey the court order and further delay/complicate the issuance of title deeds to *bonafide* purchasers.
7. The Applicant contended that the contemnor collected funds from plot owners an act that the court rendered illegal as they were not the owners of the land hence has no right to hold on the deed plans.
8. The 2nd Plaintiff, Francis Mbugua Kamau filed a replying affidavit sworn on 10th March 2023 confirming that indeed the Decree of the court indicated that he surrenders to the Secretary of the 2nd Defendant all the deed plans in his possession. He deposes that the order did not direct him to surrender to the 1st Defendant as he only purports to act as the Secretary of a women group without a formal meeting appointing him. Further, that the decree of the court does not affirm him as the secretary. He averred that he surrendered the deed plans in his possession on 16th December 2022 to the 2nd Defendant’s advocates.



9. The 2nd Plaintiff deposed that he held the deed plans for the members who had not paid for the survey work and titles amounting to a sum of Kshs 308,000/- because the members who had made the full payments collected their deed plans. Also, he contended that the 2nd Defendant would therefore be receiving deed plans without acknowledging the payments made to process the same thus unjustly benefitting from his goodwill and finances and his attempt to involve the Department of Social services to intervene was only aimed at recovering his funds paid on behalf of the plot owners.
10. The Applicant filed submissions dated 3rd April 2023 stating that the 2nd Plaintiff is in contempt of the court order that he should surrender the deed plans in his possession and also a further contempt is contained in his statement that the court did not order him to surrender the plans to the 1st Defendant. He submitted that as indicated in the 2nd Plaintiff's letter "FMK2", he withheld his own deed plan for his own use in total contempt of the court order.
11. In support of his motion the Applicant cited the case of *Gulabchand Popatlal Shah & Another* Civil Application No.39 of 1990(unreported) and *Hadkinson vs Hadkinson* [1952] 2 ALL ER 567 which were quoted in *Econet Wireless Kenya Limited vs the Minister for Information & Communication of Kenya and Communications Commission of Kenya* Nairobi Heem/SC Application 1640/2003 to submit that the uncompromising nature of obligation of every person to obey a court order even in cases here they believe it to be irregular or even void.
12. Further, the Applicant submitted that the elements needed for an order of contempt to succeed have been proven which are; that there was no ambiguity as to the terms of the order, the contemnor had knowledge of the terms and acted in breach of the order in a deliberate manner.
13. A decree was issued in favour of the Defendants in which the 2nd Plaintiff was ordered to surrender all the deed plans in his possession or in the possession of the group that he leads called plot owners to the secretary of the 2nd Defendant within thirty (30) days from the date the judgement was issued.
14. The 2nd Plaintiff argues that he was not in possession of all the deed plans as some of the members of the group had taken theirs and that he was only holding for those the members who had not paid for the survey work. He also stated that he cannot surrender the deed plans to the 1st Defendant as he is not the secretary of the 2nd Defendant and that surrender of the said deed plans without acknowledging the monies he had expended will unjustly benefit the 2nd Defendant.
15. The issue for determination is whether the contemnor is in contempt of court. Contempt of court consists of conduct which interferes with the administration of justice or obstructs or distorts the course of justice. It consists of a failure to comply with a judgment or order of a court or breach of an undertaking of court. In the case of *Sam Nyamweya & Others v Kenya Premier League Ltd and Others* [2015] eKLR Justice Aburili stated that: -

“Contempt of court is constituted by conduct that denotes wilful defiance of or disrespect towards the court or that wilfully challenges or affronts the authority of the court or the supremacy of the law, whether in civil or criminal proceedings.”
16. The elements of civil contempt were laid out in the text titled Contempt in Modern New Zealand that was cited in *North Tetu Farmers Co. Ltd v Joseph Nderitu Wanjohi* [2016] eKLR as follows: -

“There are essentially four elements that must be proved to make the case for civil contempt. The applicant must prove to the required standard (in civil contempt cases which is higher than civil cases) that:-



- (a) the terms of the order (or injunction or undertaking) were clear and unambiguous and were binding on the defendant;
- (b) the defendant had knowledge of or proper notice of the terms of the order;
- (c) the defendant has acted in breach of the terms of the order; and
- (d) the defendant's conduct was deliberate.

17. It is undisputed that the court granted orders in the judgement delivered on 5th May 2020. The full orders are as follows;

1. A permanent injunction is issued restraining the defendants, their servants and/or agents from interfering in any manner whatsoever with the Plaintiffs' use and possession of all that parcel of land known as Plot No.1 exercised from L.R No.8226/21 save as may be authorized by law on account of the 2nd Defendant's ownership of the legal interest in L.R No.8226/21 prior to the completion of the subdivision thereof.
2. I declare that the 2nd Plaintiff is the beneficial owner of Plot No.1 exercised from L.R No.8226/21.
3. The 2nd Plaintiff shall surrender to the secretary of the 2nd Defendant within thirty (30) days from the date hereof all the deed plans in his possession or in possession of the group that he leads known as Plot Owners that were prepared following a survey and subdivision exercise that was carried out by F.O Oduor Licensed Surveyor in respect of L.R No.8226/21.
4. Upon receipt of the said deed plans, the 2nd Defendant which has in its possession the original certificate of title for L.R No.8226/21 shall take immediate steps to process titles for the persons who have acquired land within L.R No.8226/21 including the 2nd Plaintiff subject as aforesaid. The 2nd Defendant shall be at liberty to levy such fees from the plot owners as may be necessary for the processing of the said titles such as legal and statutory charges, handling charges and any other disbursements that may be incurred in the entire process. In case a dispute arises over the quantum of charges or fees levied by the 2nd Defendant, the dispute shall be resolved by the County Director for Social Development or Social Development Coordinator, Kiambu County, whose decision on the matter shall be final.
5. Each party shall bear its own costs of the suit and the counter-claim.

18. It is also not disputed that the above outlined orders are clear and unambiguous and also that all parties had knowledge of them. The order in subject of contempt is number 3 which order clearly directed that the 2nd Plaintiff should surrender all the deed plans in his possession or in the possession of the group he led called Plot owners to the secretary of the 2nd Defendant within 30 days from the date of the judgement. The 2nd Plaintiff failed to fully comply with the order making it impossible for Order 4 to be carried out which order was dependent on compliance of Order 3.

19. It is therefore my holding that the 2nd Plaintiff, Francis Mbugua Kamau is in disobedience of the court as it was not open to him to choose how to comply with the said order. For instance, he deposes that the decree did not specify that 1st Defendant is a secretary of the 2nd Defendant which was not an issue raised in decree. Further, he was putting a condition that the 2nd defendant would receive the deed plans without acknowledging the payments he made for the process.

20. There is evidence put forth by the Applicant that indeed the 2nd Plaintiff was unwilling to comply. For instance, when he deposes that the 1st defendant was purporting to be the secretary of the 2nd defendant



an issue that did not arise in the decree. Further in paragraph 6 of the Replying Affidavit he was putting conditions that the 2nd defendant would receive the deed plans without acknowledged payments he made for the process. This demonstrates the hesitation by the 2nd plaintiff to comply with the decree as issued.

21. In the result, I find merit in the application dated 25th October 2022 and grant all the orders sought

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 12TH DAY OF OCTOBER, 2023

A. OMOLLO

JUDGE

