



**AKM v DMN (Matrimonial Cause E001 of 2022)  
[2024] KEHC 8706 (KLR) (17 July 2024) (Ruling)**

Neutral citation: [2024] KEHC 8706 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KITUI  
MATRIMONIAL CAUSE E001 OF 2022**

**RK LIMO, J  
JULY 17, 2024**

**BETWEEN**

**AKM ..... APPLICANT**

**AND**

**DMN ..... RESPONDENT**

**RULING**

1. DMN, the Defendant Applicant herein has brought an application dated 6<sup>th</sup> November 2023 under Sections 1A (3), 1B (1) (a) of the Civil Procedure Act and Sections 3A & 63 (e) of the Civil Procedure Act seeking the following reliefs namely:
  - i. Spent/overtaken by events
  - ii. That this honourable court be pleased to issue a Notice to Show Cause against AKM to show cause why she should not be committed to civil jail for disobedience of this Court’s Order issued on 27<sup>th</sup> September 2023.
  - iii. That pending the hearing and determination of this application, this Honorable Court makes an order that until the contemnor purges the contempt to the satisfaction of the court, the contemnor ought not be heard in these proceedings.
  - iv. That costs of this application be provided for.
2. The application is premised on the following grounds;
  - i. On 25<sup>th</sup> September 2023, the Respondent filed an application in this court claiming that the Applicant had threatened to evict her from the property in [particulars withheld] village
  - ii. On 27<sup>th</sup> September 2023, this Honourable Court gave injunctive orders restraining the Applicant from evicting the Respondent from the subject property.



- iii. The effect of the Court Order was that the status quo should remain pending determination of the suit which is part heard
  - iv. While those orders are in force, the Respondent hired a tractor on Sunday 5<sup>th</sup> November 2023 at 6.00am which destroyed the Applicant's crops/seedlings that were at different stages of germination
  - v. Despite the police, the Respondent has vowed to stay put
  - vi. The Respondent's conduct of uprooting Applicant's germinating seedlings and crops is most contemptuous of this court's order which ought to be punished severely.
3. The application is supported by the affidavit of DMN sworn on 6<sup>th</sup> November 2023 where he avers as follows; that he prepared his shamba in [particulars withheld] village in mid-September 2023 in anticipation for the October short rains and subsequent planting season. That in response, the respondent filed an application in court claiming that the applicant wanted to evict her from the land. That on 27<sup>th</sup> September 2023, this court gave orders restraining the applicant from evicting the respondent but also preserved the suit property pending hearing and determination of the main suit. That the applicant's crops started germinating in late October 2023 but on 5<sup>th</sup> November 2023, the Respondent hired a tractor and uprooted his germinating seedlings. The applicant avers that he reported the incident at Ukasi Police Station and obtained an abstract. The applicant has attached a photo marked as "DMN1" evidencing the alleged destruction and another annexure marked "DMN2" being the police abstract.
  4. He submits that the Respondent ought to be punished for contempt of court and that unless she is punished the authority of courts will be undermined. He relies on the decision in Teachers Service Commission v Kenya National Union of Teachers [2013] eKLR. He submits that a person who disobeys a lawful order should be sanctioned to preserve and safeguard the rule of law.
  5. He submits that it is a duty of everyone to respect and obey court orders unless the same are discharged. He contends that the Respondent is under a false impression that she was not to obey court orders because the order was in favour.
  6. In response to the application, the respondent filed a Replying Affidavit sworn AKM on 29<sup>th</sup> November 2023. The respondent has given a sequence of events leading to issuance of the court's orders of 27<sup>th</sup> September 2023 as follows, that on 11<sup>th</sup> September 2023, the applicant in the company of armed men tried to gain access to the matrimonial home at [particulars withheld] village where the respondent resides with the children. That the applicant demanded issuance of the house and gate keys from the respondent which she refused to surrender. That as a result of the refusal, the applicant proceeded to cut down the property fence in a bid to gain access into the compound. That on 16<sup>th</sup> September 2023, the applicant allegedly went to the home again in the company of armed men and entered the farm and proceeded to threaten the respondent. As a result, the respondent filed an application before this court dated 22<sup>nd</sup> September 2023 seeking injunctive orders against the applicant and the court issued orders on 27<sup>th</sup> September 2023 directing the applicant to cease interference with the property. That these are the orders that the applicant alleges that the respondent is in contempt of. With regards to the alleged contemptuous acts, the respondent has denied the allegations that she hired a tractor to destroy the applicant's crops and avers that the applicant made a false report to the police. The respondent has also taken issue with the application herein stating that the orders of 27<sup>th</sup> September 2023 were issued against the applicant and not her. This in her view makes this application incompetent. The respondent has also taken issue with the photos that the applicant has annexed in his



application on two fronts first on their quality which she states is unclear and secondly on the ground that they have not been accompanied by a certificate proving their authenticity.

7. In her written submissions through counsel, the Respondent submits that the Applicant has not satisfied the threshold to have her punished for contempt. She cites the decision in *Tetu Farmers Co. Ltd v Joseph Nderitu Manjohi* [2016] where Mativo J (as he then was) held that to hold a contemnor liable the term of the order to be obeyed must be clear and binding on the contemnor and there must be proof of service of the order. She submits that the applicant has failed to state which order was breached and when it was served on her.
8. She submits that the order issued by this court on 27<sup>th</sup> September 2023 was clear and binding on the Applicant and not her.
9. This court has considered this application on the merits and the response. I say on the merit because the Applicant has cited a non-existent provision being Section 45 of the *Judicature Act*. The other provisions cited i.e Section 1A (3) relates to duty of a party to assist the court to further its overriding objective, Section 1B (1) (a) relates to duty of court to make just determination of proceeding while Section 3A & 63 of the *Civil Procedure Act* relate to inherent power of courts to make such orders as they may be just and convenient. The cited provisions do not apply to contempt proceedings.
10. The actual section dealing with contempt proceedings are provided or found under Section 5 of the *Judicature Act* which states:

“ 5. Contempt of Court

- i. 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.
- ii. 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.
- iii. 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.”

11. The applicant’s contention is that the respondent destroyed his germinating crops/seedlings using a tractor on the morning of 5<sup>th</sup> November 2023. The respondent has denied this allegation and termed it as baseless and unfounded. She has also denied hiring a tractor in a bid to destroy the applicant’s crops. She avers that there is no evidence tendered to substantiate these claims by the applicant.
12. The position taken by the applicant is that the respondent is in contempt of orders issued by this court on 27<sup>th</sup> September 2023. On this particular day, the court was hearing the respondent’s application dated 22<sup>nd</sup> September 2023 in which the respondent had expressed fears of eviction and/or threats of eviction by the applicant. The court stated that it had looked at pictures of armed men (with machetes) alleged to have been sent to cause violence to the respondent and the fact that the respondent reported the incident vide O.B No. XXXX/2023 at Ukasi Police Station. The main suit relates to division of



matrimonial property and the respondent's fears were based on eviction from the matrimonial home. Upon hearing both parties, this court made the following orders;

The application dated 22<sup>nd</sup> September 2023 is hereby allowed in the following terms;

- i. The respondent and his agents or servants are stopped through an injunction from evicting or interfering with the applicant's quiet possession of the matrimonial property comprising of matrimonial home and that parcel known as E001/2022 pending the determination of the suit herein.
  - ii. Costs shall be in the cause
  - iii. The hearing earlier scheduled for 29<sup>th</sup> January 2024 shall remain as scheduled.
13. The Applicant has not cited the specific order upon which he faults the Respondent for breaching. While it is true that court orders must be obeyed for the authority and dignity of the court to be maintained, accusing someone for contempt is a serious matter that must be done with clarity and proof. This is because of the serious consequences or sanction that follows if one is found to be in breach. Defiance of a court order is not an option in a country where there is rule of law.
14. A court order is binding on the party against whom it is directed and until it is set aside it remains valid and must be complied. It is criminal to intentionally disobey a court order. This is because disobeying a court order undermines the dignity and authority of court and undermine the rule of law.
15. In the case of Samuel M.N Mweru & Others v National Land Commission & 2 Others [2020] eKLR the court observed that in civil contempt proceeding's an Applicant must prove the following;
- i. The terms of the order violated or disobeyed.
  - ii. Knowledge of those terms by the Respondent.
  - iii. Failure by the Respondent to comply with the terms of the order.
16. The court in Samuel M. N. Mweru & Others v National Land Commission & 2 others (supra) held the same view when it stated;

“Upon proof of these requirements the presence of willfulness and bad faith on the part of the Respondent would normally be inferred, but the Respondent could rebut this inference by contrary proof on a balance of probabilities. Perhaps the most comprehensive of the elements of civil contempt was stated by the learned authors of the book Contempt in Modern New Zealand who succinctly stated;

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) that;

- 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.”



17. Additionally, A. Mbogholi Msagha J (as he then was) in *David Njoroge Kinuthia & 653 others v Gnanjivan Screws and Fasteners Limited & 5 others* [2021] eKLR held as follows;

“It should not be forgotten that the consequences of contempt of court orders are grave. With respect to individuals, this may lead to loss of freedom by way of imprisonment or payment of fines. With respect to limited liability companies, a fine and attachment of property may follow. That is the reason the law requires proof of the order, service of the same and knowledge on the part of the party sought to be cited and condemned. Decided cases have pointed out that contempt of court is a quasi-criminal offence. Proof thereof is not on a balance of probabilities, but above that standard, yet not beyond reasonable doubt.”

18. In this instance, as observed above the orders issued on 27<sup>th</sup> September 2023 enjoined the Applicant or stopped him from activities stated in the order. The orders were not issued as against the Respondent but the Applicant. The Applicant is misleading when he claims that the orders issued were against the Respondent. He cannot therefore accuse the Respondent for disobeying orders that were not directed at her.
19. The Applicant has failed to pin point the order or orders that the court issued against the Respondent and which order(s) was or were disobeyed.

In the premises this application on the merits fails. Costs shall be in the main cause.

**DATED, SIGNED AND DELIVERED AT KITUI THIS 17TH DAY OF JULY, 2024.**

**HON. JUSTICE R. K. LIMO**

**JUDGE**

