



Sikalieh (Suing as the Chairman of Karen Langata District Association) v Kamenwa & 2 others (Environment & Land Petition E056 of 2022) [2023] KEELC 20549 (KLR) (5 October 2023) (Ruling)

Neutral citation: [2023] KEELC 20549 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND PETITION E056 OF 2022
EK WABWOTO, J
OCTOBER 5, 2023**

BETWEEN

SAMORA SIKALIEH (SUING AS THE CHAIRMAN OF KAREN LANGATA DISTRICT ASSOCIATION) PETITIONER

AND

FREDRICK CHEGE KAMENWA 1ST RESPONDENT

WATER RESOURCES AUTHORITY 2ND RESPONDENT

WATER SERVICES REGULATORY BOARD 3RD RESPONDENT

RULING

1. On 20th December 2022 the Court granted an interim injunction restraining the 1st Respondent, his servants and agents from selling water on a commercial basis contrary to the domestic permit issued by the Water Resources Authority. Additionally, on 16th February 2023, the Court granted orders to the effect that the 2nd and 3rd Respondents were restrained from issuing the 1st Respondent with a water permit or license to sell water abstracted from his borehole on a commercial basis.
2. Subsequently thereafter and pursuant to the grant of the aforementioned orders, the Petitioner moved this court vide an application dated 2nd March 2023 seeking the following orders:
 - i. Spent...
 - ii. The Court issues summons to Fredrick Chege Kamwene to show cause why he should not be punished for contempt of court and punished in accordance with Section 29 of the *Environment and Land Court Act* failing to obey the orders of 20th December 2022 and 16th February 2023.



- iii. The 1st Respondent do file under oath within 3 days of the Court order all the readings from the measuring device submitted to the 2nd Respondent in respect of the domestic permit No WRMA/30/NRB/3AA/15040/G in accordance with Form WRA 015 set out in the Thirteenth Schedule of the *Water Resources Regulations*, 2021 the following:
 - a. The daily water meter readings and/or the total water consumption between 20th December 2022 and 2nd March 2023.
 - b. Submit records showing the number of water bowers and the registration particulars that have been collecting water on a daily basis between 20th December 2022 and 16th February 2023 and 17th February 2023 and 1st March 2023 for sale on a commercial basis.
 - c. Copies of all invoices and receipts issued to each water bowser in respect of each commercial sale of water per truck.
- iv. The 2nd Respondent do forthwith take readings of the quantity water used by the 1st Respondent in respect of the domestic permit no. WRMA/30/NRB/3AA/15040/G between 20th December 2022 and 2nd March 2023 and file the report in court within 3 days of taking the readings in accordance with Regulation 87(3) of the *Water Regulations* 2021 and verify that the 1st Respondent's measuring device is accurate
- v. The court be pleased to order the 2nd and 3rd Respondents to forthwith seal the borehole operated pursuant to the domestic permit no. WRMA/30/NRB/3AA/15040/G issued to the 1st Respondent on account of contempt of court pending determination of the Petition
- vi. The court do order the OCS Karen Police Station be ordered to arrest Fredrick Chege Kamenwe to be produced to court forthwith in the event he refuses to attend court with his advocate.
- vii. Any other relief that the Court may deem in the interests of justice.
- viii. Costs be awarded to the Applicant.

3. The Application was accompanied by a supporting affidavit of Samora Sikalieh and was premised on the following main grounds:

- a. The 1st Respondent had installed water pipes protruding out of his compound therefore selling borehole water commercially and was in contempt of court orders given on 20th December 2022 and 16th February 2023.
- b. The 1st Respondent had knowledge of the Court orders through his advocate on record and there was no legal excuse for failure to adhere to the said orders.
- c. There has been adverse inference by the failure of the 1st Respondent to reply to letters of the Petitioner.
- d. There is prevailing drought and rapid depletion of the aquifer.



- e. The Court has jurisdiction to grant orders to safeguard the environment by granting injunctive orders.
4. In support of the application, the Petitioner filed written submissions dated 17th April 2023 in which he relied on the 2nd Respondent's; "Report on the Court Order directing water resources authority and WASREB to undertake a Hydrological Assessment." It was posited that the 1st Respondent was entitled to a maximum of 36,500m³ but as per the report, he had consumed 237,719m³ which was approximately 12 times over the limit. It was argued that this was undoubtedly proof of over-abstraction which the 1st Respondent enjoyed a profit of nearly 83.1 million. Relying on Section 29 of the *Environment and Land Court Act*, it was submitted that the 1st Respondent should be found in contempt and fined to a tune of Ksh 10,000,000. It was also submitted that the 1st Respondent had not denied that motor vehicle KAK 471Z was registered to his son Kevin Kamenwe Chege.
5. The 1st Respondent responded to the application vide a Replying affidavit sworn on 22nd March 2023. It was averred that the Petitioner did not put forth any evidence of sale either within the suit premise or outside. Additionally, the property had been developed with a residential unit yet the Petitioner had not provided photographic evidence of protruding pipes. In response to the evidenced letter of 16th February 2023, it was the 1st Respondent's assertion that motor vehicle KBN 440N was not a bowser but a 38-seater passenger bus coach. In response to the involvement of KAK 471Z, it was argued that no particulars of sightings or sale of water were furnished and therefore such allegations were malicious.
6. Having considered the application herein, the written submissions and rival affidavit, it is evident that the main issue for determination before this Court is whether the 1st Respondent is in contempt of the court orders issued on 20th December 2022 and 16th February 2023 herein.
7. Contempt of court has been defined as conduct which interferes with the administration of justice or impedes or perverts the course of justice. Civil contempt consists of a failure to comply with a judgment or order of a court or breach of an undertaking of court.
8. The grounds to be proved in contempt proceedings, according to G. Bonnie and N. Lowe, "*The Law of Contempt*" 4th Edition, London Butterworth's, 2010, P.129 are:
- a) The terms of the order (or injunction or undertaking) were clear and unambiguous and were binding the Respondent;
 - b) The Respondent had knowledge of a proper notice of the terms of the order;
 - c) The Respondent has acted in breach of the terms of the order; and
 - d) The Respondent's conduct was deliberate.
9. In the case of *Sam Nyamweya & Others vs. Kenya Premier League Ltd and Others* [2015] eKLR it was stated as follows:
- "Contempt of court is constituted by conduct that denotes willful defiance of or disrespect towards the court or that willfully challenges or affronts the authority of the court or the supremacy of the law, whether in civil or criminal proceedings."
10. In the instant application, the Court takes cognizance that the 1st Respondent has not denied personal knowledge of the Court orders. Furthermore, a perusal of the Court records confirms that Counsel for the 1st Respondent was present for delivery of ruling on 20th December 2022 and 16th February 2023. While it is essential for the maintenance of the law and order that the authority and dignity of courts



must be upheld at all times and the court cannot condone deliberate disobedience of its orders. It is not for us to decide when to obey the law. Obedience of the law is not negotiable and is not a question of convenience; It is imperative that we all do. The dignity, and authority of the Court must be protected and it is for this reason that the law provides punishment for those who flagrantly disobey court orders.

11. For the foregoing reasons, this Court finds that the application dated 2nd March 2023 is merited and the same is allowed in the following terms:

- i. The 1st Respondent is found guilty and in contempt of the court orders issued herein on 20th December 2022 and 16th February 2023.
- ii. The 1st Respondent is hereby summoned to attend open court on 16th October 2023 for mitigation and sentencing.
- iii. The 2nd Respondent is directed to forthwith take readings of the quantity of the water used by the 1st Respondent in respect of the domestic permit no. WRMA/30/NRB/3AA/15040/G between 20th December 2022 and 2nd March 2023 and subsequently file the report in court within 30 days of delivery of this ruling.
- iv. Costs of the application will abide the determination of the main Petition.

12. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 5TH DAY OF OCTOBER 2023.

E. K. WABWOTO

JUDGE

