



**Suleiman v Lankas (Environment and Land Appeal
35 of 2019) [2022] KEELC 103 (KLR) (7 June 2022) (Ruling)**

Neutral citation: [2022] KEELC 103 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAROK
ENVIRONMENT AND LAND APPEAL 35 OF 2019**

CG MBOGO, J

JUNE 7, 2022

BETWEEN

HANIB AYUB SULEIMAN APPELLANT

AND

MARY LANKAS RESPONDENT

RULING

1. What is before this court is a ruling arising from contestation of compliance of the orders of this court dated 14th July, 2021. In the said ruling my brother, Justice Kullow found the respondent guilty of contempt and ordered that she pays a fine of Kshs. 100,000/- within 60 days of the said ruling failing which she be committed to civil jail for a term of 3 months. The ruling also directed that status quo be maintained so as to preserve the subject matter and to expedite hearing of the substantive appeal.
2. When the parties appeared before me on 9th March, 2022, I directed that the respondent appears in court for cross examination on oath on the issue of contestation that she has purged the contempt of court. I also directed parties to file further affidavits, if need be, and the Deputy Registrar to visit the suit premises and file a report on whether there is ongoing development and or construction on the suit property in contravention of the ruling dated 14th July, 2021 and whether or not the suit premises has been leased out to third parties.
3. The parties appeared before me on 12th May, 2022 and both parties confirmed that the respondent had paid the sum of Kshs. 100,000/- which was received in court on 25th November, 2021. On cross examination, the respondent testified that she has complied with the orders of the court that were issued on 14th July, 2021 and paid the fine of Kshs. 100,000/-. She further testified that she did not appeal against the order of fine. Instead she followed the court order which returned the suit land to her. Further, that she did not know that the court had barred her from dealing with the suit land and that there were no structures on the suit land when the court awarded her the same. She further



testified that she does not know whether there are any structures on the suit land and that previously her husband sold 10 acres and she remained with 4 acres.

4. On re-examination, the respondent testified that the trial court reinstated the suit land to her in April 2019 when she got back her 4 acres and was later served with a stay order in December of 2019 prohibiting sub-division of the suit land. She further testified that she has filed an appeal of the contempt order. She reiterated that she does not know whether there were any structures on the suit land at the time when the stay orders were served.
5. The Deputy Registrar filed a report dated 11th May, 2022. The Deputy Registrar upon conducting a site visit found one gentleman by the name David Mepukori who was in possession of 1 acre of land which he had bought from Sheila Wambati in the year 2019 which is developed comprising a commercial structure containing 6 shops. There is also a timber sales yard which is leased out to Sofia Kwamboka since 2021 and a car wash. On the upper side of the land, there is construction that seems to be ongoing which seems to be a church. The Deputy Registrar could not ascertain who was conducting the construction as there was no one on the site. The land under construction is clear and the upper land is vacant and uncleared and some livestock were grazing.
6. The appellant filed a further affidavit sworn on 18th March, 2022 which he deposed that the respondent is yet to purge contempt on the suit property where structures have been erected in utter disregard of this court's order and that on 14th July, 2021 when this court gave directions on status quo there were neither tenants nor structures on the suit land. The appellant further deposed that the respondent expedited construction after obtaining lower court's injunction to his detriment. Further that the respondent has never disputed the 10 acres which he bought yet went illegally and hived off one acre. As such, the contempt can only be purged by cancelling/ revoking the subdivisions and removing all structures erected on the suit land. The appellant annexed copies of pictures of leased out structures on the suit land.
7. The respondent filed an undated further affidavit on 12th May, 2022. The respondent deposed that she obtained orders to transfer 4 acres out of parcel number Cis-Mara/Oleleshwa/ 544 and Cis-Mara/Oleleshwa/ 545 on 25th April, 2019. Subsequently, on 24th June 2019 upon execution of the order, she obtained a certificate of title in respect to Cis-Mara/ Oleleshwa/ 19251 which was noted in the register at the land's office.
8. The respondent further deposed that the appellant misled this court as to the existence of land parcel number Cis-Mara/Oleleshwa/ 544 and Cis-Mara/Oleleshwa/ 545 when he approached this court for stay orders vide an application dated 19th December, 2019 and that the stay orders which formed the basis of the contempt application in respect to the above mentioned properties were not in existence when the orders were issued on 19th December, 2019 and being the indefeasible owner of property number Cis-Mara/Oleleshwa/ 19251 she was at liberty to excise her right of property as guaranteed in law. The respondent further deposed that the parcels of land visited by the court on 21st March, 2022 are now owned by third parties and for this reason, she has complied with the court's direction to purge the contempt of court.
9. I have anxiously but carefully analysed the further affidavits and the evidence of the respondent during cross examination and re- examination and the issue for determination is whether the respondent has purged the contempt orders.
10. The decisions courts make are for and on behalf of the people and for that reason, they must not only be respected and obeyed but must also be complied with in order to enhance public confidence in the judiciary which is vital for the preservation of our constitutional democracy. The courts act only in



accordance with the constitution and the law (Article 160) and exercises its judicial authority through its judgments decrees, orders and or directions. For that reason, the authority of the courts and dignity of their processes are maintained when their court orders are obeyed and respected thus courts become effective in the discharge of their constitutional mandate. In the case of *Canadian Metal Co. Ltd v Canadian Broadcasting Corp(No.2)* [1975] 48 D.L.R. (30), the court stated that;

“To allow court orders to be disobeyed would be to tread the road toward anarchy. If orders of the court can be treated with disrespect, the whole administration of justice is brought into scorn... if the remedies that the courts grant to correct... wrongs can be ignored, then there will be nothing left for each person but to take the law into his own hands. Loss of respect for the courts will quickly result into the destruction of our society.”

11. It is, therefore, a fundamental rule of law that court orders be obeyed and where an individual is enjoined by an order of the court to do or to refrain from doing a particular act; he has a duty to carry out that order. The court has a duty to commit that individual for contempt of its orders where he deliberately fails to carry out such orders. Having stated the above, it is important for me to address the root cause of the issue at hand which is contempt of court orders.

12. Contempt of court consists of 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. –See *Osborne’s Concise Law Dictionary*, at page 102.

13. In the case of *Sam Nyamweya & Others v Kenya Premier League Ltd and Others* [2015] eKLR Justice Aburili stated that:-

“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.”

14. *Halsbury’s Law of England*, Vol.9(1) 4th Edition states as follows;

‘Contempt of Court can be classified as either criminal contempt, consisting of words or acts which impede or interfere with the administration of justice or which creates substantial risk that the course of justice will be seriously impeded or prejudiced, or contempt in procedure, otherwise known as civil contempt consisting of disobedience to Judgment, Orders or other process of Court and involving in private injury’.

15. On *Status quo*, the *Blacks Law dictionary* 8th Edition states that this is a Latin word which means “the situation as it exists”.

16. An order for maintenance of *Status quo* has been explained by Murithi J in *Boabab Beach Resort* as quoted by F. Tuiyot, J (as he then was) Saifudeen Abdullahi & 4 Others in Mombasa High Court Misc. Civil Cause No. 11 of 2012 where he states: -

“In my view, an order to *Status quo* to be maintained is different from an order of injunction both in terms of the principles for grant and the practical effect of each. While the latter is an substantive equitable remedy granted upon establishment of a right, or at interlocutory stage, a prima facie case, among other principles to be considered, the former is simply an ancillary order for the preservation of the situation as it exists in relation to pending proceedings before the hearing and determination thereof. It does not depend on proof of right or prima facie case. In its effect, an injunction may compel the doing or restrain the



doing of a certain act, such as, respectively, the reinstatement of an evicted tenant or the eviction of the tenant in possession. An order for status quo merely leaves the situation or things as they stand pending the hearing of the reference or complaint. In its negative form, however, an injunction may have the same effect as an order for status quo.” (emphasis mine)

17. For purposes of determining the dispute at hand, it is important for this court to look at the sequence of events that led to the filing of the contempt. The appellant filed a notice of motion application dated 18th December, 2019 seeking stay of execution of the orders of the Chief Magistrate granting the respondent four acres of property known as Cis-Mara/Oleleshwa/ 544 and Cis-Mara/Oleleshwa/ 545 pending inter-partes hearing of the application and hearing and determination of the appeal. The appellant also filed a memorandum of appeal dated 18th December, 2019. The appellant was granted stay of execution of the orders of the Chief Magistrate on 19th December, 2019. The said orders were served upon the respondent’s counsel on 20th December, 2019. Prior to this, the respondent had been awarded an amended decree dated 5th January, 2012 with respect to property known as Cis-Mara/Oleleshwa/1502. Thereafter the respondent obtained orders dated 25th April, 2019 directing the District Land Registrar to carve out 4 acres of parcel known as Cis-Mara/Oleleshwa/ 544 and Cis-Mara/Oleleshwa/ 545 and assist in the registration of the same in the names of the respondent. Again, on 31st May, 2019 the Magistrates Court further directed that the executive officer-Narok Law Courts do sign the mutation forms, application for consent of the Land Control Board and the transfer of land or any other relevant document to enable the respondent have land the transferred to her.
18. It appears that there was an application for review of the orders made on 25th April, 2019 which was filed at the Magistrates Court, through a notice of motion application dated 30th July, 2019 and, was dismissed on 17th December, 2019 which now forms the basis of the stay of execution application where the appellant obtained orders for stay. I do note however, that since 25th April, 2019 up until 19th December, 2019 there were no orders of stay of execution and, as it were, the orders dated 25th April, 2019 remained in force.
19. In her further affidavit, the respondent deposed that the suit land is non-existent and annexed a copy of the green card marked as MLA3 and MLA 4. The entries in the copy of the green card with respect to parcel number 544 indicates that on 25th April, 2019 by a court order, 4 acres be transferred to the respondent and on the same day the title was closed for subdivision of new numbers 19251 and 19252. The entries with respect to Cis-Mara/Oleleshwa/ 544 indicate that on 25th April, 2019 the caution placed by the respondent was removed and on the same day it was closed for sub-division. A further look at the green card indicates that on the 24th June, 2019, the title with respect to parcel known as Cis-Mara/Oleleshwa 19251 was registered in the name of the respondent herein. The title was again issued to Christine Nyokabi Gitonga on 27th June, 2019. The title now in the name of another party was closed for sub-division on 22nd January, 2020.
20. In my view, the suit land changed hands as it had been registered in the name of the respondent who went ahead and closed the suit land for subdivision in satisfaction of the magistrates’ court’s decree. It is clear from the above, that so much took place between 24th April, 2019 and 19th December, 2019.
21. The question now is, was the respondent in contempt of the court orders? From the analysis of the documents relied upon, transactions took place between 25th April, 2019 to 19th December, 2019 to the effect that the suit land became non-existent owing to transfer of the suit land to other parties as well as subdivision. In other words, the respondent was genuine in her conduct of the dealings of the suit land for the reason that there were no orders barring her from dealing with the same from 25th April, 2019 to 19th December, 2019. At the risk of being accused of sitting on appeal over the ruling of



this court dated 14th July, 2021, I find that there may have been no willful disobedience of the court orders because at the time stay orders and orders of status quo were obtained, the suit land was non-existent and, therefore, contempt could not suffice. In my view, the appellant herein was a little too late to save himself.

22. Arising from the above, I do find that the respondent is not in contempt as there exists no subject matter. This court cannot make any such further orders since there is nothing left before it to determine. It is so ordered. There will be no orders as to costs.

DATED, SIGNED AND DELIVERED IN OPEN COURT ON 7TH JUNE, 2022.

MBOGO C.G

JUDGE

7/6/2022

In the presence of: -

CA: Timothy Chuma

Appellant:absent

Respondent:absent

Ms Naipanoi for the appellant

Mr Tanyasis for the respondent

