



REPUBLIC OF KENYA



KENYA LAW
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Gathatha Farmers Company Ltd v Chemtingei & 2 others; Kaitet Tea Estates (1977) Limited & another (Interested Parties) (Land Case 9 of 2023) [2023] KEELC 21172 (KLR) (2 November 2023) (Ruling)

Neutral citation: [2023] KEELC 21172 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KITALE
LAND CASE 9 OF 2023
FO NYAGAKA, J
NOVEMBER 2, 2023

BETWEEN

GATHATHA FARMERS COMPANY LTD PLAINTIFF

AND

SIMATWA CHEMTINGEI 1ST DEFENDANT

ODUORI CHONGORE 2ND DEFENDANT

THE ESTATE OF OKIRO OKOYO 3RD DEFENDANT

AND

KAITET TEA ESTATES (1977) LIMITED INTERESTED PARTY

ENDEBESS ESTATE PRIMARY SCHOOL INTERESTED PARTY

RULING

(ON WHETHER OR NOT TO WITHDRAW AN APPLICATION ALLEGEDLY DRAWN AND SIGNED USING FORGED SIGNATURES OF BEHALF OF A PARTY BEFORE HEARING THE ALLEGED SUSPECT)

1. When this court sat to hear an application dated August 15, 2023 the 4th defendant prayed for a declaration that the application is null and void. Strangely, from the face of the application it was him who filed it. But on the material date he denied ever drafting and or filing the Application yet it was in his name and the Affidavit was purportedly sworn by him before a Commissioner for Oaths.
2. Learned counsel for the adverse parties did not object to the striking out of the Application. However, based on the Submission of the 4th defendant about the origin and drawer of the Application, both called for the punishment of the individual who allegedly drew, filed and served the application. The



- 4th defendant named him as one Wilfred Ogutu. He submitted that the said individual drew the document, forged his signature and filed the application in Court. The 4th defendant stated further that for reason of him not agreeing with what the individual was doing in his name and capacity, he wrote to Court and sent to the other parties a letter dated October 17, 2023. In it he distanced himself from the any representation of him by any other person. He submitted further that on the morning of the date of hearing, he again filed another letter, dated October 21, 2023, following up with the earlier one. He emphasized in it that the application coming on that date was null and void because the writer forged his “...signature to fulfil his own ambition”. That on his part he wanted justice from the Court.
3. The basis of the application the applicant renounced and the two letters he wrote was that in an earlier ruling this court delivered on October 11, 2023 the court had found that a purported “Specific Power of Attorney” the 4th defendant is said to have drawn in favour of the said Wilfred Ogutu Makodiango was null and void since it did not accord with the law. Moreover, it was so poorly drawn that it would not pass for a power of attorney let alone not being a specific one. This finding seems to have infuriated the donee of that he allegedly decided to draw and file the application which is impugned.
 4. I have considered the issue before me. The allegations about someone drawing documents on behalf of another without his authority, forging that other’s signature, commissioning the document, presenting the false document before authorities and thereby misleading the court, serving the said document on parties are extremely serious. Particularly, since they revolved around legal proceedings before a court of law, they greatly impact the practice of the legal profession.
 5. There is a thin line between this a decision by this court which finds that conduct of an individual warrants investigation by the relevant agencies of government so as to make a finding as to whether or not to charge a suspect and declaring that the person actually committed an offence although this court does not have the jurisdiction to conduct criminal proceedings except those of contempt of court. I dare say that where an individual trudges on misusing the court process to carry out criminal activities he actually is acting in contempt of court even though there is no express order or decree disobeyed. Contempt is all about the dignity of the court or body legally clothed with dignity, for instance, the Parliament of Kenya. It is time the meaning and import of contempt of court was brought out in its purest and clearest form.
 6. Thus, for this court to decide to not or forward recommendations about the suspected conduct without according anyone associated to the conduct a hearing it would be unjust to that other. While the instant decision is not administrative, a statement as to whether or not the individual alleged to have authored and filed the application in issue would suffice: it would satisfy this Court that indeed it is he or not he who subjected the court process to abuse and that is where natural justice kicks in.
 7. In the *Management of Committee of Makondo Primary School and another v Uganda National Examination Board*, HC Civil Misc Application No 18 of 2010, the Supreme Court of Uganda stated as follows regarding the rules of natural justice:

“It is a cardinal rule of natural justice that no one should be condemned unheard. Natural justice is not a creature of humankind. It was ordained by the divine hand of the Lord God hence the rules enjoy superiority over all laws made by humankind and that any law that contravenes or offends against any of the rules of natural justice, is null and void and of no effect. The rule as captured in the Latin Phrase '*audi alteram partem*' literally translates into 'hear the parties in turn', and has been appropriately paraphrased as 'do not condemn anyone unheard'. This means a person against whom there is a complaint must be given a just and fair hearing.”



8. For that reason, this court is of the view that if it makes any findings, adverse or otherwise about the alleged conduct of Wilfred Ogutu Makodiango, it would go against the central rule of natural justice that one should not be condemned unheard. This Court therefore directs that the said Wilfred Ogutu Makodiango be and is hereby summoned to attend Court and state on oath his position over the issue. This should be done in presence of the 4th defendant who too should be present in person to state his position on oath. The other parties who wish to clarify any issue on the allegations are free to attend court and examine the two individuals who will be stating their case.
9. Further, since the Directions of the court when the application in issue was presented to Court under certificate of urgency are said to have been served via the email address of the said Wilfred Ogutu on the offices of learned counsel for Kaitet Tea Estates (1977) Limited, this Court directs that the said advocate print out, certify as true copies of original the email and attachments that were served through it, and the email header which contains the details of the source of the email(s) including the Internet Protocol (IP) address (es). Similarly, the Registry of this court should print out and certify as true copies of the original the emails and their headers, documents and other electronic communication that went into the communication between it and whoever may have filed the Application online. That would include the assessment of the fees payable and how the Directions of the Court were communicated to or passed over to the individual who served them on learned counsel.
10. The upshot is that this court will make a ruling on the prayer for withdrawal or declaration of the application dated November 18, 2023 null and void when it shall have given a hearing to the individuals likely to be affected by the orders it will ultimately issue. Thus, the parties and the said Wilfred Ogutu are directed to attend the physical court on November 20, 2023. The deputy registrar of this court shall facilitate the service of the witness summons on the said Wilfred Ogutu through a Court process server. Hearing on the position of the individuals on the date stated above.
11. Costs shall be in the cause.
12. Orders accordingly.

**RULING DATED, SIGNED AND DELIVERED AT VIRTUALLY VIA THE TEAMS PLATFORM
THIS 2ND NOVEMBER, 2023.**

HON. DR. IUR FRED NYAGAKA

JUDGE

