



Wildlife Lodges Limited v County Council of Narok & another (Environment & Land Case 34 of 2019) [2023] KEELC 20538 (KLR) (11 October 2023) (Ruling)

Neutral citation: [2023] KEELC 20538 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAROK
ENVIRONMENT & LAND CASE 34 OF 2019
CG MBOGO, J
OCTOBER 11, 2023**

BETWEEN

WILDLIFE LODGES LIMITED PLAINTIFF

AND

COUNTY COUNCIL OF NAROK 1ST DEFENDANT

WILDERNESS LODGES LIMITED 2ND DEFENDANT

RULING

1. Before this court for determination is the chamber summons application dated June 11, 2010 filed by the plaintiff/applicant and is expressed to be brought under order xxxix rule 2A of the [Civil Procedure Rules](#) and section 3A of the [Civil Procedure Act](#) seeking the following orders: -
 1. Spent.
 2. Spent.
 3. That the Managing Director of the 2nd defendant, one Nayan Patel be detained in prison for a period of six (6) months or such period as this honourable court shall deem necessary for being in disobedience of the orders of this court given on November 6, 2003, December 1, 2003 and February 2, 2004.
 4. That in addition to or in lieu of such committal, the honourable court be pleased to order the sequestration of the properties of the 2nd defendant and the Managing Director of the 2nd defendant, one Nayan Patel for disobedience of the orders of this court given on February 2, 2004.
 5. That the 2nd defendant and its lawyers should not be heard by this honourable court until they purge the contempt of the orders of this court as ordered by Justice Ojwang herein.



6. That the 2nd defendant, one Nayan Patel and its Managing Director be condemned to pay the costs of this application.
2. The application is premised on the grounds that neither the 2nd defendant/respondent nor its Managing Director, have complied with the first, second and third orders of this court and in flagrant disregard thereof, the 2nd defendant's/respondent's Managing Director has placed an order in the Standard Newspaper of June 9, 2010 showing that he does not intend to comply with the same.
3. The application was supported by the affidavit of Pan Lianxue which was sworn on even date. The plaintiff/applicant deposed that the High Court issued three orders and that the import of the three orders are very clear and unambiguous. Further, that the import of the third order was to find the Managing Director of the 2nd defendant/respondent in contempt of the first and second orders and as a consequence, the Managing Director of the 2nd defendant was ordered to hand over the suit premises with its operations to the 1st defendant/respondent who in turn would hand it over to the plaintiff/applicant.
4. The plaintiff/applicant further deposed that it enforced the said orders and took possession of the suit premises and business operations on May 26, 2010 which as at the same date the 2nd defendant/respondent had not complied with the terms of the third orders. Further, that the 2nd defendant/respondent went ahead and placed an advertisement in the Standard Newspaper of June 9, 2010 and by letters dated 3rd and June 4, 2010 wrote to the Kenya Association of Tour Operators and Micato Safaris refuting the orders.
5. In conclusion, the plaintiff/applicant deposed that the import and effect of the third order was to find the Managing Director of the 2nd defendant/respondent guilty of contempt.
6. The application was opposed by the replying affidavit of Nayan Patel, Managing Director of the 2nd defendant/respondent sworn on July 14, 2010. In his response, the 2nd defendant/respondent deposed that he has never been personally served with any of the orders said to have been disobeyed and that the application is an abuse of the court process as the plaintiff/applicant had through chamber summons dated December 10, 2003, sought orders for the committal of certain officers of the council and of the 2nd defendant/respondent on the grounds that they were in contempt of disobeying court orders issued *ex parte* on November 6, 2003 and December 1, 2003.
7. The 2nd defendant/respondent further deposed that the findings and holdings of Ojwang' J (as he then was) acquitted it of the charges of contempt and the repetition by the plaintiff/applicant that he was found in contempt is false. Further, it was deposed that by virtue of rule 10 (b) of the *Constitution (Protection of Fundamental Rule, 2001* ("the 2001 rules"), which were in force then, all further proceedings were stayed and upon revocation of the 2001 rules by the *Constitution (Supervisory Jurisdiction and Protection of the Individual) High Court Practice and Procedure Rules, 2006*, it was open for the plaintiff/applicant under rule 36 to apply to this court for stay to be lifted.
8. The 2nd defendant/respondent further deposed that it did not disobey the orders of the court as the same were stayed as a consequence of the constitutional reference lodged by the 1st defendant/respondent and in any event, the plaintiff/applicant had already taken possession of the suit premises by the time the contempt application was lodged.
9. In response to the advertisements, the 2nd defendant/respondent deposed that it also took out adverts as well as send letters setting out its position informing them that it would move the court for appropriate relief.



10. The application was canvassed by way of written submissions. On February 2, 2023 the plaintiff/applicant filed written submissions dated January 26, 2023. The plaintiff/applicant submitted that the contention is with respect to the 2nd defendant's/respondent's refusal to comply with the third order which amounts to contempt of court which is deliberate and intentional and constitutes a clear violation of the court's authority and dignity. The plaintiff/applicant relied on the cases of *Republic v Cabinet Secretary, Ministry of Education & another exparte Thadayo Obanda* [2018] eKLR and *Econet Wireless Kenya Limited v Minister for Information & Communication of Kenya & another* [2005] 1KLR 828.
11. The 2nd defendant/respondent filed written submissions dated July 15, 2010 and supplementary written submissions dated February 24, 2023. In its written submissions dated July 15, 2010, the 2nd defendant/respondent submitted that the plaintiff/applicant has not attempted to show that any of the three orders on which the application is predicated were ever served on Mr Nayan Patel and as per the documents annexed to the application, there is no suggestion by copies of documents claimed to have been served annexed to the affidavit of James Ochieng' Oduol. Also the exhibit "PL3" does not contain a notice of penal consequences endorsed thereon and is therefore ineffective to support an application for committal.
12. The 2nd defendant/respondent further submitted that in the context of contempt proceedings, the court must insist on strict compliance with all the procedural safeguards and relied on the cases of *Loise Margaret Wanjiru v Stephen Njuguna* (unreported) civil appeal No 198 of 1998 at page 5 and *Chiltern District Council v Keane* [1985] 2 ALL ER 118.
13. The 2nd defendant/respondent further submitted that even looking at the merit of the application, the same has been overtaken by events for the reason that by the time the contempt application was lodged, the plaintiff/applicant was in possession which is the subject matter of the 3rd contempt application. With regard to the advertisements, the 2nd defendant/respondent submitted that the advertisements informed the public as well as the interested parties that such taking over of possession of the suit premises was unlawful and it would move the court for appropriate relief and nothing that the 2nd defendant/respondent has done evinces an intention to violate any orders of this court.
14. In its supplementary written submissions, the 2nd defendant/respondent reiterated that from the court record, the plaintiff/applicant had already obtained possession of the property and questioned what it was that the Managing Director of the 2nd defendant/respondent would appear to show the court.
15. The 2nd defendant/respondent further submitted that its director could not appear before this court due to the stay of proceedings as a result of the constitutional reference filed by the 1st defendant/respondent which the plaintiff/applicant has had over 12 years to reveal to the court its existence. Further that the 2nd defendant's/respondent averments stand uncontroverted as they have not even been addressed in the plaintiff's submissions. The 2nd defendant/respondent relied on the cases of *Samuel M.N. Mweru & others v National Land Commission & 2 others* [2020] eKLR, *Mutitika v Baharini Farm Limited* [1985] eKLR and *Sheila Cassatt Issenberg & another v Anthony Machatha Kinyanjui* [2021] eKLR.
16. On May 30, 2023, counsels for the plaintiff/applicant and the 2nd defendant/respondent highlighted their submissions. Mr Nyiha, the counsel for the plaintiff/applicant submitted that to date, the Managing Director of the 2nd defendant/respondent even by way of a letter has not written to the court to give the court the extenuating circumstances that made him not to appear before court. The counsel submitted that court orders are sacrosanct and disobedience of the orders cannot be cured by time. Specifically, he referred the court to the order of Ojwang, J (as he then was) on February 2, 2004. In the



- order, Ojwang, J (as he then was) he specifically states that the officials of the 1st defendant/respondent were required to purge contempt. The Managing Director of the 2nd defendant/respondent was also required to appear within 30 days which to date, has not appeared before any court. That the only defence that the 2nd defendant/respondent raises is that they were not served personally with the relevant order yet the same affidavit contravenes about the service which they say that are aware of.
17. The counsel invited the court to interrogate the contents of the affidavit of Mr Nayan Patel filed on July 14, 2010 and submitted that even if the 2nd defendant/respondent argues that there was an automatic stay, the stay automatically lapsed in the year 2006 once the rules of constitutional reference were revoked. Further, that even after that stay lapsed by the operation of the law, the 2nd defendant/respondent did not take steps to purge the contempt. They continue to cite a non-existent stay.
 18. In conclusion, the counsel submitted that the order of February 4, 2004 actually in its entirety found that the 2nd defendant/respondent was in contempt of court and that what was pending was for him to show cause why he should not be punished. The counsel urged the court to find that the application is merited and take necessary steps.
 19. Mr Mwangi, the counsel for the 2nd defendant/respondent submitted that the application for contempt is made entirely superfluous and if the court considers the matter, it has been overtaken by events. That as conceded by his learned senior, a considerable time has been taken since the application was filed in the year 2010. Further, that the most interesting thing which his learned friend has not pointed out to the court, is that the order required the 2nd defendant/respondent to hand over a lease of Narok/ Cis Mara/Koyaki 3.
 20. The counsel submitted that with respect to JR No 5 of 2018 previously High Court Misc No 1350/2003, the same was withdrawn by the plaintiff/applicant twice. That from the record, the plaintiff/applicant withdrew it on July 28, 2022 and just recently, confirmed the position on May 2, 2023. He submitted that the anchorage of the order the 2nd defendant/respondent is accused to be in contempt has been removed and that if there are no orders in JR 5/18, there cannot be said to be standing orders in this file. Crucially, contempt orders are quasi criminal in nature and it was entirely the plaintiff's/applicant's decision to withdraw the JR proceedings.
 21. The counsel further submitted that as per the plaintiff's/applicant's supporting affidavit, they took possession of the premises before they filed the application for contempt. Further, that the order by Ojwang, J and Nyamu, J required the 2nd defendant/respondent to give possession of the premises which they had possession three weeks before they filed this application and that other than for intimidation purposes this application is superfluous.
 22. The counsel further submitted that even more embarrassing to the plaintiff/applicant, there was a brief that was filed by the plaintiff/applicant in the application, it was stated that the premises were handed over to Hyalt International Ltd with the consent of the 2nd defendant/respondent on December 28, 2012 and that they now want Mr Nayan to be punished for premises that they are not in occupation of.
 23. The counsel further submitted that as for the merits of the application, the affidavit in support does not talk of service upon Mr Nayan and that the plaintiff/applicant ought to prove service of the order on Mr Nayan. Also, that the counsel for the plaintiff/applicant has conceded that there was stay of the proceedings in this matter and also numerous proceedings including consents recorded by the plaintiff/applicant in the JR matter which formalized the transfer of the lease to itself.
 24. In rebuttal, Mr Nyiha, the counsel for the plaintiff/applicant submitted that the order by Ojwang, J of February 2, 2004 was clear and specific on what was required i.e. that the Managing Director of the



- 2nd defendant/respondent had to appear before the judge in chambers. The counsel submitted that the Managing Director has not appeared showing that he is not remorseful. Also, that when it comes to service, in the fullness of time the many affidavits of Mr James Ochieng, the counsel confirmed effected service and as such, the contempt is proved and not inferred.
25. I have carefully analysed and considered the application, the replying affidavit and the written submissions filed by both parties and the issue for determination is whether the application has merit.
26. Contempt of court is that conduct or action that defies or disrespects authority of court.
27. 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.
28. Properly put, contempt is a 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.
29. In this case, the plaintiff/applicant contended that the 2nd defendant/respondent is in breach of the orders issued by Ojwang, J (as he then was) on February 2, 2004 to the effect, “That the Managing Director of the 2nd defendant shall within the next 30 days appear before a judge in chambers, to show that he has duly complied with the joint above, or in the alternative, to show cause why he should not be committed for contempt.”
30. According to the plaintiff/applicant, the 2nd defendant/respondent defied the orders as stated above and even went ahead and placed an advertisement in the Standard Newspaper showing that they did not recognize the three orders issued. I have looked at the said advertisement as annexed to the plaintiff's/applicant's application and it reads as follows:-
- “Our attention has been drawn to a public notice published in the Daily Nation, Saturday June 5, 2010 by Wildlife Lodges Limited who have violently and illegally taken possession of Keekerok Lodge from its lawfully registered owners, Wilderness Lodges Limited. We are pursuing all the legal avenues available to us to ensure that possession is immediately restored to us. Take notice we Wilderness Lodges Limited will not honour any contracts or other arrangements entered into between Wildlife Lodges Limited and any party in relation of Keekorok Lodge nor we will be liable to any party dealing with Wildlife Lodges Limited for any acts or omissions on their part whether during the period of their unlawful occupation of Keekorok Lodge or at all...”
31. 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)

32. 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 applicant must prove willful and deliberate disobedience of the court order, if he were to succeed. This was stated in *Gatharia K. Mutikika v Baharini 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 on 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.”

33. 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. Was the 2nd defendant/respondent aware of the existence of the orders? I believe so because how else would the 2nd defendant/respondent not be aware and yet proceed to place advertisement in the Standard Newspaper as well as write letters dated 3rd and June 4, 2010? I am alive to the fact that the orders said to have been disobeyed were issued in the year 2004 which is nineteen years ago.
34. In addition, I have heard counsel for the 2nd defendant/respondent submit that the plaintiff/applicant took possession of the suit premises and, therefore, there is no need for the Managing Director of the 2nd defendant/respondent to appear before the judge in chambers. Let me say, that the orders issued by the court, ought to and must be obeyed to its very end. If at all, the order requires performance of the said orders in piecemeal, it therefore follows that the said orders must be obeyed to its logical conclusion.
35. The court on February 2, 2004, issued the following orders: -

“(a) The application by notice of motion filed by the 2nd defendant on December 3, 2003 may be set down for hearing on the basis of priority once the 2nd



defendant, within 28 days from the date of this ruling, hands over the suit premises with its operations to the 1st defendant.

- (b) In the meantime the plaintiff will have leave to make any such applications as may be necessary and in relation to the suit premises and the operations conducted thereon.
- (c) The Managing Director of the second defendant shall, within the next 30 days, appear before a Judge in chambers to show that he has duly complied with the first order above, or in the alternative, to show cause why he should not be committed for contempt.
- (d) The Acting Town Clerk of the first defendant, the Treasurer of the first defendant and the advocate of the first defendant, Moitalel Ole Kenta, shall each and all, within the next seven days, take due action to purge their contempt of the court orders of November 6, 2003 and December 1, 2003 and they shall each and all, appear before a judge in chambers in ten days from the date of this ruling, to show that they have purged their contempt, or in the alternative to show cause why they should not be committed for contempt.
- (e) The plaintiff's costs in this application shall be borne by the first defendant, the second defendant shall bear its own costs.”(with emphasis)

36. The question then is, does the 2nd defendant's/respondent's replying affidavit positively answer the question of compliance with the above orders? Unfortunately, the 2nd defendant's/respondent's affidavit has only confirmed disregard for the authority of this court's duty to ensure that orders are complied with to the letter. Order (b) issued in the above ruling by Ojwang, J (as he then was) placed a mandatory obligation by use of the word “shall” upon the 2nd defendant's/respondent's Managing Director to return back to court within the stipulated period to report on whether order (a) was complied with.

37. Also, no material has been placed before this court to show that the said orders were varied or set aside to enable the 2nd defendant/respondent not to comply.

38. Arising from the above, this court find merit in the chamber summons dated June 11, 2010 in the following terms: -

- i. That the Managing Director of the 2nd defendant, one Nayan Patel is fined a sum of Kshs 1,000,000/- in default of which he will be detained in prison for a period of 3 months for being in disobedience of the orders of this court given on November 6, 2003, December 1, 2003 and February 2, 2004.
- ii. That the 2nd defendant and its Managing Director are hereby denied audience of this court until compliance with order i. above.
- iii. That the 2nd defendant and its Managing Director one Nayan Patel to pay costs of this application.

It is so ordered.

DATED, SIGNED & DELIVERED VIA EMAIL on this 11TH day of OCTOBER, 2023.

HON. MBOGO C.G.

JUDGE



11/10/2023

In the presence of:

CA:Pere Meyoki

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