



REPUBLIC OF KENYA



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**RJC v WBKK L (Petition E006 of 2022) [2024] KEHC 13754 (KLR) (6 November 2024) (Ruling)**

Neutral citation: [2024] KEHC 13754 (KLR)

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT AT ELDORET**  
**PETITION E006 OF 2022**  
**JRA WANANDA, J**  
**NOVEMBER 6, 2024**  
**IN THE MATTER OF THE MATRIMONIAL PROPERTY ACT, 2013**  
**IN THE MATTER OF THE MARRIAGE ACT, 2014**  
**IN THE MATTER OF DIVISION OF MATRIMONIAL PROPERTY**

**BETWEEN**

**RJC ..... PETITIONER**

**AND**

**WBKK L ..... RESPONDENT**

**RULING**

1. The Application the subject of this Ruling seeks a finding of contempt of Court.
2. As I stated in my earlier Ruling delivered herein on 3/06/2023, the parties in this matter were a married couple but are now divorced and that on 22/09/2022, the Petitioner filed the Petition dated 20/09/2022 seeking orders for division of matrimonial property.
3. On the same 22/09/2022, the Petitioner also filed the interlocutory Notice of Motion dated 20/09/2022 whereof she sought orders of interlocutory injunction seeking to preserve the property in issue herein, namely, land parcel No Uasin Gishu/Elgeyo Border Scheme/xxx (hereinafter referred to as “the suit property”). Upon hearing the Application, I allowed the Application and, inter alia, made orders as follows:

“(ii) Accordingly, pending the hearing and determination of the Petition herein, the Respondent by himself, his agents, servants, employees or relatives, is hereby be restrained by way of temporary injunction from disposing, selling, transferring or alienating in whatsoever manner, the parcel of land known as Uasin Gishu/Elgeyo Border Scheme/xxx.



- (iii) Further, pending the hearing and determination of the Petition herein, an order of inhibition is hereby issued inhibiting registration of any dealing in respect of the said parcel of land known as Uasin Gishu/Elgeyo Border Scheme/xxx by way of transfer, charge, subdivision or any other manner whatsoever.”
4. In respect to the said orders, the Petitioner has now, through her Advocates, Messrs Nyagaka S. M. & Co., filed the Notice of Motion dated 13/02/2024, seeking the following orders:
- i. [.....] spent
  - ii. That Summons be issued against the Respondent to appear before Court and show cause why he should not be committed to civil jail for such terms as the Court may deem just.
  - iii. That this Honourable Court be pleased to cite the Respondent as being in contempt of, and order the Respondent to be committed to civil jail for six (6) months having disobeyed and contemned the orders issued on 23/06/2023 until compliance with the orders of this Honourable Court.
  - iv. That the Respondent be cited for contempt of Court and fined a sum of at least Kshs 300,000/- and that the Court makes any such order for purposes of enforcing the orders issued on 23/06/2023.
  - v. That the District Land Registrar Eldoret be ordered to cancel the subdivisions of land parcels obtained from Uasin Gishu/Elgeyo Border Scheme/xxx i.e. Uasin Gishu/Elgeyo Border Scheme/534, 535 and 536 and the same be reverted to Uasin Gishu/Elgeyo Border Scheme/xxx.
  - vi. That the Respondent be compelled to pay the costs of this Application.
  - vii. Any other relief suitable in the circumstances is likewise prayed for the best interest of justice.
5. The Application is stated to be brought under Article 159 of the 2010 Constitution, Section 5 of the Judicature Act, Section 1A, 1B, 3A, 63(c) and (e) of the Civil Procedure Act, Order 9, Order 40 Rules 1 and 3, Order 51 Rule 1 Civil Procedure Rules 2010 and “all enabling provisions of the law”. The grounds of the Application are as set on the face thereof and the same is supported by the Affidavit sworn by the Petitioner, Ruth Jebet.
6. In the Affidavit, the Petitioner referred to the said Ruling of 23/06/2023 and deponed that despite lodging a caution over the suit property, the Respondent mysteriously removed the same and started sub-dividing the land into 3 portions and has proceeded with taking out the title deed with the sole aim of defeating this instant case. He listed the new titles as Uasin Gishu/Elgeyo Border Scheme/534, 535 and 536 and prayed that the same be reverted to Uasin Gishu/Elgeyo Border Scheme/xxx. She deponed that if the Court does not allow the instant Application, the Respondent will be taking the Court orders for a ride and the Petitioner’s claim will be defeated and rendered nugatory. She deponed further that the Respondent’s failure to adhere to the Court orders has affected her claim over the suit property
7. The Application is opposed by the Respondent who swore the Replying Affidavit filed on 6/03/2024. He deponed that the Application pursuant to which the injunction orders were issued was already overtaken by events before it was made, that consequently, the orders were issued in vain since he had already sold and subdivided the suit property to purchasers before the Application was made. He deponed that it is not true that he sub-divided the land after issuance of the order and deponed that



the same was done in the year 2021 and mutation registered in the same year, between May and July, that in the circumstances, it is not true that he breached the terms of the injunction orders or that he committed any act in contempt thereof. He contended that contempt of Court proceedings can only be brought against a person who is in disobedience of Court orders after they have been issued, with knowledge of existence thereof. He deponed that the alleged acts of selling, sub-dividing and transferring the land was done 1 year before the Application for injunction was made, and 2 years before the order was issued. He cited the case of *Oilfield Movers Ltd v Zabara Oil & Gas Limited* [2020] eKLR.

8. With leave from the Court, the Petitioner filed a Further Affidavit on 2/04/2024. She deponed that when the Respondent replied to the Application for injunction, there was no indication that the suit property was subdivided or sold off or that it was no longer available but that in the course of the proceedings, she (Petitioner) learnt that the property was undergoing subdivision by the Respondent, that although the Respondent states that the property was subdivided and sold off, that is a lie as there is no material evidence placed before the Court to show that it has been so disposed of. According to the Petitioner therefore, the property is still in existence, that the Respondent is taking the Court for a ride and is determined to take the matrimonial property out of reach in order to defeat this case.

### **Hearing of the Application**

9. The parties were then granted liberty to file written Submissions. Pursuant thereto, the Petitioner filed her Submissions on 2/04/2024. On the part of the Respondent however, Ms. Cherop who held brief for Mr. Kiplagat, Counsel for the Respondent, on 28/05/2024, informed the Court that the Respondent would not be filing any Submissions.

### **Petitioner's Submissions**

10. Counsel for the Petitioner submitted that the suit property was matrimonial property that was acquired during the subsistence of the marriage with the Respondent, and that at the time of filing the main matter, the property was in the name of the Respondent but has since been subdivided into 3 land parcels. He submitted that the Respondent has confirmed that the property has been subdivided and sold off which facts are disputed by the Applicant, that although the Respondent claims to have disposed of the subdivisions, no evidence such as sale agreements has been produced to support the allegations. He pointed out that even when the Court issued the injunction orders, the Respondent never bothered to inform the Court that the property was no more but opted to remain mute and that he ought to have informed the Court of any difficulty in complying with the orders. He cited the case of *Republic v County Chief Officer, Finance & Economic Planning, Nairobi City County (Ex Parte David Mugo Mwangi)* [2018] eKLR which, he submitted, was quoted in the case of *Republic v County Government of Kitui Ex Parte Fairplan Systems Limited* [2022] eKLR.
11. Counsel also submitted that the Court orders are valid, that the Respondent has not complained about them and has not applied for setting aside thereof, that this goes to the root of the Respondent's attitude to these proceedings which the Respondent takes as a joke with the view that the Court is an inferior body that will do nothing to him. He submitted that having not complained against the orders and having admitted that he disposed of the properties is a clear breach thereof. He also observed that the annexure exhibited by the Applicant shows that the sub-divisions are in the name of the Respondent, that if he went ahead and disposed of them then the same can be traced even to the innocent purchasers as no party is allowed to abuse the Court process by pretending that the property changed names. He urged the Court to exercise its discretionary power and order the Respondent to submit the sale or transfer documents within 7 days for purposes of giving directions.



## Determination

12. The issue that arises for determination herein is “whether the Respondent has disobeyed the Court orders issued herein on 23/06/2023, and therefore, whether he should be cited and punished for contempt of Court”.
13. The Respondent has taken the position that the Application pursuant to which the injunction orders were issued on 23/06/2023 was already overtaken by events before it was made, and that consequently, the orders were issued in vain since he had already sub-divided and sold the resultant parcels of land to purchasers before the Application was made
14. “Contempt of Court” is that conduct or action that defies or disrespects authority of Court. Black’s Law Dictionary 9<sup>th</sup> Edition defines contempt as:

“The act or state of despising; the conduct of being despised. Conduct that defies the authority or dignity of a court or legislature. Because such conduct interferes with the administration of justice, it is punishable, usually by fine or imprisonment.”
15. Contempt of Court is in the nature of criminal proceedings and therefore, proof of a case against a contemnor is higher than that of balance of probability. Due to the gravity of consequences that ordinarily flow from contempt proceedings, it is trite that the order be extracted and served and/or it be demonstrated that the person cited for contempt had personal knowledge of that order. In order to find a person guilty of contempt there must therefore be proof of wilful and intentional disobedience of a Court order. In Mabinderjit Singh Bitta v Union of India & others 1A No 10 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 wilful violation of the order of the court, even to constitute a civil contempt. Every party is lis 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.
16. Knowledge is a question of fact and for a person to be found guilty of contempt, he must have been aware of the terms of the order. That is, he must know what the order required him or her to do or not to do but wilfully and deliberately disobeyed it. In Katsuri Limited v Kapurchand Depor Shah [2016] eKLR, citing Kristen Carla Burchell v Barry Grant Burchell (Eastern Cape Division Case No 364 of 2005), it was stated as follows:

“in order for an applicant to succeed in civil contempt proceedings, the applicant has to prove (i) the terms of the order, knowledge of the terms by the respondent, failure by the respondent to comply with the terms of the order.”
17. What has caught my attention in this matter is that the Respondent now alleges that long before this Court issued the orders of injunction on 23/08/2023, and before the Petitioner even filed the Application dated 22/09/2022 which gave rise to the orders of injunction, he had already sub-divided the suit property and sold the resultant sub-division portions to third parties. These allegations came as a surprise to me since the Respondent fully participated in the Application dated 22/09/2022 by swearing and filing a Replying Affidavit and through his Advocate, Ms. Cherop who consistently held brief for Mr. Kiplagat, and who even filed written Submissions, fully participated in the hearing and strenuously opposed the Application. Nowhere in his said Replying Affidavit did he depone, allege



- or disclose that he had already sub-divided the property and/or sold the portions. At no time also did his Advocates allude to, or disclose this fact or allegation to the Court, not even in their written Submissions which in fact gave the contrary representations.
18. If it is true that indeed the Respondent had truly already sub-divided the suit property and sold the sub-division portions to third parties, then it is evident that the Respondent deliberately took this Court for a ride and knowingly caused this Court to engage in an exercise that did nothing but to only waste precious judicial time. This, if indeed is the case, then is a shocking mockery of the Court and an abuse of its process as it would mean that the Respondent deliberately took the Court on a wild goose chase, just sat back and gleefully enjoyed himself watching the Court engaging in the futile exercise of hearing the Application, spending long nights researching on the Application and writing the Ruling and eventually delivering the Ruling whereof it issued the orders of injunction. The scenario becomes even more shocking considering that the Respondent swore a Replying Affidavit to the Application strenuously fighting the Application thus giving the impression that the suit property was still in existence and intact. The only disclosure that the Respondent made was that the caution lodged by the Petitioner had been removed. It is even more disturbing that the Respondent was at all these times, represented by a law firm comprising Advocates through whom the Replying Affidavit and Submissions were drawn and filed.
  19. The situation is not assisted by the fact that although the Respondent alleges that he sub-divided and sold the resultant portions to third parties, apart from an illegible copy of an alleged mutation, he has not exhibited any other supporting document or even disclosed the names of the alleged purchasers. I cannot at this stage therefore accurately verify whether this conspicuous silence was a deliberate act intended to leave the Court in limbo and with no material to make a conclusive finding. The Respondent's allegations get even more doubtful and suspicious considering that the Petitioner has, on his part, exhibited copies of Official Search Reports from the Land Registry, dated 21/12/2021 and 29/08/2022, respectively, and which indicate that as at both dates, the suit property was still intact and fully in existence. The only fact apparent therefrom is that the caution lodged by the Petitioner on the basis of spouse's interest had in between, been removed.
  20. I still do not want to believe that the Respondent has misled the Court or disobeyed Court orders in the matter alluded, and want to believe that possibly there has been an innocent misunderstanding somewhere along the line on the part of the Respondent. I am unable to believe that a litigant, particularly one represented by Advocates, can really so blatantly conduct himself against or towards the Court in the manner alleged herein. For this reason, before I arrive at a conclusive and final finding, I will give the Respondent one more chance to give to the Court a clearer, better and more conclusive explanation of the disturbing matters set out above.
  21. It is only after such clearer explanation and full disclosure of facts that this Court will be in a position to determine whether the Respondent deliberately disobeyed the Court orders issued on 23/06/2023 and whether therefore, he is in contempt of Court. The Court will also only then be in a position to make a finding on the new angle also of possible further contempt of Court that has now arisen, that is, whether the Respondent deliberately misled the Court during the hearing of the Petitioner's earlier Application dated 20/09/2023, and therefore, whether he is also in contempt of Court by failing to disclose during the hearing of that Application, up to the date of delivery of the Ruling on 23/08/2023, that he had already sub-divided the suit property and sold the resultant land parcels to third parties.
  22. What I should perhaps make clear at this stage and guarantee to the parties is that should it turn out that indeed the Respondent and/or his Advocates deliberately "stole a match" on the Court by deliberately and knowingly misleading the Court by suppressing, concealing or withholding material information up to the delivery of the Ruling of 23/06/2023 and/or that the Respondent has disobeyed the Court



orders issued on 23/06/2023, or has committed any act that would amount to deliberately subverting or frustrating the course of justice, then no doubt this Court SHALL definitely and certainly come out really hard on the Respondent and/or its Advocates or any other person who has participated in or assisted in any such actions, and mete out a stiff and painful penalty as a result. I say no more at this stage.

## Orders

23. In the premises, at this stage, I partially allow the Petitioner's Notice of Motion dated 13/02/2024 and order as follows:
- i. The Respondent, in respect to his allegation that he has already sub-divided the suit property Uasin Gishu/Elgeyo Border Scheme/xxx and sold it to third parties, shall within 14 days of the date hereof, file herein and also serve upon the Petitioner, an Affidavit in which he shall clearly disclose the dates when he sub-divided the suit property and the dates when he sold the sub-division portions to third parties as he alleges.
  - ii. In the Affidavit, the Respondent shall also disclose the descriptions or land reference numbers of the resultant portions or land parcels created from the suit property - Uasin Gishu/Elgeyo Border Scheme/xxx - as alleged by him, and also disclose or state the names and/or identities of the alleged purchasers.
  - iii. The Respondent shall also exhibit to the Affidavit, copies of documents in support of his said allegations of sub-dividing the suit property and sale of the resultant portions, including, but not limited to, Sale Agreements, Transfers, Land Control Board Consents, if any, Receipts issued upon payments of fees for any of the above matters, Survey Reports, Title documents, and any other such or relevant document.
  - iv. The copy of the mutation exhibited to the Respondent's Affidavit filed in respect to the Application herein being illegible, a more legible copy shall be also included in the fresh Affidavit to be filed by the Respondent.
  - v. The Respondent shall also in the said fresh Affidavit to be filed, also give a clear explanation to the Court on why he never disclosed the fact of the sub-division of the suit property - Uasin Gishu/Elgeyo Border Scheme/xxx -, existence of the mutation and sale of the sub-divided portions, during the hearing and/or trial of the Petitioner's earlier Notice of Motion dated 20/09/2022 up to the delivery of the Court's Ruling thereon on 23/06/2023.
  - vi. The Respondent's Advocates, Messrs J.K. Kiplagat & Co. Advocates being the law firm that drew and filed the Respondent's previous and current Replying Affidavits and written Submissions referred to herein and also regularly appeared in Court on behalf of the Respondent, shall similarly, also within 14 days from the date hereof, swear and file and serve upon the Petitioner, its own separate Affidavit disclosing to the Court whether it (the law firm) was aware of the fact or allegation by the Respondent that he had, before the filing of Petitioner's earlier Notice of Motion dated 22/09/2022 and the delivery of the Court's Ruling thereon on 23/06/2023, sub-divided the suit property - Uasin Gishu/Elgeyo Border Scheme/xxx -, existence of the mutation and sale of the sub-division portions, and if so, an explanation by the law firm why it never at any time disclosed this fact to the Court.
  - vii. Upon being served with the said respective Affidavits, the Petitioner shall be at liberty, within 14 days thereof, to comment, by Affidavit, on the contents of the Affidavit to be filed by the Respondent and his Advocates, as ordered hereinabove.



- viii. Once the parties have complied with the above directions, this Court shall give further orders and/or directions, including making a finding on whether the Respondent deliberately or knowingly disobeyed the Court orders issued on 23/06/2023, whether he is therefore in contempt of Court and whether he should therefore be punished for the same.
- ix. In the meantime, for avoidance of doubt, it is reiterated and confirmed that the orders issued herein on 23/06/2023, including the interim orders of injunction prohibiting any disposal, sale, transfer or alienation of the suit property - Uasin Gishu/Elgeyo Border Scheme/xxx – and ordering for registration of an inhibition thereon prohibiting any dealings in respect of the suit property by way of transfer, charge, subdivision or any other manner whatsoever, continue to remain fully in force.
- x. The orders in (ix) above also apply to any subdivision or any portion of the suit property Uasin Gishu/Elgeyo Border Scheme/xxx created from or out of sub-division thereof, if any, whether those described as Uasin Gishu/Elgeyo Border Scheme/534, Uasin Gishu/Elgeyo Border Scheme/535 or Uasin Gishu/Elgeyo Border Scheme/536, or any other such portion or parcel of land created out of the suit property.
- xi. The Respondent shall extract the orders herein and serve the same upon the Land Registrar, Uasin Gishu County and/or the District Land Registrar, Eldoret.

**DELIVERED, DATED AND SIGNED AT ELDORET THIS 6<sup>TH</sup> DAY OF NOVEMBER 2024**

.....

**WANANDA J. R. ANURO**

**JUDGE**

Delivered in the presence of:

. Nyagaka for Petitioner

Ms. Cherop h/b for Kiplagat for Respondent

Court Assistant: Brian Kimathi

