



**Nyandarua Progressive Agencies Ltd v Mugo & 9 others; Kamau & another (Interested Parties) (Civil Case 25 of 2017) [2023] KEHC 20010 (KLR) (6 July 2023) (Ruling)**

Neutral citation: [2023] KEHC 20010 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAKURU  
CIVIL CASE 25 OF 2017  
HK CHEMITEI, J  
JULY 6, 2023**

**BETWEEN**

**NYANDARUA PROGRESSIVE AGENCIES LTD ..... PLAINTIFF**

**AND**

**FRANCIS WAINAINA MUGO ..... 1<sup>ST</sup> DEFENDANT**

**REGISTRAR OF COMPANIES & 8 OTHERS ..... 2<sup>ND</sup> DEFENDANT**

**AND**

**JANE WANJIRU KAMAU ..... INTERESTED PARTY**

**STEPHEN MUCHORI & OTHERS ..... INTERESTED PARTY**

**RULING**

1. The notice of motion application dated May 4, 2022 by the applicants pray for the following orders;
  - (a) This court be pleased to hold Samuel Maina Waweru (chairman), Peter Kinyanjui Ngugi (vice chairman), Jesse Kimeria Nguiri (secretary) & Peter Wanjohi Karanja (treasurer) in contempt of court decree dated April 29, 2021 and commit them to civil jail for a period of 6 months or as the court deems fit for disobeying the court order restraining them from dealing with the company's property in whatsoever manner.
  - (b) Costs of the application to be borne by the plaintiff.
2. The application is supported by the grounds on the face of the application and sworn affidavit of Michael Njoroge Thiongo of even date on behalf of the rest of the applicants.
3. The gist of the application is that on April 29, 2021 this court delivered a ruling in which *inter alia* restrained the 10<sup>th</sup> defendant from registering the officials elected on April 10, 2018 and directing the



status quo as at May 27, 2020 be maintained. It went on to direct that the officials elected on April 13, 2018 to remain in office pending the determination of the appeal.

4. It is the applicants case that despite being served with the said order dated April 29, 2021, the respondents have breached the same by subdividing the companies property, placing the beacons on the subdivided parcels of and balloting the same, selling numerous plots and pocketing the proceeds, harvesting marram soil from the farm and selling the same, issuing title deeds to non-members and calling out annual general meeting.
5. It is against this background that the applicants prayed that the respondents who are the officials of the company are in contempt and must be punished. He deponed that the respondents were properly served and he attached a copy of the affidavit of service.
6. The respondents *vide* replying affidavit of Eliud Samuel Maina sworn on September 16, 2022 denied the above accusations. He deponed on behalf of his co respondents that they have not breached the said order for the reasons that the issues complained of by the applicants had long been effected before the order was served. He said that they were elected into the office on the April 27, 2021 hence replacing the applicants.
7. He went on to state that by the time the orders were served they had already done what they ought to have done including being registered by the 10<sup>th</sup> defendant as valid officials of the company. He deponed that what they effected was the member's resolutions dated July 1, 2016 allowing the sub division and allotment of the plots to the members.
8. He denied that they fixed the beacons illegally but they were replacing the beacons which had been uprooted by Francis Mugo who had been charged in a criminal suit.
9. In short they claimed that by the time the impugned order was served they had already done their bit as officials and that the new elections had been undertaken and thus they did not breach any orders of the court.
10. The court directed the parties to file their submissions which they have done and the court has had the advantage of perusing the same together with the cited authorities.
11. The issue of contempt is quasi-judicial in nature as was laid down in *Sheila Cassatt Isenberg & another v Antony Machatha Kinyanjui* [2021] eKLR. The breach must always be clear, specific and unambiguous and that the guilty party must have known its existence but deliberately disobeyed.
12. I have perused the file and it is clear that the ruling issued by the court April 29, 2021 was indeed clear and it gave directions on how the status quo ought to be kept pending the outcome of the appeal. The question was whether the respondents were aware of the said order or not. Were they served and if so when were they served.?
13. From the courts record, on the material day the coram showed that one Abuya advocate appeared for the 1<sup>st</sup> to 9<sup>th</sup> applicants and there was no appearance for the respondents. So essentially there was no representation on the part of the respondents at the time of delivery of the ruling.
14. I have looked at annexure "mnt 5" in the applicants supporting affidavit, namely, the affidavit of service sworn by one Julius Kamotho Njaga dated April 28, 2022 which showed that the order per the ruling dated April 29, 2021 was served on May 17, 2021 and not April 26, 2022. If that is the case, then the order was served way after the order had been granted.
15. My perusal of the court record does not lead me to an order issued on May 17, 2021 and therefore the court is unable to verify Mr Njaga affidavit of service.



16. Looking at the complaint by the applicants it appears then that the order issued on April 29, 2021 was not served upon the respondents and the earlier orders issued had been superseded by the judgement of the court and that more steps had been taken on the ground including the contentious issues of the title issuance and the confirmation of the respondents as valid directors of the plaintiff.
17. For now, however the issue before me is the question of contempt of the said orders. As stated above this court is unable to find with certainty any evidence of service of the orders upon the respondents. There must be service of the order and a demonstration of wilful disobedience of it.
18. In the premises I think I have stated much to demonstrate that this court does not find evidence of service of the order of stay pending appeal and the application is hereby dismissed with no order as to costs.

**DATED SIGNED AND DELIVERED AT NAKURU VIA VIDEO LINK THIS 6TH DAY OF JULY 2023.**

**H. K. CHEMITEI**

**JUDGE**

