



**Wings of Life Gospel Church International Trustees v Somo & 4 others (Environment & Land Case E132 of 2021) [2021] KEELC 1407 (KLR) (21 October 2021) (Ruling)**

*Wings of Life Gospel Church International Trustees v Hussein Adan Somo & 4 others [2021] eKLR*

Neutral citation: [2021] KEELC 1407 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND CASE E132 OF 2021  
SO OKONG'O, J  
OCTOBER 21, 2021**

**BETWEEN**

**WINGS OF LIFE GOSPEL CHURCH INTERNATIONAL  
TRUSTEES ..... PLAINTIFF**

**AND**

**HUSSEIN ADAN SOMO ..... 1<sup>ST</sup> DEFENDANT  
NAIROBI CITY COUNTY ..... 2<sup>ND</sup> DEFENDANT  
MINISTRY OF LANDS AND PHYSICAL PLANNING ..... 3<sup>RD</sup> DEFENDANT  
DIRECTOR OF SURVEYS ..... 4<sup>TH</sup> DEFENDANT  
ATTORNEY GENERAL ..... 5<sup>TH</sup> DEFENDANT**

**RULING**

1. On 23<sup>rd</sup> April, 2021, the court made the following orders on the plaintiff’s application dated 16<sup>th</sup> April, 2021;
  1. That pending the hearing of the application inter-partes or further orders by the court, the 1<sup>st</sup> and 2<sup>nd</sup> defendants are restrained on a temporary basis from demolishing the plaintiff’s structures, evicting the plaintiff, selling, charging and/or interfering in any manner whatsoever with the plaintiff’s possession of all that parcel of land known as L.R No. 209/16780, I.R 211484 also referred to as Plot “B” Off Racecourse and General Waruinge Road(hereinafter referred to as “the suit property”). For the avoidance of doubt, possession of the suit property shall revert to and shall remain what it was prior to the alleged forceful entry into the property and eviction of the plaintiff therefrom on 13<sup>th</sup> and 14<sup>th</sup> April, 2021.



2. That until further orders by the court, there shall be a temporary inhibition inhibiting the registration of any other or further dealings with the suit property.
  3. That the application shall be served for hearing on inter-partes on 28<sup>th</sup> April, 2021.
2. On 26<sup>th</sup> April, 2021, the 1<sup>st</sup> defendant filed an application dated 26<sup>th</sup> April, 2021 under certificate of urgency seeking a review, variation and/or setting aside of the said orders of 23<sup>rd</sup> April, 2021. The 1<sup>st</sup> defendant's application was brought on among other grounds that the 1<sup>st</sup> defendant stood the risk of being cited for contempt of court if the said orders were not set aside and that the eviction and demolition that were restrained by the said orders had already taken place. In his affidavit in support of the application, the 1<sup>st</sup> defendant admitted that he was served with the orders made by this court on 23<sup>rd</sup> April, 2021 on 24<sup>th</sup> April, 2021. The court ordered that the 1<sup>st</sup> defendant's said application be served upon the plaintiff for mention on 28<sup>th</sup> April, 2021 when the plaintiff's application was scheduled to come up for hearing.
  3. When the two applications came up on 28<sup>th</sup> April, 2021, the 1<sup>st</sup> defendant was not ready to proceed. The 1<sup>st</sup> defendant's advocates had not served the 1<sup>st</sup> defendant's application dated 26<sup>th</sup> April, 2021 upon the plaintiff. They had also not responded to the plaintiff's application. The 1<sup>st</sup> defendant's advocate Mr. Orange called upon the court to interpret its orders of 23<sup>th</sup> April, 2021 since the orders were granted ex parte and the same required the reinstatement of the plaintiff into the suit property. On his part, the plaintiff's advocate, Mr. Kahuthu claimed that the 1<sup>st</sup> defendant had defied the said court orders and as such the 1<sup>st</sup> defendant was not supposed to be heard. Mr. Orange argued that the 1<sup>st</sup> defendant was in possession of the suit property and as such it was not fair for him to be removed from the property. The court fixed the plaintiff's application dated 16<sup>th</sup> April, 2021 for hearing on 16<sup>th</sup> June, 2021 and declined the invitation from the 1<sup>st</sup> defendant to interpret the orders made on 23<sup>rd</sup> April, 2021. The said orders were extended.
  4. When the plaintiff's application came up for hearing on 16<sup>th</sup> June, 2021, the same did not proceed. The plaintiff's advocate informed the court that the 1<sup>st</sup> defendant had continued with his defiance of the orders made on 23<sup>rd</sup> April, 2021 and as a result of that the plaintiff had filed an application dated 11<sup>th</sup> June, 2021 for contempt against the 1<sup>st</sup> defendant. The court directed that the said application for contempt be heard first. That is the application which is the subject of this ruling.
  5. In its application dated 11<sup>th</sup> June, 2021, the plaintiff sought the following orders;
    1. That the 1<sup>st</sup> defendant, Hussein Adan Somo and/or his agents be committed to prison/Civil jail for 6 months for contempt of the court's orders given on 23<sup>rd</sup> April, 2021 and extended on 28<sup>th</sup> April, 2021.
    2. That a warrant of arrest be issued to the Officer Commanding Kamukunji Police Station to arrest the 1<sup>st</sup> defendant and bring him before the court for sentencing.
    3. That in the alternative, the court does order the attachment of the 1<sup>st</sup> defendant's properties and for that purpose the 1<sup>st</sup> defendant does provide the court with the title documents for his properties within 7 days of the orders and/or the 1<sup>st</sup> defendant does deposit Kshs. 50,000,000/- with the plaintiff forthwith.
    4. That the court does issue any other order deemed fit in the circumstances.
    5. That the 1<sup>st</sup> defendant should not be heard until he purges his contempt.
    6. That the 1<sup>st</sup> defendant does bear the costs of the application.



6. The plaintiff's application that was supported by the affidavit of Gerishon K. Njoroge was brought on the grounds that the orders made herein on 23<sup>rd</sup> April, 2021 and extended on 28<sup>th</sup> April, 2021 were extracted and served upon the 1<sup>st</sup> defendant and that the 1<sup>st</sup> defendant had refused to comply with the same. The plaintiff averred that the 1<sup>st</sup> defendant was aware of the said orders and even filed an application in the Court of Appeal in Civil Appeal (Application) No. E241 of 2021, Nairobi seeking to stay the same which application was dismissed. The plaintiff annexed to its affidavit in support of the application among others; copies of the orders given on 23<sup>rd</sup> April, 2021 and 28<sup>th</sup> April, 2021 and affidavits of service thereof upon the 1<sup>st</sup> defendant. The plaintiff also annexed a copy of the order that was made by the Court of Appeal on 8<sup>th</sup> June, 2021. The plaintiff averred that the 1<sup>st</sup> defendant had refused to comply with the court order in that he had refused to hand over possession of the suit property to the plaintiff. The plaintiff averred that the 1<sup>st</sup> defendant had stationed two (2) security guards on the suit property.
7. The 1<sup>st</sup> defendant opposed the application through a Notice of Preliminary Objection dated 28<sup>th</sup> June, 2021 and a replying sworn on 14<sup>th</sup> September, 2021. In his Notice of Preliminary Objection, the 1<sup>st</sup> defendant contended that the plaintiff does not have capacity to institute this suit under the [Societies Act](#), Chapter 108 Laws of Kenya. The 1<sup>st</sup> defendant contended further that the application is fatally defective, bad in law and amounts to an abuse of the court process. In his affidavit, the 1<sup>st</sup> defendant stated that he was given possession of the suit property by the 2<sup>nd</sup> defendant on 13<sup>th</sup> March, 2021, he fenced the same and erected a gate thereon. The 1<sup>st</sup> defendant stated that the court orders in question were served upon him but the same had been overtaken by events. The 1<sup>st</sup> defendant stated that he had not commenced any construction on the suit property because he respected the said court orders. The 1<sup>st</sup> defendant stated that he had not blocked the plaintiff from accessing the suit property.
8. The plaintiff filed a supplementary affidavit sworn by Gerishon K. Njoroge on 17<sup>th</sup> September, 2021 in which he stated that the 1<sup>st</sup> defendant had continued with his defiance of the court by completely demolishing the church building and erecting a stone wall fence around the suit property. The plaintiff averred that the court order referred to in the 1<sup>st</sup> defendant's affidavit concerned a neighbouring plot and had nothing to do with the suit property. The plaintiff averred that the 1<sup>st</sup> defendant was not ready to comply with the orders of the court.
9. The application was heard on 29<sup>th</sup> September, 2021. In his submissions, Mr. Kahuthu for plaintiff reiterated the contents of the affidavits filed in support of the application. Mr. Kahuthu submitted that the 1<sup>st</sup> defendant had not denied the existence of the order he is accused of disobeying and service of the same upon him. Mr. Kahuthu submitted that the plaintiff had placed evidence before the court showing the status of the suit property after the 1<sup>st</sup> defendant took possession of the same. He urged the court to grant the orders sought.
10. In his submissions in reply, Mr. Orange for the 1<sup>st</sup> defendant reiterated the contents of the 1<sup>st</sup> defendant's replying affidavit. Mr. Orange submitted that as at the time the 1<sup>st</sup> defendant was served with the court order; he had already put up a fence around the suit property. Mr. Orange submitted that the 1<sup>st</sup> defendant had not refused to restore the plaintiff back to the suit property. He submitted that the 1<sup>st</sup> defendant had not denied the plaintiff access to the suit property. In a rejoinder, Mr. Kahuthu submitted that the plaintiff had attempted to go back to the suit property and was denied access by the 1<sup>st</sup> defendant.



## Determination:

11. I have considered the plaintiff's application together with the affidavits filed in support thereof. I have also considered the affidavit and Notice of Preliminary Objection filed by the 1<sup>st</sup> defendant in opposition to the application. Finally, I have considered the submissions by the advocates for the parties. The main issues for determination in the application before me is whether the plaintiff has established that the 1<sup>st</sup> defendant breached the orders issued herein on 23<sup>rd</sup> April, 2021 and extended on 28<sup>th</sup> April, 2021 and whether the plaintiff is entitled to the reliefs sought in the application.
12. In *Hardkinson v Hardkinson* [1952] ALL ER 567, it was held that:

“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 unless and until it was discharged and disobedience of such order would as a general rule result in the person disobeying 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.”
13. In *Mutitika v Baharini Farm Ltd* [1985] KLR 227 it was held that:
  - i. A person who knowing of an injunction, or an order of stay, willfully does something, or causes others to do something, to break the injunction, or interfere with the stay, is liable to be committed for contempt of court as such a person has by his conduct obstructed justice.
  - ii. The standard of proof in contempt proceedings must be higher than proof on a balance of probabilities and almost but not exactly beyond reasonable doubt.
  - iii. The principle must be borne in mind that the jurisdiction to commit for contempt should be carefully exercised with great reluctance and anxiety on the part of the court to see whether there is no other mode which can be brought to bear on the contemnor.
14. In *Micheal Sistu Mwaura Kamau v Director of Public Prosecutions & 4 others* (2018) eKLR the court set out the law on contempt as follows:

“It is trite that to commit a person for contempt of court, the court must be satisfied that he has willfully and deliberately disobeyed a court order that he was aware of. That is made absolutely clear by section 4 of the [Contempt of Court Act](#) and the ruling of the Supreme Court in *Republic v. Ahmad Abolfathi Mohammed & Another* (supra). Secondly, as this Court emphasized in *Jihan Freighters Ltd v. Hardware & General Stores Ltd* and in *A.B. & Another v. R. B.* [2016] eKLR, to sustain committal for contempt of court, the order of the court that is alleged to have been deliberately disobeyed must be clear and precise so as to leave no doubt as to what a party was supposed to do or to refrain from doing. Lastly, the standard of proof in committal proceedings is higher than proof on a balance of probabilities, though not as high as proof beyond reasonable doubt. (See *Mutitika v. Baharini Farm* (supra) and *Republic v. Ahmad Abolfathi Mohammed & Another* (supra).”
15. It is on the foregoing principles that the plaintiff's application falls for consideration. The plaintiff has claimed that the 1<sup>st</sup> defendant committed an act of contempt by refusing to vacate the suit property and handover possession of the same to the plaintiff in accordance with the orders made herein on 23<sup>rd</sup> April, 2021 that was extended on 28<sup>th</sup> April, 2021. In response to this allegation, the 1<sup>st</sup> defendant has claimed that the suit property was handed over to him by the 2<sup>nd</sup> defendant after the 2<sup>nd</sup> defendant had evicted the plaintiff therefrom and that upon taking possession, he put up a perimeter wall around the



suit property and installed a gate. The 1<sup>st</sup> defendant has contended that when the order of 23<sup>rd</sup> April, 2021 was served upon him, he had already constructed the said perimeter wall. The 1<sup>st</sup> defendant has contended that he has not refused to grant the plaintiff access to the suit property.

16. From the conduct of the 1<sup>st</sup> defendant and the evidence before the court, I am satisfied that the 1<sup>st</sup> defendant is in contempt of the orders made herein on 23<sup>rd</sup> April, 2021. The 1<sup>st</sup> defendant was aware that he was required pursuant to the said court order to hand over possession of the suit property to the plaintiff. The 1<sup>st</sup> defendant came before this court to set aside the said order and the court declined to stay the same ex parte. In the application the 1<sup>st</sup> defendant stated that if the orders of 23<sup>rd</sup> April, 2021 were not varied, he risked being cited for contempt of court. The 1<sup>st</sup> defendant's application for the variation of the said order is still pending. The 1<sup>st</sup> defendant then went to the Court of Appeal to have the order stayed. The Court of Appeal dismissed his application. The 1<sup>st</sup> defendant has admitted that he has fenced the suit property with a stone wall and installed a gate. The 1<sup>st</sup> defendant has not denied that he has put guards on the suit property to keep off any person trying to access the same. On 28<sup>th</sup> April, 2021 when the parties appeared before this court, the plaintiff's advocate informed the court that the 1<sup>st</sup> defendant had defied the court order of 23<sup>rd</sup> April, 2021. As at this date, the contempt of court application had not been filed. The 1<sup>st</sup> defendant's advocate did not deny the claim by the plaintiff's advocate.
17. The record of the court shows that Mr. Orange advocate for the 1<sup>st</sup> defendant told the court on that day that the 1<sup>st</sup> defendant was in possession of the suit property and he urged the court to maintain that status quo. In fact, Mr. Orange argued that it was unfair to remove the 1<sup>st</sup> defendant from the suit property. The 1<sup>st</sup> defendant has not told the court when he had a change of heart and agreed to surrender possession of the suit property to the plaintiff. As a show of good faith even after the contempt application was brought, nothing stopped the 1<sup>st</sup> defendant's advocate from informing the court that the 1<sup>st</sup> defendant was ready and willing to surrender the suit property to the plaintiff and that it was not necessary to argue the application.
18. Due to the foregoing, I am satisfied that the plaintiff has proved the act of contempt alleged against the 1<sup>st</sup> defendant. The orders given on 23<sup>rd</sup> April, 2021 were clear in their terms. The 1<sup>st</sup> defendant was prevented from interfering with the plaintiff's possession of the suit property. The court made it clear that in the event that possession of the suit property had been taken from the plaintiff through forceful eviction, possession had to revert to what it was prior to the eviction of the plaintiff from the suit property. It is not disputed that the plaintiff was forcefully evicted from the suit property. It is also not disputed that the 1<sup>st</sup> defendant took possession of the suit property thereafter. It is not disputed that the 1<sup>st</sup> defendant was served with the court order aforesaid that required that possession be restored to the plaintiff. It is also not disputed that the plaintiff has not got back possession of the suit property. I am persuaded that the 1<sup>st</sup> defendant in flagrant disobedience of the order issued herein on 23<sup>rd</sup> April, 2021 has denied the plaintiff access to the suit property by putting up a perimeter wall fence around the suit property, installing a gate and posting guards to keep off the plaintiff from the property.
19. In the final analysis, I hereby make the following orders on the plaintiff's application dated 11<sup>th</sup> June, 2021;
  1. I find the 1<sup>st</sup> defendant, Hussein Adan Somo in contempt of the orders made on 23<sup>rd</sup> April, 2021 and extended on 28<sup>th</sup> April, 2021.
  2. The 1<sup>st</sup> defendant is granted seven (7) days from the date hereof within which to purge his contempt by granting the plaintiff access and possession of the suit property on a temporary



basis pending the hearing of the plaintiff's and the 1<sup>st</sup> defendant's applications dated 16<sup>th</sup> April, 2021 and 26<sup>th</sup> April, 2021 respectively pending herein.

3. The 1<sup>st</sup> defendant shall appear before this court on a date to be fixed to address the court in mitigation before a sentence is passed against him.
4. The plaintiff shall have the costs of the application.

**DELIVERED AND DATED AT NAIROBI THIS 21<sup>ST</sup> DAY OF OCTOBER, 2021**

**S OKONG'O**

**JUDGE**

Ruling delivered virtually through Microsoft Teams Video Conferencing Platform in the presence of:

Mr. Kahuthu for the Plaintiff

Mr. Orenge for the 1<sup>st</sup> defendant

Ms. Mogusu for the 2<sup>nd</sup> defendant

N/A for the 3<sup>rd</sup>, 4<sup>th</sup>, and 5<sup>th</sup> defendants

Ms. C. Nyokabi-Court Assistant

