



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

Nduva & 3 others v Ndar & 3 others; Ng'ang'a (Intended Interested Party) (Civil Case 24 of 2017) [2025] KEHC 3876 (KLR) (Civ) (13 March 2025) (Ruling)

Neutral citation: [2025] KEHC 3876 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

CIVIL

CIVIL CASE 24 OF 2017

SN MUTUKU, J

MARCH 13, 2025

**IN THE MATTER OF ST. VINCENT DE PAUL SOCIETY
OF KENYA REGISTERED TRUSTEES (THE TRUST)**

AND

**IN THE MATTER OF THE TRUSTEES (PERPETUAL
SUCCESSION) ACT CAP 164 LAWS OF KENYA**

AND

**THE TRUSTEES RULES, 2948 AND IN THE MATTER
OF THE CIVIL PROCEDURE ACT AND CIVIL**

PROCEDURE RULES, 2010

AND

**IN THE MATTER OF CHANGE OF TRUSTEESHIP WITHING THE SOCIETY
OF ST. VINCENT DE PAUL SOCIETY OF KENYA REGISTERED TRUSTEES**

(“THE TRUST”)

BETWEEN

MICHAEL MUSEMBI NDUVA 1ST PLAINTIFF

MARY GORETTI GITARI MUNYI 2ND PLAINTIFF

URBANUS MUTHAI KINUTHIA 3RD PLAINTIFF

ST CATHERINE MULLIGAN 4TH PLAINTIFF

AND

JOHN NDAR 1ST DEFENDANT

SUSAN NJERU 2ND DEFENDANT



ISAYA NYABERA 3RD DEFENDANT

REGISTRAR OF DOCUMENTS 4TH DEFENDANT

AND

JAMES MUIRURI NG'ANG'A INTENDED INTERESTED PARTY

RULING

Background

1. On 6th April, 2023, this Court (Meoli, J) delivered a judgment in favour of the Plaintiffs herein and granted the following orders:
 - a. A Permanent prohibitory injunction restraining the 1st and 2nd defendants from acting as and/or purporting to act as the Trustees of the Trust herein.
 - b. An order directing the 1st and 2nd defendants to vacate office with immediate effect and to hand over all official documents, seal of the Trust and the office to the Plaintiffs herein being the newly elected Trustees of the Trust pursuant to the election of the International Office of the Trust.
 - c. An order directing the 1st and 2nd Defendants to hand over the original Certificate of Incorporation and the Official Seal of the Trust forthwith to the Plaintiffs.
 - d. An order directing the 4th Defendant to, forthwith, certify and register the appointment of the 1st, 2nd, 3rd and 4th Plaintiffs as the new and only Trustees of the Trust.
 - e. The respective parties will bear their own costs in this matter.
2. It seems that the above orders were not complied with, necessitating the filing of an application, Notice of Motion, dated 26th October 2023. This application sought several orders with the main contention being that the 1st Defendant was in contempt of the judgment of the court delivered on 6th April 2023 and the resultant decree. This application was canvassed. The Court (Meoli, J) found that the assertion by the Applicants in that Motion that the 1st Defendant had willfully failed, neglected or refused to comply with the orders of the court were uncontroverted and that refusal to comply and failure to explain his non-compliance with the orders of the court irresistibly pointed to willful disobedience on the part of the 1st Defendant. The court found the 1st Defendant in contempt of court and issued a Notice to Show Cause against the 1st Defendant to attend court in person to show cause why he should not be punished for contempt of court in respect of the decree issued by this court on 6th July 2023, arising from the judgment of this court delivered on 6th April 2023.

Notice to Show Cause

3. On 18th February 2025, the 1st Defendant attended court virtually. He was in the company of his advocate Ms Onyiego. Mr. Waigwa represented the Plaintiffs.
4. The 1st Defendant testified under oath that he is sickly, suffering from cancer of the bones and heart problems which have affected his mental state. He testified that due to his sickly condition, he has not been attending court. That failure to attend court was not deliberate. He testified that he did not have the documents ordered by the court; that he had never seen such documents; that Peter Nyakiamo,



who was the Trustee at the time, did not hand over the documents to him and that he did not know where those documents were. He stated that he did not have the contact of Peter Nyakiamo and that had he been in good health, he would have attended the court to explain. He asked the court to dismiss the Notice to Show Cause.

5. Under cross-examination by Mr. Waigwa on behalf of the Plaintiffs, the 1st Defendant stated that it was not true that he was told to surrender all the items he possessed in respect of the Trust. He said he was not aware that the Court ordered him not to deal with the land. He said he was not aware of demand notices sent to him to release the documents and that it was not true that all the time he was represented by advocates.
6. Both counsel made brief oral submissions. Mr. Waigwa submitted that the Contemnor has not shown remorse for his willful contempt of the court orders; that he has continued to disobey the orders and that his actions undermine the reasons why parties came to court to resolve this matter. He submitted that if this court were unable to enforce its orders, it would lose public trust; that there is need to uphold judicial authority because court orders are not inconsequential.
7. Counsel submitted, further, that the Contemnor did not take responsibility for his actions or show willingness to comply with court orders and therefore custodial sentence would be proportionate to the contempt in order to preserve the dignity of the court.
8. Ms Onyiego submitted that the 1st Defendant has mitigated and has shown remorse; that he has been unwell which condition has led to his non-compliance with the court orders; that his actions were caused by the sickness which has led to mental health challenges and that he has no family and he could not present himself.
9. Ms Onyiego submitted, further, that the 1st Defendant has explained that he was not the custodian of the documents but his predecessor; that he is not befitting of custodial sentence, which would be inhumane; that due to his age and sickness, he requires constant monitoring which cannot be done in custody due to the overcrowding and therefore it would be unjust to incarcerate him. Counsel urged that this court considers non-custodial sentence should the court find it fit to punish him for contempt of court.

Determination

10. Contempt of court is defined in Black's Law Dictionary, 9th Edition, as: "Conduct that defies the authority of a court...." Contempt of Court interferes with the administration of justice. In *Econet Wireless Kenya Limited v. Minister for Information and Communication of Kenya Authority* [2005] eKLR, the Court stated as follows:

"It is essential for the maintenance of the rule of law and order that the authority and the dignity of our courts are upheld at all times. The Court will not condone deliberate disobedience of its orders and will not shy away from its responsibility to deal firmly with proved contemnors. It is the plain and unqualified obligation of every person against whom an order is made by court of competent jurisdiction, to obey it unless and until the order is discharged. The uncompromising nature of this obligation is shown by the fact that it extends even to cases where the person affected by the order believes it to be irregular or void."

11. That the 1st Defendant was found guilty of contempt of court is not in doubt. In the Ruling delivered by this Court (Meoli, J) on 27th June 2024 found that: "The Refusal to comply and failure to explain



his non-compliance with the orders of the court irresistibly points to willful disobedience on the part of the 1st Defendant, who is hereby found in contempt of the orders of this court”.

12. The only issue before me, after taking the mitigation of the Contemnor during the Notice to Show Cause proceedings, is to determine what punishment should be meted out to the Contemnor.
13. I have considered the mitigation of the Contemnor when he was called upon by this Court to show cause why he should not be punished. The Contemnor gave various reasons why he did not comply with court orders. He told the court that he has been sick and has not been able to attend court; that he did not know about the orders of the court and that he did not have custody of the documents he was ordered to surrender to the Plaintiffs.
14. The record of the Court shows that the Contemnor has had, at all material times, legal representation. He cannot therefore be heard to state that he did not know about the court orders. Further, he was absented himself from attending court.
15. This court observed the Contemnor as he was giving evidence during the virtual hearing of the Notice to Show Cause. He did not appear remorseful. He did not seem to appreciate the seriousness of his actions and did not take responsibility for them.
16. Disobedience of court orders is a serious matter. It undermines the authority of the court. As pronounced by the Court in an Indian case, T.N Gadavarman Thiru Mulpad v Ashok Khot and anor [2005] 5 SCC, the Supreme Court of India, in emphasizing the dangers of disobeying court orders:

“Disobedience of this Court’s order strikes at the very root of the rule of law on which the judicial system rests. The rule of law is the foundation of a democratic society. Judiciary is the guardian of the rule of law. Hence, it is not only the third pillar but also the central pillar of the democratic State. If the judiciary is to perform its duties and functions effectively and remain true to the spirit with which they are sacredly entrusted to it, the dignity and authority of the Courts have to be respected and protected at all costs. Otherwise, the very cornerstone of our constitutional scheme will give way and with it will disappear the rule of law and the civilized life in the society. That is why it is imperative and invariable that Court’s orders are to be followed and complied with.”

17. Contempt of court proceedings are criminal in nature. A Contemnor is likely to lose his freedom if incarcerated. It is for this reason that a court handling such a matter must carefully consider the issue of proof whose standard in contempt of court proceedings is higher than on a balance of probabilities in civil matters. In this matter, this court is not in doubt that the Contemnor disobeyed court orders.
18. In *Gatharia K. Mutikika – vs Baharini Farm Ltd* [1985] KLR 227 it was held that:

“A contempt of court is an offence of a criminal character. A man may be sent to prison. It must be proved satisfactorily..... it must be higher than proof on a balance of probabilities, almost but not exactly, beyond reasonable doubt. The standard of proof beyond reasonable doubt ought to be left where it belongs, to wit criminal cases. It is not safe to extend it to offences which can be said to be quasi-criminal in nature.

However, the guilt has to be proved with such strictness of proof as is consistent with the gravity of the charge... Recourse ought not to be heard to process contempt of court in aid of a civil remedy where there is any other method of doing justice. The jurisdiction of committing for contempt being practically arbitrary and unlimited, should be most jealously and carefully watched and exercised with the greatest reluctance and the greatest



anxiety on the part of the judge to see whether there is no other mode which is not open to the objection of arbitrariness and which can be brought to bear upon the subject..... applying the test that the standard of proof should be consistent with the gravity of the alleged contempt... it is competent for the court where contempt is alleged to or has been committed, and or an application to commit, to take the lenient course of granting an injunction instead of making an order for committal or sequestration, whether the offender is a party to the proceedings or not.”

19. Further, the intentional and willful disobedience of the court orders must be demonstrated. This court is not persuaded that the Contemnor was not aware of the Court orders. As I have stated in this Ruling, the Contemnor had, at all material times, legal representation. He cannot feign ignorance of court orders. He did not present himself to court, either personally or through counsel to defend his position that he did not have in his custody the documents referred to.
20. I am satisfied that the threshold of proof higher than on a balance of probabilities and lower than proof beyond reasonable doubt has been met. The Contemnor has shown contempt of court processes in this case and intentionally and willfully disobeyed the orders of this court. He does not show any indication of purging the contempt. While this court sympathizes with his health condition, it must stamp its authority and ensure that court processes and orders are respected in order to uphold the dignity of this court and maintain the rule of law.
21. The conclusion I have arrived at, after careful consideration of the matter, is that the 1st Defendant, having failed to purge the contempt, must be punished for the disobedience of court orders. Consequently, I hereby sentence the 1st Defendant to pay a fine in the sum of Kshs 150,000, which should be paid within a period of 30 days from the date of this ruling, failing which the contemnor shall be committed to civil jail for a period of 3 months.
22. Orders to issue accordingly.

DATED, SIGNED AND DELIVERED THIS 13TH MARCH 2025.

S. N. MUTUKU

JUDGE

