



Koech & another (Suing as Administrators of the Estate of Kipkereng Arap Koech - Deceased) v Kipkurere & another (Environment & Land Case 626 of 2013) [2023] KEELC 21370 (KLR) (9 November 2023) (Ruling)

Neutral citation: [2023] KEELC 21370 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT & LAND CASE 626 OF 2013
A OMBWAYO, J
NOVEMBER 9, 2023**

BETWEEN

**JOB KOECH 1ST PLAINTIFF
PHILIP KIPTOO KOECH 2ND PLAINTIFF
SUING AS ADMINISTRATORS OF THE ESTATE OF KIPKERENG ARAP
KOECH - DECEASED**

AND

**PAUL KIPKECH KIPKURERE 1ST DEFENDANT
KIPSYENAN FARMERS COMPANY LIMITED 2ND DEFENDANT**

RULING

1. This ruling is in respect of the Defendants/Applicants Notice of Motion application dated 12th July, 2023 which is expressed to be brought under Article 159 of *the Constitution*, Order 52 (3) of the Supreme Court Rules of England, Section 5 of the *Judicature Act*, Section 1A, 1B and 3A of the *Civil Procedure Act*, Order 51 Rule 1 of the Civil Procedure Rules and all other enabling provisions of the law.
2. The Application seeks the following orders:
 - a. Spent
 - b. That the plaintiffs/intended contemnors be summoned to court to show cause why they should not be sentenced to a 6-month imprisonment term for blatantly refusing to comply with the court orders.



- c. That the plaintiffs/intended contemnors be committed to a 6-month imprisonment term for blatantly refusing to comply with the court orders and or a fine of Kes 10,000,000 each.
 - d. That the plaintiffs/contemnors be compelled by this court to desist from illegally trespassing on the defendant's/Applicants parcel of land.
 - e. That cost of this application be borne by the contemnors.
3. The application is based on the grounds on its face and supported by the affidavit sworn on 12th July, 2023 by one Paul Kipketch Kurere, the 1st Defendant.

Factual Background

4. The matter first came up in court on 18th July, 2023 and the court stated That it was not persuaded as to the urgency of the application and directed That the same be served upon the intended contemnors and further directed That the application would be heard inter partes on 27th September, 2023.

The Applicants' Contention

5. The Applicant contends That the intended contemnors have been duly served with the order of the court but have since refused to comply with the same. They also contend That the intended contemnors continue to insult and make a mockery of the court process and the Office of the Director of Public Prosecution (ODPP) is duly informed.
6. They contend That the Plaintiffs'/Intended contemnors in utter disregard to the court order have proceeded to illegally trespass unto the parcel of land by tilling it. It is their contention That apprehensive of their interests in the said parcel of land, they proceeded to report the invasion to the police on 28th April, 2023.
7. The Defendants contend That to protect the dignity and authority of this Honourable court, this court ought to enforce its orders against the contemnors.

Intended Contemnors' Contention

8. The Intended Contemnors filed an affidavit dated 26th September, 2023 which is sworn by Job Koech and Philip Kiptoo Koech and they depose That they are aware of the court ruling dated 17th November, 2022 and they were served with the court orders dated 17th November, 2022.
9. They further depose That they do confirm receipt of the Notice of Motion dated 12th July, 2023 seeking orders That they be summoned by the court to show cause why they should not be punished for violating the court orders.
10. It is also their deposition That they undertake to fully comply with the court orders dated 17th November, 2022 and they are requesting the Defendants' to be pleased to withdraw their application dated 17th July, 2023 without costs.

Submissions

11. Neither the intended contemnors nor the Applicants filed any submissions.



Analysis And Determination

12. After considering the pleadings of the Applicants and the intended contemnors, the following issues arise for determination:
 - a. Whether the Applicants are entitled to the prayers sought in the Notice of Motion Application dated 12th July, 2023?
 - b. Who should pay the costs of this Application?

Whether the Applicants are entitled to the prayers sought in the Notice of Motion Application dated 12th July, 2023?

13. According to the Black's Law Dictionary, 9th Edition:

“Contempt is a disregard of, disobedience to, the rules, or orders of a legislative or judicial body, or an interruption of its proceedings by disorderly behavior or insolent language, in its presence or so near thereto as to disturb the proceedings or to impair the respect due to such a body.”
14. The Applicants have invoked Order 52 (3) of the Supreme Court Rules of England and Section 5 of the *Judicature Act* in the Application dated 12th July, 2023.
15. The Court of Appeal in *Christine Wangari Chege vs Elizabeth Wanjiru Evans & Others* observed as follows:

“Though the Court of Appeal of England and Wales was established in 1875, some 92 years before the commencement of the *Judicature Act*,¹ the Act in the cited Section 5 simply directs That this court like the High Court must make reference to the powers exercised by the High Court of Justice in England and not those exercised by its counterpart, the Court of Appeal of England and Wales.

The High Court of Justice in England is That level of the court system in England, comprising three divisions, the Queen's Bench, the Chancery and Family Divisions. That court draws its jurisdiction to punish for contempt of court from both the statute, namely the *Contempt of Court Act*, 1981 and the Common Law. But the procedure to be followed in commencing, prosecuting and punishing contempt of court cases was, until 2012, as will shortly be explained, provided for by Order 52 Rules 1 to 4 of the Rules of the Supreme Court (RSC), made under the Supreme Court of *Judicature Act*, 1873 (or simply the *Judicature Act*, 1873). The *Judicature Act*, 1873 abolished a cluster of courts in England and Wales dating back to medieval periods, some with overlapping judicial powers, and in their place Supreme Court of Judicature, which must not be confused with the Supreme Court of the United Kingdom which was established only on 1st October, 2009 assuming the judicial features of the House of Lords.

Order 52 RSC, until 2012 as alluded to earlier provide the procedure of commencing contempt of court proceedings. The procedure may be summarized as follows, in so far as it relates to the High Court of Justice: -

- i. An application to the High Court of England for committal for contempt of court will not be granted unless leave to make such an application has been granted.



- ii. An application for leave must be made *ex parte* to a judge in chambers and supported by a statement setting out the particulars of the applicant as well as those of the person sought to be committed and the grounds on which his committal is sought, and by an affidavit verifying the facts relied on.
- iii. The applicant must give notice of the application for leave not later than the preceding day to the Crown Office.
- iv. Where an application for leave is refused by a Judge in chambers the applicant may apply afresh to a divisional court for leave within 8 days after the refusal by the Judge.
- v. When leave has been granted, the substantive application by a motion would be made to a divisional court.
- vi. The motion must be entered within 14 days after the granting of leave; if not, leave shall lapse.
- vii. The motion together with the statement and affidavit must be served personally on the person sought to be committed, unless the Court thinks otherwise.”

16. Section 5 of [Judicature Act](#) provides:

“5.

- (1) The High Court and the Court of Appeal shall have the same power to punish for contempt of court as is for the time being possessed by the High Court of Justice in England, and That power shall extend to upholding the authority and dignity of subordinate courts.
- (2) An order of the High Court made by way of punishment for contempt of court shall be appealable as if it were a conviction and sentence made in the exercise of the ordinary original criminal jurisdiction of the High Court.”

17. It is an established principle of law That in order to succeed in civil contempt proceedings, the applicant has to prove (i) the terms of the order, (ii) Knowledge of these terms by the Respondent, (iii). Failure by the Respondent to comply with the terms of the order.

18. The court in the judicial decision of Samuel M. N. Mweru & Others v National Land Commission & 2 others [2020] eKLR stated:

“A court without contempt power is not a court. The contempt power (both in its civil and criminal form) is so innate in the concept of jurisdictional authority That a court That could not secure compliance with its own judgments and orders is a contradiction in terms, an “oxymoron.” Contempt power is something regarded as intrinsic to the notion of court; even obvious, I would say. In the common lawyer’s eye, the power of contempt “is inherent in courts, and automatically exists by its very nature.”



19. This court has analyzed the Affidavit filed by the Intended Contemnors dated 26th February, 2023. Paragraph 3 of the Affidavit confirms That they were served with the court orders dated 17th November, 2022. Paragraph 4 confirms the intended contemnors had knowledge of the Contempt application dated 12th July, 2023 and the contemnors are in violation of the terms of the court order.
20. The court notes That paragraph 5 and 6 of the Affidavit filed by the intended contemnors dated 26th September, 2023 states That: the intended contemnors undertake to fully comply with the court orders dated 17th November, 2022 while paragraph 6 of the Replying Affidavit it is deposed That they are requesting the Defendants to be pleased to withdraw their application dated 17th July, 2023 without costs.
21. The court has looked at the extracted court order dated 17th November, 2022 and the court issued the following orders:
 1. That the court adopts the report by the Regional Surveyor as its Judgment and directs That the report be implemented by the Regional Surveyor together with the Land Registrar, Nakuru.
 2. That the Plaintiff's suit has not been proved to the required standard and is ordered dismissed.
 3. That the Defendants have been partially successful to the extent That they were adjudged not to have trespassed on to the plaintiff's land.
 4. That the defendant's claim for damages was not proved and is disallowed.
 5. That each party shall bear their own costs of the suit and counter-claim.
22. The court has noted That the first order had a direct bearing on the institution of the contempt application. Further the supporting affidavit sworn by the 1st Defendant/Applicant on 12th July, 2023 at paragraph 4 states That: "the plaintiffs/intended contemnors in utter disregard to the court order have proceeded to illegally trespass unto the parcel of land by tilling it."
23. In view of the contemnors admission of the contempt and the above analysis, the conclusion becomes irresistible That the Applicants' Notice of Motion dated 12th July 2023 satisfies the prerequisites for the court to grant the orders sought.

Who should pay the costs of this Application?

24. The general rule is That costs follow the event. This is in accordance with the provisions of Section 27 of the *Civil Procedure Act*. (Cap 21). A successful party should ordinarily be awarded costs of an action unless the court, for good reason directs otherwise.

Disposition

25. In the result, I find That the Applicants' application dated 12th July, 2023 succeeds and I issue the following orders:
 - a. That the 1st and 2nd Contemnors are guilty of disobeying this Court's orders dated 17th November, 2022 and subsequently are held in contempt.
 - b. That the 1st and 2nd Contemnor to pay a total fine of Kenya Shillings One Hundred Thousand as a penalty for being in Contempt of Court by willfully



disobeying the orders of this court issued on 17th November, 2022 or being imprisoned in jail for a term of one month and forthwith purge its contempt within thirty (30) days from the date hereof.

- c. Costs of the Application to be borne by the Contemnors.

**RULING DATED, SIGNED AND DELIVERED VIA ELECTRONIC MAIL AT NAKURU THIS
9TH NOVEMBER, 2023**

A O OMBWAYO

JUDGE

