



Lemein v Nabaala; Mutiri & 10 others (Interested Parties) (Environment and Land Case Civil Suit E001 of 2021) [2023] KEELC 20353 (KLR) (4 October 2023) (Ruling)

Neutral citation: [2023] KEELC 20353 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAROK
ENVIRONMENT AND LAND CASE CIVIL SUIT E001 OF 2021
CG MBOGO, J
OCTOBER 4, 2023**

BETWEEN

JOSEPH KARIA LEMEIN PLAINTIFF

AND

JOHN RIANOI NABAALA RESPONDENT

AND

NGUNJIRI MUTIRI & 10 OTHERS INTERESTED PARTY

RULING

1. Before this court for determination is the notice of motion application dated June 13, 2023 filed by the plaintiff/applicant and is expressed to be brought under section 5(1) of the *Judicature Act* and sections 3A and 63(e) of the *Civil Procedure Act* seeking the following orders: -
 1. Spent.
 2. That the defendant/respondent John Riano Nabaala be summoned to show cause why he should not be committed to civil jail for disobeying court orders.
 3. That the defendant/respondent be committed to civil jail for a period of six months for contempt of court orders.
 4. That alternatively the court impose a fine of Kshs 1,000,000 upon the contemnor John Riano Nabaala.
 5. That the costs of this application be borne by the defendant/respondent.
2. The application is premised on the grounds inter alia that the defendant/respondent violated valid and served court orders in this matter and unless this court intervenes and stamps its authority, the contemnor shall not cease from violating this order.



3. The application is supported by the affidavit of the plaintiff/applicant sworn on even date. In his affidavit, the plaintiff/applicant deposed that *vide* the orders of this court delivered on March 22, 2022, the defendant/respondent was ordered to reopen the public access road traversing through parcel No Cis-Mara/Enabelbel/ Enegetia/ 721, 193,345,192 and 191. That the court issued the said orders which are still valid and no orders to the contrary have been issued by any court.
4. The plaintiff/applicant further deposed that the court order was served upon the defendant's/ respondent's advocate and there was no compliance so far and to protect the dignity of this court, the court ought to reign in on the contemnor by committing him to prison.
5. The application was opposed by the replying affidavit of the defendant/respondent sworn on June 30, 2023. The defendant/respondent deposed that he filed a suit at the Magistrates' Court in ELC Case No 104B of 2020 against the 10th and 11th interested parties wherein he obtained orders on December 2, 2020 to fence and close the non-existent road on parcel No Cis-Mara/Enabelbel-Enegetia/721 which is his parcel of land till the hearing and determination of the main suit. That when the application dated December 17, 2020 was fixed for inter-partes hearing, the plaintiff/applicant moved to this court and filed the instant case without disclosing that there is a similar/related case before the lower court which is an abuse of the court process.
6. Further, the defendant/respondent deposed that the ruling referred to by the plaintiff/applicant mentions five parcels of land with only one belonging to him and the rest belonging to the interested parties who have not been cited for contempt for the simple reason that there is no road across to the parcels of land including his. In addition, that the application coming late in the day is a means by the plaintiff/applicant to delay the final hearing and disposal of the case before the lower court.
7. The plaintiff/applicant filed a further affidavit in response thereto which was sworn on August 9, 2023 which constitutes of averments similar to those raised in his supporting affidavit.
8. The application was canvassed by way of written submissions. On the August 9, 2023 the plaintiff/ applicant filed written submissions of even date and raised the following issues for determination: -
 - a. What are the parameters for contempt of court and whether the contemnors and the respondents have indeed shown contempt to the court judgments.
 - b. Who bears costs of this application.
9. On the first issue, the plaintiff/applicant while relying on the case of *Samuel M.N Mweru & others v National Land Commission & 2 others* [2020] eKLR submitted that the terms of the judgment were clear, the defendants/respondents had proper knowledge of the terms, the defendants/respondents have acted in breach of the terms of the order and that the defendants/respondents willfully and deliberately failed to comply with the judgment/decree of the court. The plaintiff/applicant further submitted that it is a matter of necessity that the defendants/respondents be cited for contempt and punished accordingly. The plaintiff/applicant relied on the case of *Teachers Service Commission v Kenya National Union of Teachers & 2 others* [2013] eKLR.
10. The plaintiff/applicant further submitted that had the contemnors and defendants/respondents complied with the orders of the court, the instant application would not be necessary and for this reason, he is entitled to costs.
11. On October 2, 2023, the defendant/respondent filed undated written submissions and raised three issues for determination as follows: -
 - a. Is the applicant guilty of non-disclosure of the material facts to the case.



- b. Whether the applicant's acts amount to abuse of court process.
 - c. Whether the defendant is in contempt of the court orders.
12. On the first issue, the defendant/respondent submitted that the plaintiff/applicant obtained the orders by concealing to this court the fact that there was already in place a valid court order issued by the court which is a serious issue which the court can set aside injunctive orders. The defendant/respondent relied on the case of *Signature Tours & Travel Limited v National Bank of Kenya Limited* [2017] eKLR.
 13. The defendant/respondent further submitted that the injunction sought by the plaintiff/applicant, being an equitable remedy, should not have issued in his favour as demonstrated by his conduct that he was undeserving of the equitable relief. The defendant/respondent relied on the case of *Sceneries Limited v National Land Commission* [2017] eKLR. Further, that the application amounts to abuse of court process for failing to disclose the existence of a similar matter before the lower court. Reliance was placed in the case of *Heritage Insurance Company Limited v Patrick Kasina Kisilu* [2015] eKLR.
 14. I have carefully analysed and considered the application, replies thereof and the written submissions filed by both parties and the issue for determination is whether the respondent is in contempt of the orders of this court.
 15. Contempt of court is that conduct or action that defies or disrespects authority of court. *Black's Law Dictionary* 9th Edition, defines contempt as:

The act or state of despising; the conduct of being despised. Conduct that defies the authority or dignity of a court or legislature. Because such conduct interferes with the administration of justice.
 16. Properly put, contempt is conduct that impairs the fair and efficient administration of justice. Section 5 of the *Judicature Act* confers jurisdiction on the superior courts to punish for contempt. The reason why courts punish for contempt is to uphold the dignity and authority of the court, ensure compliance with directions of the court, observance and respect of due process of law, preserve an effective and impartial system of justice, and maintain public confidence in the administration of justice by courts. Without sanctions for contempt, there would be a serious threat to the rule of law and administration of justice. For a party to be cited for contempt, he must have violated and or disobeyed an order that was directed at him.
 17. In this case, the plaintiff/applicant obtained orders of this court against the defendant/respondent *vide* a ruling delivered by Kullow, J on March 22, 2022. In its ruling, the court issued orders directing the defendant/respondent to reopen the public access road through parcels No 721,193,345,192 and former parcel No 191. The application before court seeks to have the defendant/respondent cited for contempt of this court's order and be committed to civil jail or in the alternative, fined a sum of Kshs 1,000,000/-.
 18. Dealing with the question of contempt in *Econet Wireless Kenya Ltd v Minister for Information & Communication of Kenya & another* [2005] KLR 828, Ibrahim, J. (as he then was), underscored the importance of obeying court orders, stating:

"It is essential for the maintenance of the rule of law and order that the authority and the dignity of our courts are upheld at all times. The Court will not condone deliberate disobedience of its orders and will not shy away from its responsibility to deal firmly with proved contemnors. It is the plain and unqualified obligation of every person against whom



an order is made by court of competent jurisdiction, to obey it unless and until the order is discharged. The uncompromising nature of this obligation is shown by the fact that it extends even to cases where the person affected by the order believes it to be irregular or void.” (emphasis)

19. 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 because the liberty of the subject is usually at stake and the plaintiff/applicant must prove willful and deliberate disobedience of the court order, if he were to succeed. This was stated in Gatharia K. *Mutikika v Babarini Farm Limited* [1985] KLR 227, that:

“A contempt of court is an offence of a criminal character. A man may be sent to prison. It must be proved satisfactorily.... It must be higher than proof on a balance of probabilities, almost but not exactly, beyond reasonable doubt. The standard of proof beyond reasonable doubt ought to be left where it belongs, to wit criminal cases. It is not safe to extend it to offences which can be said to be quasi-criminal in nature.

However, the guilt has to be proved with such strictness of proof as is consistent with the gravity of the charge... Recourse ought not to be had to process of contempt of court in aid of a civil remedy where there is any other method of doing justice. The jurisdiction of committing for contempt being practically arbitrary and unlimited, should be most jealously and carefully watched and exercised with the greatest reluctance and the greatest anxiety on the part of the judge to see whether there is no other mode which is not open to the objection of arbitrariness and which can be brought to bear upon the subject... applying the test that the standard of proof should be consistent with the gravity of the alleged contempt... it is competent for the court where contempt is alleged to or has been committed, and or an application to commit, to take the lenient course of granting an injunction instead of making an order for committal or sequestration, whether the offender is a party to the proceedings or not.”

20. Due to the gravity of consequences that flow from contempt proceedings, it is proper that the order be served and the person cited for contempt should have had personal knowledge of that order. The defendant/respondent in this case has not denied knowledge and existence of the orders of the court. However, he raised issues of material non-disclosure of the existence of a similar case that is pending hearing and determination before the lower court. The defendant/respondent in paragraph 4 of his replying affidavit alluded to the fact that he obtained a court order on December 2, 2020 to fence and close the non-existent road on parcel No Cis-Mara/Enabelbel-Enenetia/721 pending the hearing and determination of the suit. I have looked at the said orders issued on December 2, 2020. Indeed the defendant/respondent obtained injunction orders against the defendant/respondent in ELC Case No 104B of 2020 before the lower court. However, at this time, the plaintiff/applicant was not a party to the suit. Moreover, the said orders were clear to the effect that the injunction order could only last for four months. That period has lapsed.
21. In my view, the defendant/respondent cannot claim existence of another case to be his reason for refusal to comply with court orders. In any case, no further evidence has been adduced to show that the orders were extended pending the hearing and determination of the main suit.
22. Arising from the above, I find the defendant/respondent in contempt of the orders of this court. A fine of Kshs 200,000/- is hereby imposed upon the respondent to be paid within seven days from the date of the ruling hereof failure to which the respondent will be committed to civil jail for a term of sixty days. It is hereby ordered.



DATED, SIGNED & DELIVERED VIRTUALLY ON THIS 4TH DAY OF OCTOBER, 2023.

HON. MBOGO C.G.

JUDGE

