



**Thairu v County Government of Machakos & 2 others (Environment & Land
Petition 137 of 2018) [2021] KEELC 2880 (KLR) (11 June 2021) (Ruling)**

David Gitau Thairu v County Government of Machakos & 2 others [2021] eKLR

Neutral citation: [2021] KEELC 2880 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS

ENVIRONMENT & LAND PETITION 137 OF 2018

OA ANGOTE, J

JUNE 11, 2021

**IN THE MATTER OF ARTICLES 19, 20, 21, 22, 23, 40
AND 64 OF THE CONSTITUTION OF KENYA, 2010**

AND

**IN THE MATTER OF ALLEGED CONTRAVENTION OF
FUNDAMENTAL RIGHTS AND FREEDOMS UNDER ARTICLES**

20(2), 21(1), 27, 40(1) AND 40(3) OF THE CONSTITUTION OF KENYA, 2010

AND

IN THE MATTER OF THE LAND ACT, 2012 AND THE LAND REGISTRATION ACT, 2012

AND

**IN THE MATTER OF COMPULSORY ACQUISITION OF LAND
REFERENCE NUMBER 22423, MACHAKOS WITHOUT DUE PROCESS**

AND

IN CONTRAVENTION OF THE CONSTITUTION OF KENYA, 2010

BETWEEN

DAVID GITAU THAIRU PETITIONER

AND

COUNTY GOVERNMENT OF MACHAKOS, 1ST RESPONDENT

GOVERNOR MACHAKOS COUNTY GOVERNMENT 2ND RESPONDENT

ATTORNEY GENERAL 3RD RESPONDENT



RULING

1. In the Notice of Motion dated 26th November, 2020, the Petitioner has prayed for the following orders:
 - a. That this Honourable Court be pleased to find the 2nd Respondent Governor, County Government of Machakos is in contempt of the Judgment and orders of Honourable Justice O. A. Angote in the High Court of Kenya, ELC Petition Case Number 137 of 2018 issued on 30th July, 2020 and 25th September, 2020.
 - b. That the said Governor of the County Government of Machakos be arrested and committed to civil jail for a term not exceeding six (6) months.
 - c. That this Honourable Court be pleased to order that the Governor, County Government of Machakos should not be heard by the court until he purge the contempt.
2. The Application is supported by the Affidavit of the Petitioner who deponed that he is the registered owner of land known as 23423, Machakos; that he lodged a Petition seeking to prohibit the Respondents from trespassing and dumping on his land and that the Respondents have refused to comply with the orders of the court.
3. The Petitioner deponed that despite serving the Respondents with the Judgment of the Court, the Governor, County of Machakos, has refused, ignored and neglected to act and comply with the decree and that as a result of the refusal of the Respondents to comply with the orders of the court, he has continued to suffer. Although the Respondents were served with the Application, they did not file a response.
4. Contempt proceedings are quasi-criminal in nature. That being the case, it is always incumbent on the Applicant to prove that the alleged contemnors' actions were deliberate in the sense that they deliberately or willfully acted in a manner that breached the Judgment.
5. Although the Petitioner has alleged that the Respondents have continued to trespass on the suit property even after the Judgment of this court, no evidence was placed before me by way of photographs or otherwise to prove the continued trespass or dumping of waste on L.R. Number 23425.
6. As was held in the case of Katsuri Limited vs. Kapurchand Depar Shah (2016) eKLR, contempt of court is an offence of a criminal character of which a man may be sent to prison. As such, it must be satisfactorily proved by the Applicant. The standard of prove in contempt proceedings is always higher than proof on a balance of probabilities but not beyond reasonable doubt (See (Katsuri Limited (supra).
7. In the absence of evidence to show that the Respondents have disobeyed the decree of this court of July 30, 2020, I dismiss the Application dated November 26, 2020 but with no order as to costs.

DATED, SIGNED AND DELIVERED VIRTUALLY IN MACHAKOS THIS 11TH DAY OF JUNE, 2021.

O. A. ANGOTE

JUDGE

