



REPUBLIC OF KENYA



**Kinyua v Gichanga (Civil Case 53 of 2003)
[2024] KEHC 9733 (KLR) (Civ) (1 August 2024) (Ruling)**

Neutral citation: [2024] KEHC 9733 (KLR)

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

CIVIL

CIVIL CASE 53 OF 2003

MA ODERO, J

AUGUST 1, 2024

BETWEEN

JOYCE KAMENE KINYUA APPLICANT

AND

JOSEPH KINYUA GICHANGA RESPONDENT

RULING

1. Before this court is the Notice of Motion dated 30th May 2023 by which the Applicant Joseph Kinyua Gichanga seeks the following orders;-
 - 1.. Spent
 2. That this honourable court be pleased to grant leave to applicant to institute contempt of court proceedings against the respondent, Joyce Kamene Kinyua
 3. That this Honourable Court be pleased to find that the respondent is in contempt of court order given on 27th September, 2017 by Hon. Justice W. M. Musyoka and consequently be punished for disobeying the said order.
 4. That the consequent upon 3 above, this court be pleased to sentence the respondent/ contemnor to imprisonment and/or order the attached and sale of their personal properties in satisfaction of such fines as may be meted out.
 5. That further to 4 above this court be pleased to sentence the respondent to such fines as are appropriate and/or order the attachment and sale of their personal properties in satisfaction of such fines as may be meted out.



6. That in the event the respondent/contemnor do wish to purge their contempt, they do so by providing a detailed full and accurate account of the rent that she has collected in respect of the property known as Nairbi/Block 62/452 Kibera Ayany between the period of 2nd Novemebr 2006 until to date and provide a copy of the title deed to the applicant to enable him conduct and official search on the property known as Nairobi/Block 62/452 Kibera Ayang.
2. The application which was premised upon Sections 1A, 3 and 3A of the *Civil Procedure Act*, Section 5 of the *Judicature Act*, Article 159 (2) (d) of *the Constitution* of Kenya and all other enabling provisions of the law was supported by the Affidavit of even date sworn by the Applicant.
3. The Respondent Joyce Kamene Kinyua opposed the Application.
4. The matter was canvassed by way of written submissions. The applicant filed the written submissions dated 26th July 2023 whilst the Respondent relied upon her written submissions dated 17th August 2023.

Background

5. The Applicant and the Respondent were a couple who got married to each other in the year 1968. The couple cohabited as man and wife until the year 1997 when they separated. Thereafter the Respondent filed the Originating Summons dated 31st January 2002 seeking division of matrimonial property.
6. Vide a Ruling delivered on 2nd November 29th September 2017, Hon Justice William Musyoka made the following orders:-
 - a. That I hereby order that Nairobi/Block 62/452 Kibera Ayany be sold by private treaty and the proceeds be shared equally between the plaintiff and the defendant;
 - b. That the plaintiff shall prepare and place before the court within forty five days a full and accurate account of the rent that she has collected in respect of the said property between 2nd November 2006 and the date of the account;
 - c. That the sharing of the proceeds of the sale to be carried out under (a) above shall await compliance with (b) above and any other or further orders as may be made subsequent to the filing of the accounts;
 - d. That the Deputy Registrar of the family Division shall execute all or any documents relevant to the sale ordered in (a) above;
 - e. That the matter shall be mentioned after forty-five (45) days for compliance; and
 - f. That the defendant shall have costs of the application.
7. The Applicant avers that the Respondent has blatantly refused to comply with the orders made by the court by failing to place before the court a full and accurate account of all rent collected in respect of the property known as Nairobi/Block 62/452 Kibera Ayany (thereafter ‘the Kibera Property’) as directed by the court.
8. Further the Applicant alleges that the Respondent has failed and/or declined to provide a copy of the Title Deed to the Kibera Property to enable him conduct an official search in respect of the same.
9. The Applicant accused the Respondent of deliberately stalling in order to prevent the sale and sharing of proceeds of the Kibera Property as directed by the court. He therefore urges this court to cite the Respondent for contempt and to punish her accordingly.



10. As stated earlier the application was opposed.

Analysis and Determination

11. The Applicant has alleged that the Respondent has contravened the orders made by the court on 29th September, 2017.

12. The jurisdiction of the High Court to punish for contempt is found in Section 5 of the [Judicature Act](#) which provides:-

“(1) 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 such power shall extend to upholding the authority and dignity of subordinate courts.

(2) 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.”

13. In *Econet Wireless Kenya Ltd v Minister for Information Communication of Kenya & Another* [2005] KLR 828, the obligation to obey court orders was well explicated thus:-

“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.” [own emphasis]

14. In the premises, the elements that the Respondent herein needed to prove are:-

- a. that the Orders of 29th September 2017 were clear, unambiguous and binding on the respondent;
- b. that the Applicant had proper notice or knowledge of the terms of those orders;
(see *Katsuri Limited v Kapurchand Depar Shah* [2016]eKLR)

15. The standard of proof applicable in contempt applications, is above a balance of probabilities, given the criminal connotations of contempt proceedings. In *Gatharia K. Mutikikia v Baharinin Farm Ltd* [1985] KLR 227 the Court of Appeal stated as follows:-

“.....In our view the standard of proof in contempt proceedings must be higher than proof on the 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, in criminal cases. It is not safe to extend it to offence which can be said to be quasi-criminal in nature.”

[own emphasis]



16. It is important that the court satisfy itself that the person being accused of disobeying court orders had knowledge/notice of said court orders.
17. In *Oilfield Movers Ltd -vs- Zahara Oil & Gas Limited* [2020] eKLR the court stated as follows:-

“It is important however that the court satisfies itself beyond any shadow of a doubt that the person alleged to be in contempt committed the act complained of with full knowledge or motive of the existence of the order of the court forbidding it. The threshold is quite high as it involves possible deprivation of a person’s liberty.”
18. I have perused the orders which were made by Hon Justice Musyoka. The same were clear and unambiguous and did not require any interpretation.
19. The next question is whether the Respondent was aware of the said orders. The Respondent has actively participated in this matter since its inception in the year 2003 and in fact has all along been represented by counsel.
20. Moreover the record clearly indicates that on 29th September 2017 when the ruling in question was delivered, there was an Advocate in court representing the Respondent.
21. Additionally the Applicant has annexed letters dated 21st March 2019 and 12th April, 2019 notifying the Respondents Advocates Muriithi Donge & Company Advocates of the courts orders.
22. Accordingly I am satisfied that through her Advocate who was her agent the Respondent had full Notice of the orders which were made by the court.
23. The final issue for consideration is whether the Respondent breached or acted in contravention of the said orders.
24. In *Oilfield Movers Ltd -vs- Zahara Oil & Gas Limited* [2020] eKLR the court stated -

“It is important however that the court satisfies itself beyond any shadow of a doubt that the person alleged to be in contempt committed the act complained of with full knowledge or motive of the existence of the order of the court forbidding it. The threshold is quite high as it involves possible deprivation of a persons’ liberty.....”
25. In order to find a person guilty of contempt there must be proof of willful and intentional disobedience of a court order. In *Mahinderjit Singh Bitta -vs- Union of India & Otehrs* 1a No 100 of 2010 the Supreme Court of India stated as follows:-

“In exercise of its contempt jurisdiction the courts are primarily concerned with enquiring whether the contemnor is guilty of intentional and willful violation of the order of the court, even to constitute a civil contempt. Every party is before the court and even otherwise, is expected to obey the orders of the court in its spirit and substance. Every person is required to respect and obey the orders of the court with due dignity for the institution” (own emphasis)
26. The orders made by the court on 27th September 2016 directed the Respondent to perform certain actions. Firstly the court directed that the Kibera Property be sold by private treaty and the proceeds of sale be divided equally between the parties.
27. Secondly the Respondent was directed to prepare and place before the court within forty five (45) days a full and accurate account of the rent she had collected in respect of the Kibera Property between 2nd



November, 2006 and the date of said account. This was to be done in order to facilitate the sharing of the rental proceeds.

28. According to the Applicant the Respondent failed and/or declined to file an account of the rental proceeds as ordered by the court. According to the Applicant this failure to comply was deliberate and was calculated to frustrate the sale of the property and sharing of the proceeds.
29. The fact that the Respondent failed to comply with the courts orders to provide an account within 45 days is not in any doubt. The Respondent herself concedes that she did not comply with the orders of the court.
30. The Respondent pleads that she was unable to comply with the said orders because the orders as issued were outside her scope to perform.

That her failure to comply was not intentional. That she was unable to prepare a full and accurate account because the couples son who moved into the Kibera Property in the year 1997 has not been paying any rent.

31. This is not a reason for failure to comply but rather amounts to a very feeble excuse advanced by the Respondent in an attempt to explain her failure to comply. If there was no rental income being received in respect of the Kibera Property then all the Respondent needed to do was to file an account indicating that no rental income was being received i.e the rental income is NIL.
32. Alternatively the Respondent could have come back to court to explain her inability to file the accounts or seek further clarification as need be.

Instead she opted to ignore the courts orders.

33. The orders in question were made on 27th September 2017. This application was filed in May 2023 almost six (6) years AFTER the orders were made. Still the Respondent has not complied. Courts do not make orders in vain. Any person to whom a court order is directed is obliged to obey said orders even if he/she does not agree with said

Orders.

34. Obedience of court orders is not optional. In *Sheila Cassatt Issenberg & another v Antony Machatha Kinyanjui* [2021] eKLR, the court relying on the case of *T. N. Gadavarman Thiru Mulpad v Ashok Khot and Anor* [2006] 5 SCC, the Supreme Court of India emphasized on the dangers of disobeying Court orders, thus:

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 corner stone 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 [Own emphasis]

35. The Respondents actions were contemptuous to say the least. I am inclined to agree with the Applicant that hers was a move calculated to frustrate the sale of the Kibera Property.



36. I am satisfied that it has been proved that the Respondent willfully and deliberately opted not to comply with the courts orders made on 27th September, 2017. She is in contempt of court.
37. Accordingly I allow this application and I impose upon the Respondent a fine of Kshs. 50,000 to be paid within thirty (30) days. In event of failure to comply the Respondent will be committed to Civil jail for a period of thirty (30) days. Costs of this application will be borne by the Respondent.

DATED IN NYERI THIS 1ST DAY OF AUGUST, 2024.

MAUREEN A. ODERO

JUDGE

