



**Awoko v Awoko (Environment & Land Case 57 of 2016)
[2023] KEELC 21203 (KLR) (2 November 2023) (Ruling)**

Neutral citation: [2023] KEELC 21203 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT BUSIA
ENVIRONMENT & LAND CASE 57 OF 2016
BN OLAO, J
NOVEMBER 2, 2023**

BETWEEN

OBONDO OWUNGU AWOKO PLAINTIFF

AND

PATRICK BUKAKI AWOKO DEFENDANT

RULING

1. Obondo Owungu Awoko (the Plaintiff herein) approached this Court *vide* his plaint dated 21st June 2016 seeking judgment against Patrick Bukaki Awoko (the Defendant herein) in the following terms:
 - a. Eviction of the Defendant from the land parcel no Marachi/Elukongo/4337.
 - b. Fresh establishment / re-instatement of the boundary features for the land parcel no Marachi/Elukongo/4337.
 - c. Costs of this suit.
 - d. Interest on (c) above.
 - e. Any other or further relief this Honourable Court may deem fit and just to grant.
2. His case is that he is the registered proprietor of the land parcel no Marachi/Elukongo/4337 (the suit land) and which borders the Defendant's land parcel no Marachi/Elukongo/4339. However, the Defendant had on or about 12th november 2015 moved from his land and trespassed onto the suit land where he not only up-rooted the boundary features but he also proceeded to erect thereon a semi-permanent house in which he lives.
3. The Defendant denied that the Plaintiff is the registered proprietor of the suit land adding that if he is, then he obtained registration thereof fraudulently. He added that he has been living on the suit land



for over 60 years and has therefore acquired it by way of adverse possession. He further denied that this Court has the jurisdiction to determine the dispute which is a boundary dispute.

4. The dispute was heard by Kaniaru J and in a judgment delivered on his behalf by Omollo J on 22nd July 2020, the Judge found in favour of the Plaintiff and directed the Defendant to remove himself from the suit land within 90 days of the delivery of the judgment or be forcefully evicted.
5. There is nothing on record to show that the Defendant filed any appeal against that judgment or that it was ever reviewed or set aside.
6. The Defendant did not remove himself from the suit land and execution proceeded. By an application dated 8th February 2021, the Plaintiff sought an order for the officer commanding Butula Police Station (OCS) to provide security during the eviction of the Defendant from the suit land. The application wrongly reads that the order was sought against the Plaintiff. That must be a typographical order. That application was allowed by Omollo J on 12th February 2021.
7. I now have before me for determination the Plaintiff's notice of Motion dated 1st March 2022 in which he seeks the following orders:
 1. Spent
 2. That this Honourable Court be pleased to find the Defendant in contempt of Court for disobedience of the orders of the court contained in the final decree issued herein on 22nd July 2020.
 3. That this Honourable Court upon granting prayer (2) above, be pleased to commit the Defendant to imprisonment for a period of 2 years and to pay an amount of money in fine as the Court may deem fit.
 4. The Honourable Court be pleased to order eviction of the Defendant, his agents and/or relatives from the land parcel no Marachi/Elukongo/4337.
 5. That the Defendant do meet the costs of these committal proceedings.
8. The application is based on the grounds set out therein and supported by the Plaintiff's affidavit dated 1st March 2022.
9. The gist of the application is that notwithstanding the judgment of Kaniaru J ordering the Defendant to vacate the suit land or be evicted, he has failed to do so. Efforts by the Officer Commanding Butula Police Station (OCS) to evict him were thwarted when the Defendant, his friends and relatives denied him access. The Defendant and his agents and relatives not only destroyed the Plaintiff's property worth Kshs.1,250,665.00 but also caused the Plaintiff bodily injuries during the eviction process. And despite attempts, he has refused to vacate the suit land and has frustrated several attempts to evict him thus necessitating this application.
10. Annexed to the Plaintiff's affidavit are the following documents:
 1. Copy of judgment and decree issued herein.
 2. Order directed at the OCS Butula Police Station.
 3. Valuation report by M/S Homeland Valuers showing the value of the property destroyed on the suit land.
 4. Photographs of a damaged building, motorcycles and other goods as well as a picture of a man with a bandaged head injury and blood stained clothes.



11. Meanwhile by a notice of Motion dated 19th July 2022 Mr Oye Ashioya who had been on record for the Defendant applied to ceased acting for him. That application was allowed on 10th May 2023 in the presence of the Defendant who sought and was granted two (2) months to instruct another counsel. The firm of Nandwa & Company Advocates subsequently came on record for the Defendant on 12th July 2023. On 13th July 2023, the Court gave Mr Nandwa two (2) weeks to file the Defendant's response and submissions to the application as had been ordered on 27th February 2023 when directions were made that the application be canvassed by way of written submissions.
12. notwithstanding the extension of time given to Mr Nandwa to file the Defendant's response and submissions to the application, none was filed.
13. The application therefore remains un-opposed and the only submissions are those filed by Mr Namatsi instructed by the firm of Namatsi & Company Advocates for the Plaintiff.
14. I have considered the application, un-opposed as it is, as well as the submissions by Mr Namatsi.
15. Although the application is not opposed, I will nonetheless consider it to determine if it meets the required threshold for contempt proceedings.
16. It is not in dispute that by a judgment delivered on 22nd July 2020, the Defendant was ordered to vacate the suit land within 90 days or be forcibly evicted therefrom. There is no doubt that the Defendant has always been aware about the contents of the said judgment because it was delivered when his then counsel Mr Ashioya was still on record for him in this matter and only ceased acting for him on 21st September 2022. In any event, the Defendant was present in Court on 21st September 2022 when his then counsel was discharged from these proceedings. If he was still in the dark above the contents of this judgment, that was the right time to complain. He did not claim any ignorance about the same and as is now clear, he has not even responded to this application. Since the Defendant was aware about what this court's judgment required of him, he was duty bound to obey it. If he was aggrieved by it, then he should have appealed the decision or applied to have it reviewed or set aside for whatever reasons. He did none of the above. Court orders must be obeyed otherwise the rule of law and administration of justice will be abused by those who think they can ignore Court orders. That explains why under Section 29 of the *Environment and Land Court Act*, severe penalties for disobedience of Court orders are set out as follows:
 - 29: "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 imprisonment for a term not exceeding two years, or to both."
17. The above penalty clearly emphasizes the seriousness with which the Courts treats disobedience of their orders. And obedience of Court orders is not optional. As was stated by Romer L. J, in the case of *Hadkinson -v- Hadkinson* 1952 All ER 567:

"It is the plain and unqualified obligation of every person against, or in respect of whom an order is made by a Court of competent jurisdiction to obey it unless and until that order is discharged. The uncompromising nature to this obligation is shown by the fact that it extends even to cases where the person affected by an order believes it to be irregular or even void."



The Judge went on to quote Cottenham L. C. In *Chuck -v- Cremer (i) (i) Coop-temp Cott 342*:

“A party who knows of an order, whether null or void, regular or irregular, cannot be permitted to disobey it ... it would be most dangerous to hold that the suitors, or their solicitors, could themselves judge whether an order was null or void, whether it was regular or irregular. That they should come to the Court and not take upon themselves to determine such a question. That the course of a party knowing of an order, which was null or irregular; and who might be affected by it, was plain. He should apply to the Court that it might be discharged. As long as it exists, it must not be disobeyed.”

18. In the case of *Shimmers Plaza Limited -v- National Bank Of Kenya Limited* Ca Civil Appeal no 33 of 2012 [2015 eKLR] the Court stated:

“We reiterate here that Court orders must be obeyed. parties against whom such orders are made cannot be allowed to trash them with impunity. Obedience of Court orders is not optional, rather, it is mandatory and a person does not choose whether to obey a Court order or not.”

19. The law is well set in the above precedents and others. In the circumstances of this case, the Defendant has not only refused to vacate the suit land as directed but has also frustrated efforts to evict him and in the process, assaulted the Plaintiff causing him bodily harm. The Plaintiff must surely be wondering whether the Defendant is above the law.

20. I am satisfied that the Defendant is in contempt of the orders issued by this Court on 22nd July 2020. He must be punished for the same. Prayer no 2 of the notice of Motion dated 1st March 2022 is granted.

21. As regards prayer no 3 which sought an order that this Court commits the Defendant to imprisonment for 2 years and/or pay a fine, the punishment will be determined after the Defendant’s mitigation has been considered.

22. Prayer no 4 sought the order that the Defendant, his agents and/or relatives be evicted from the land parcel no Marachi/Elukongo/4337. That is not necessary for the simple reason that there is already a decree to that effect and which has not been reviewed, set aside or appealed. And since the Defendant did not voluntarily vacate the suit land during the 90 days period which has long lapsed, the other limb of the decree which is his forceful eviction therefrom must be executed even as he is punished for the contempt of this Court’s judgment.

23. With regard to costs, they follow the event. The Plaintiff is entitled to the costs of this application.

24. The up-shot of all the above is that the notice of Motion dated 1st March 2022 is allowed in the following terms:

1. This Court finds the Defendant to be in contempt of the orders issued by this Court on 22nd July 2022.
2. The Defendant be served with summons to appear before this Court on 16th november 2023 at 9 am for mitigation and appropriate orders.
3. As the Defendant is notorious for disobeying Court orders, a warrant for his arrest will be issued in default of (2) above.
4. The Defendant will meet the Plaintiff’s costs of this application.



RULING DATED, SIGNED AND DELIVERED ON THIS 2ND DAY OF noVEMBER 2023.

BOAZ N. OLAO

JUDGE

