



**Manoti & another v Manoti (Environment & Land Case
133 of 2016) [2022] KEELC 2353 (KLR) (4 July 2022) (Ruling)**

Neutral citation: [2022] KEELC 2353 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISII
ENVIRONMENT & LAND CASE 133 OF 2016**

JM ONYANGO, J

JULY 4, 2022

BETWEEN

JACKLINE MORAA MANOTI 1ST APPLICANT

TERESIA KERUBO MANOTI 2ND APPLICANT

AND

ALEX MISATI MANOTI RESPONDENT

RULING

Introduction

1. The plaintiffs/applicants filed a Notice of Motion under Certificate of Urgency dated November 8, 2021 seeking orders that the respondent be cited and punished for contempt of court orders of temporary injunction rendered on September 30, 2021. The plaintiffs/applicants also prayed for a warrant of arrest to be issued against the defendant/respondent to bring him before the court for committal to jail for disobedience of court order, for a jail term not exceeding 6 months or such shorter term that this court may deem fit and expedient. In the alternative the plaintiffs/applicants prayed for an order of sequestration to attach the properties of the defendant, which properties are to be sold to defray the damages occasioned by breach and or disobedience of the lawful order of temporary injunction rendered on September 30, 2021
2. The application is anchored on the supporting affidavit of Jackline Moraa Manoti sworn on December 8, 2021. She averred that this court issued a temporary order of injunction against the defendant/respondent restraining the respondent from entering into, trespassing or otherwise dealing with land parcel LR. Wanjare Bogiakumu/7891 and 7891 (hereinafter referred to as the suit properties) registered in the name of the plaintiffs/applicants pending the hearing and determination of a suit filed by the plaintiff against him.



3. She averred that subsequently upon obtaining the orders, they extracted them and served them upon the defendant/respondent personally and upon his Advocates on record October 29, 2021. He stated that the said orders were endorsed with a penal notice warning the defendant of the penal consequences in case of breach or disobedience.
4. In total disregard of the orders issued on September 30, 2021, the defendant/respondent on October 30, 2021 and on October 31, 2021 in the company of his agents and/or servants proceeded to cut trees that were growing on the suit properties without the consent or permission of the of the plaintiffs/applicants. They added that the plaintiff had also been carrying out farming activities on the suit properties without due regard of the court order.
5. She further averred that on or about the November 8, 2021 the defendant entered into the suit properties and found the plaintiffs/applicants carrying out their normal activities, ran to Ekerero Police Post where he misrepresented himself to be in possession of a court order that barred the applicants from using the suit properties based on false information supplied to him. He deposed that he was arrested but later released.
6. It was her contention that it was in the interest of justice owing to the alleged unlawful activities of the respondent that this court allows the application ex-debito justitiae.
7. In response the application, the respondent filed a replying affidavits sworn on February 28, 2022. The respondent averred that the averments of the applicants in the application were full of falsehoods aimed at hoodwinking the court into granting the orders sought. He denied that he had disobeyed the court order. He contended that a surveyor's report would be ideal to confirm such malicious allegations so that the court arrives at a fair determination. He further averred that the application is bad in law, incurably, defective and an abuse of the court process
8. The court directed that the application be canvassed by way of written submissions. The applicant filed their written submissions on May 22, 2022 while the defendant/respondent failed to file their submissions.

Issues For Determination

9. Whether the respondent is in contempt of the court order of temporary injunction issued on September 30, 2021 and if so, whether he should be punished for it.

Analysis And Determination

10. It is the applicant's case that this court issued orders of temporary injunction on September 30, 2021 against the defendant/respondent restraining him and or his agents from entering into, trespassing or otherwise dealing with the suit properties pending the hearing and determination of the main suit. He avers that the orders were extracted and served personally on the respondent and his Advocate on October 29, 2021. He deposed further that the said orders were endorsed with a penal notice warning the defendant of the penal consequences in case of breach or disobedience.
11. He stated that on 30th and October 31, 2021 the respondent in the company of his agents and/or servants proceeded to cut down trees that were growing on the suit properties without the consent or permission of the plaintiffs/applicants. The respondent filed a Replying Affidavit in which he generally denied the allegations that he was in contempt of the court order. Even though he did not give his side of the story to demystify the allegations levelled against him, he prayed that a survey be done to determine the veracity of the claims by the applicants.



12. The *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”.
13. The principle of contempt of court is contained in section 5(1) of the *Judicature Act* which provides that:
- “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.”
14. In land matters such as the case before me, section 29 of the *Environment and Land Court Act* provides that;
- 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 to imprisonment for a term not exceeding two years, or to both
15. Having underscored the meaning and the legal basis of contempt of court, it is necessary to examine the elements that must be established before a court can allow an application to cite a party for contempt of court. In the case of *North Tetu Farmers Co. Ltd v. Joseph Nderitu Wanjobi* (2016) eKLR Justice Mativo stated as follows:
- “writing on proving the elements of civil contempt, learned authors of the book Contempt in Modern New Zealand have authoritatively stated as follows: -
- “there are essentially four elements that must be proved to make the case for civil contempt. The applicant must prove to the required standard (in civil contempt cases which is higher than civil cases - (a) the terms of the order (or injunction or undertaking) were clear and unambiguous and were binding on the defendant; (b) the defendant had knowledge of or proper notice of the terms of the order; (c) the defendant has acted in breach of the terms of the order; and (d) the defendant's conduct was deliberate.”
16. The next question therefore should be whether the above four elements have been established to warrant this court to cite the defendant/respondent for contempt.
- Whether the terms of the injunction order issued on September 30, 2021 were clear and unambiguous and were binding on the defendant**
17. A perusal of the court ruling delivered on September 30, 2021, reveals that the court ordered that;
- i. A temporary order of injunction is hereby issued restraining the defendant/respondent from entering, encroaching into, cultivating or in any way interfering with, threatening to forcefully enter upon, fence or in any other manner deal with the land Parcels No. Wanjare/Bogiakumu/7891 & 7892
 - ii. Costs of the application shall be the cause
18. It is the above order that was extracted and served upon the respondent on October 29, 2021.



19. As submitted by learned counsel for the applicant, there is no notable ambiguity in the order that was extracted and served upon the respondent. It must therefore be taken that the respondent understood the meaning of the said order.

Whether the defendant/respondent had knowledge of or proper notice of the terms of the order;

20. The applicant has demonstrated by way of an affidavit of service dated November 1, 2021 that the respondent was served in person. The applicant averred that after receiving the said order the defendant turned around and had one of the applicant's agents arrested by police officers from Gesonso Police Station on the November 8, 2021. The said agent is said to have been later released after the order was presented and explained to the police offices.
21. Apart from claiming that the applicant's averments were full of falsehoods, the respondent did not deny that he was served with the court order nor did he state that he did not understand the terms of the order. It is therefore my finding that the defendant/respondent had knowledge and proper notice of the terms of the court order.

Whether the defendant has acted in breach of the terms of the order.

22. Having established that the respondent was fully aware of the clear terms of the court order, it was incumbent upon him to comply with the same. In *Wildlife Lodges Ltd v County Council of Narok and another* [2005] 2 EA 344 (HCK) the Court expressed itself thus:

“It was the plain and unqualified obligation of every person against or in respect of whom an order was made by a Court of competent jurisdiction to obey it until that order was discharged, and disobedience of such an order would, as a general rule, result in the person disobeying it being in contempt and punishable by committal or attachment and in an application to the court by him not being entertained until he had purged his contempt. A party who knows of an order, whether null or valid, 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 valid – whether it was regular or irregular. That they should come to the court and not take it 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 existed it must not be disobeyed...If there is a misapprehension in the minds of the defendants as to the reasonable meaning of the order, then the expectation of them is that they would have made an application to the court for the resolution of any misunderstanding and this would have been the lawful course. In cases of alleged contempt, the breach for which the alleged contemnor is cited must not only be precisely defined but also proved to the standard which is higher than proof on a balance of probabilities but not as high as proof beyond reasonable doubt...”

23. The question I must determine is whether the applicant has set out to the required standard sufficient evidence to establish that the respondent acted in contempt of the court order which was served upon him.
24. In her supporting affidavit Jackline Moraa Manoti who is one of the applicants has deponed that despite the defendant/respondent being served with the court order issued against him on September 30, 2021, he has continuously interfered the plaintiffs/applicants' occupation and use of the suit properties by cutting down trees and cutting the Napier grass grown on the suit properties. She



has annexed copies of the photographs showing the activities that have been carried out on the suit property. Jackline has also averred that the defendant/respondent continues to carry on farming activities on the suit properties contrary to the court order.

25. She further averred that the defendant/respondent has continued to threaten the lives of the applicants and their agents. For instance, Jackline narrated that on or about the November 8, 2021, the defendant/respondent entered into the suit properties and found the applicants carrying out their normal daily farming activities. She stated that the defendant immediately rushed to the Ekerero Police Post where he misrepresented himself to be in possession of an Order barring the plaintiffs/applicants from using the suit properties. The said police officers based on the false information supplied to them, proceeded to arrest applicants but fortunately they were later released upon showing police officers the order dated September 30, 2021. She attached a copy of the OB Number issued by Gesonso Police Station to that effect.
26. She also averred that the defendant/respondent was in collusion with Police officers from Ekerero Police Station, who have been harassing the applicants' agents and relatives who have been permitted to carry out farming activities on the suit property.
27. The respondent in his response merely denied the applicants' claims and called upon the court to send a surveyor to visit the suit property to establish whether he had breached the court order.
28. It is not in dispute that the court issued an injunction against the respondent after establishing that the plaintiffs were the registered owners of the suit properties and that they were the ones in occupation thereof. The court also found that the defendant/respondent had not tendered any evidence to prove that he was in occupation of the suit properties. The court established that the only issue that was pending was that of the legality of the titles that applicants had over the suit properties which issue could not be determined at an interlocutory stage.
29. In light of the foregoing, I am satisfied that the respondent has deliberately disobeyed the court order that was served upon them. The court does not issue orders in vain and those who willfully disobey court orders risk being punished.
30. That being the case, it is my finding that the applicants have proved that the defendant has breached the court order issued on September 30, 2021 and is therefore guilty of contempt of court.
31. Accordingly, I direct that the respondent appears personally before this court on September 22, 2022 a 9.00 am for sentencing and further orders. In default of his appearance, the court shall proceed to mete out an appropriate sentence, his absence notwithstanding.

DATED, SIGNED AND DELIVERED AT KISII THIS 4TH DAY OF JULY, 2022.

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J.M ONYANGO

JUDGE

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