



REPUBLIC OF KENYA



KENYA LAW

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**Mbogho & 2 others v Director Lands Adjudication & Settlement
& 4 others (Environment & Land Petition E012 of 2024)
[2025] KEELC 285 (KLR) (Environment and Land) (31 January 2025) (Ruling)**

Neutral citation: [2025] KEELC 285 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT VOI
ENVIRONMENT AND LAND
ENVIRONMENT & LAND PETITION E012 OF 2024**

EK WABWOTO, J

JANUARY 31, 2025

BETWEEN

HERMAN MWAKITAU MBOGHO 1ST PETITIONER

ASHA MWAKE NDOLONGA 2ND PETITIONER

NEWTON CHUMA MWAKIO & OTHERS 3RD PETITIONER

AND

**THE DIRECTOR LANDS ADJUDICATION & SETTLEMENT 1ST
RESPONDENT**

CHIEF LAND REGISTRAR 2ND RESPONDENT

NATIONAL LAND COMMISSION 3RD RESPONDENT

MASDEN MALAGHO 4TH RESPONDENT

ATTORNEY GENERAL 5TH RESPONDENT

RULING

1. This is a ruling in respect to the Petitioner's application dated 22nd July 2023 seeking for the following reliefs:-
 1. Spent...
 2. That this Honourable court be pleased to order that the 1st, 2nd, 3rd and 5th Respondents purge their contempt within twenty one (21) days from the date of this order.



3. That pending hearing and determination of this application the 1st, 2nd, 3rd and 5th Respondents their agents, servants, officials or any other person whatsoever not being petitioner be restrained and/or prohibited from entering, developing or using any parcel resulting from subdivision of Voi Municipal Block 3 or in any other manner from interfering with the petitioners quiet enjoyment, use, occupation or possession thereof whatsoever.
 4. That this Honourable Court be pleased to find the current office bearers of the 1st, 2nd, 3rd and 5th Respondents to be in contempt of court for disobedience of the Court Orders issued on 15th May 2023.
 5. That upon grant of prayer (4) above, this honourable court be pleased to issue an order committing the current office bearers of the 1st, 2nd, 3rd and 5th Respondents to Civil Jail or condemn them to pay a fine for disobeying court orders issued on 15th May 2023.
 6. That pending determine of the fairness and the equitable distribution on those deserving allocation by court, the 1st, 2nd, 3rd and 5th Respondents their agents, servants, officials or any other person whatsoever not being petitioner be restrained and/or prohibited from entering, developing or using any parcel resulting from subdivision of Voi Municipal Block 3 or in any other manner from interfering with the petitioners quiet enjoyment, use, occupation or possession thereof whatsoever.
 7. That the OCS Voi Police station do ensure compliance of the orders issued herein.
 8. That the costs of this application be borne by the Respondents.
2. The application is also supported by the affidavit sworn by Anthony Majimbo on the 22nd July 2024 which reiterated the grounds made in support of the said application.
 3. The application was opposed by the 4th Respondent who filed grounds of opposition dated 4th October 2024. It was contended that the application is misconceived, bad in law and offends the provision of Order 9 Rule 9 of the Civil Procedure Rules for the reasons that the said application has been made after delivery of judgment by a party acting in person without the leave of the court or consent sought from the said counsel who was on record.
 4. It was also contended that the said application seeks to cite parties for contempt in the absence of a Decree/or Order of the Court.
 5. The court has considered the said application and the oral submissions made by the Petitioners and the 4th Respondent during the plenary hearing of the said application and the main issue for consideration is whether this application is merited to warrant the grant of the prayers sought.
 6. Section 5 of the Judicature Act:
 - “(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 that power shall extend to upholding the authority and dignity of subordinate courts.”
 7. The procedure in the High Court of Justice in England was considered in detail by the Court of Appeal in Christine Wangari Gachege vs. Elizabeth Wanjiru Evans & 11 Others [2014] eKLR.



8. Rule 81.4, 81.5, 81.7 and 81.8 of the English Civil Procedure Rules (Amendment No. 3) Rules, 2020 provides for the requirements of a contempt application, the manner of service of the application, directions for hearing of contempt application and hearings of such applications.

9. In Civil Case No. 111 of 2016 Cecil Miller vs Jackson Njeru & Another [2017] eKLR the Court listed the elements of civil contempt as follows:-

“The element of a Civil Contempt as espoused in a book titled “Contempt in Modern New Zealand, were set out as follows:

- 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 conduct was deliberate.

These four elements must be proved to make a case for Civil Contempt. Although the proceedings are civil in nature, it is well established that the degree of proof is almost that beyond reasonable doubt but definitely higher than on balance of probability.”

10. The above mentioned four elements that must be proved to make a case for civil contempt.

11. In the instant application the court has first to be satisfied that the said application is properly before this court since the nature of a contempt application is one that has serious ramification wherein if the contemnor is found guilty he or she loses his right to liberty.

12. It was the 4th Respondent’s contention that the application offends Order 9 Rule 9 of the Civil Procedure. Order 9 Rule 9 of the Civil Procedure provides that Order 9 Rule 9 of Civil Procedure Rules that;

“When there is a change of advocate, or when a party decides to act in person having previously engaged an advocate, after judgment has been passed, such change or intention to act in person shall not be effected without an order of the Court—

- (a) upon an application with notice to all the parties; or
- (b) upon a consent filed between the outgoing advocate and the proposed incoming advocate or party intending to act in person as the case may be.”

13. In my considered view and as has been held in various court decisions and rightly posited by the both parties in their written submissions, the intent of Order 9 Rule 9 and 10 of the Civil Procedure Rules was to cure the mischief of litigants sacking their advocates at the execution stage or at the point of filing their bill of costs thus denying their advocates their hard-earned fees. Hence therefore once judgement has been rendered, leave has to be sought from the same court.

14. In the instant application, the court has perused the record and it is evident that the Petitioner filed the said application without leave of this court and consent from their previous Counsel on record and as such the said application is not properly before this court.

15. The Petitioner also conceded during the plenary hearing of the said application that they had not annexed a proper decree duly signed by the Deputy Registrar of this court.



16. In view of the foregoing, it is the finding of this court that the said application is unmerited and the same is dismissed with an order that each party to bear own costs of the said application.

DATED, SIGNED AND DELIVERED VIRTUALLY AT VOI THIS 31ST DAY OF JANUARY 2025

E. K. WABWOTO

JUDGE

In the presence of:-

Mr. Majimbo the 16th Petitioner appearing in person.

N/A for the Respondents.

Court Assistant: Mary Ngoira.

