

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT EMBU
ELC CASE NO. E011 OF 2020
(FORMERLY ELC CASE NO. E055 OF 2020)

BEATRICE MUTHONI
MUTHI.....PLAINTIFF/APPLICANT

VERSUS

MIRIAM WANJIKU KARURI.....DEFENDANT/1ST
CONTEMNOR

AND

MARGARET MUTHONI MUTAI,
LAND REGISTRAR KIRITIRI.....2ND
CONTEMNOR

RULING

The Plaintiff filed the application dated 12/3/2025 seeking to have Miriam Wanjiku Karuri and Margaret Muthoni Mutai, Land Registrar Kiritiri, cited for contempt of court for willfully disobeying the consent order made on 17/2/2022 by transferring the suit land to the Defendant, which was subdivided and some portions transferred to third parties. She sought an order that upon being cited for contempt, the contemnors be sentenced to jail for a period not exceeding six months, or that they be condemned to pay a fine as the court may direct, or both.

Additionally, she sought to have the contemnors ordered to purge the contempt by cancelling or reversing the transfer to the Defendant, the subdivisions and transfers to third parties, and for the suit land to revert to the name of Michael Njeru Muthi pending the determination of this matter in compliance with the consent order. The Plaintiff sought to have the 2nd contemnor compelled to provide her or her advocate with the green card for the suit land within such period as the court directs. She also urged the court to make any alternative or further orders to meet the ends of justice and for costs of the application.

The application was premised on the grounds set out on the face of the application and the supporting affidavit sworn by the Plaintiff, Beatrice Muthoni Muthi. She averred that on 17/2/2022, together with the Defendant, they recorded a consent order vide which they agreed to maintain the status quo on the land known as Mbeti/Gachoka/145 (the suit land) pending the hearing and determination of the suit on the following terms: that the Defendant would remain in occupation of the suit land; the Defendant would neither carry out any further development on the suit land nor subdivide or transfer it, or to offer for sale, cut down trees, inter (*sic*) any other bodies or in any other manner alter the prevailing state of the land until the suit was heard and determined. The other terms were that the land was to remain in the name of the registered owner, Michael Njeru Muthi pending further orders of the court and the Plaintiff was to allow the Defendant quiet possession of the land.

The Plaintiff averred that since the consent order was recorded in the presence of the Defendant or her advocates, the Defendant was aware of the clear terms of the orders. That in blatant violation of the orders, the Defendant with the help or in collusion with the 2nd contemnor transferred the suit land to the Defendant's name and thereafter subdivided the land into several portions, some of which had been transferred to third parties when the suit was pending determination. She stated that the contemnors were still continuing with the process of subdivision and transfer of portions of the land even as the time of filing the instant application, and that the 2nd contemnor had deliberately frustrated her attempts to access any information from her office regarding the ongoing activities. She averred that the contemnor's actions amounted to contempt of court, which should to be punished accordingly.

The Plaintiff attached copies of the consent order, letter requesting for the Land Registrar's ruling removing the caution on the suit land, letter from the Defendant's advocate forwarding copies of the title deeds for the subdivided portions and the letter requesting for an official search and green card for the suit land and a payment receipt.

The Defendant opposed the application through the replying affidavit in which she deponed that she was aware that the Plaintiff lodged a caution against Mbeti/Gachoka/145, which action in her view brought the dispute before the Land Registrar, Kiritiri and that when she filed the instant suit it meant that the

Plaintiff was pursuing her claim in two different forums. She stated that on or about 19/3/2024, the Land Registrar Kiritiri conducted a hearing regarding the caution, where all parties were represented. She averred that there was no stay of those proceedings before the 2nd contemnor. Further, that the Plaintiff was fully aware and actively participated in the proceedings and did not inform the 2nd contemnor of stay orders issued in this suit. She averred that after hearing both parties, the 2nd contemnor directed that the caution be removed and the ownership documents were to be transferred to the person who purchased the suit land through auction. She averred that the Plaintiff did not challenge that finding and on that basis, she proceeded to enforce the 2nd contemnor's ruling. She stated that she was deeply apologetic to the court and the confusion arose because both parties submitted themselves to the Land Registrar's jurisdiction.

The Defendant claimed that the consent order was entered by counsel in her absence, and that given her limited understanding of English, she did not fully appreciate the import and meaning of the court order. She pleaded with the court to exercise leniency, and explained that she did not willfully violate the consent order. She urged the court to dismiss the application with costs. She attached a copy of the proceedings before the Land Registrar.

The 2nd contemnor filed a replying affidavit, in which she deponed that the records at the land registry indicated that Mbeti/Gachoka/145 was originally registered in the name of

Michael Njeru Muthi and formed part of his estate in the succession case. The land was sold through a public auction conducted by the Kenya Deposit Insurance Corporation but the Defendant did not transfer the land to her name after purchasing it. She stated that the relevant transfer instruments, title documents, payments, and consents were duly processed during the auction process and she exhibited these to her affidavit. She stated that the suit parcel was subdivided into parcel numbers 11147 to 11167, with Miriam Wanjiku Karuri and Michael Nyamu Wanjau registered as proprietors. Further, that the official searches which she attached to the affidavit reflected the current status of the suit land as she described it.

The court directed parties to file and exchange written submissions, which it has considered. The Plaintiff submitted that the Defendant does not deny the existence of the consent order of 17/2/2022 or that the suit land was transferred to her name, or that the suit land had been subdivided and some portions transferred to third parties. She submitted that in her explanation, the Defendant was trying to absolve herself from any blame and instead blamed the Plaintiff and the 2nd contemnor. She relied on Section 5 of the Judicature Act, Rules 81.4 and 81.10 of the Civil Procedure (Amendment No. 2) Rules, 2012 of the Senior Courts of England and Wales and County Courts of England and Wales, which is the law currently applicable to contempt proceedings as per the Court of Appeal decision in **Christine Wangari Gachege v Elizabeth Wanjiru Evans and 11 others (2014) eKLR**.

Further, she submitted that, courts have held in various decisions that for an applicant to succeed in a contempt application, they must demonstrate the terms of the order, knowledge of the terms of the order by the respondent and failure by the respondent to comply with the terms of the order. She submitted that the existence of the orders had been demonstrated and that the Defendant was aware of the orders since the consent order was recorded in the presence of both parties and their advocates. She averred that the 2nd contemnor was aware of the order and that this is supported by her ruling on the caution attached to the Defendant's replying affidavit, where she confirmed that she had been informed of ongoing court proceedings and warned of the implications of her ruling by the Plaintiff and her daughter during the hearing. That having been informed of the court proceedings, the 2nd contemnor had a duty at the very least to advert to the proceedings before taking any action regarding the suit land and satisfy herself on the legality of any action she would take.

She submitted that denial by the 2nd contemnor's that she was unaware of the existence of the consent order in her submissions was an issue of fact that should have been raised in her replying affidavit on oath and not through submissions. She pointed out that in her replying affidavit, the contemnor only gave a chronology of events and record of ownership of the suit land and failed to address the issue of contempt. That since the 2nd contemnor did not dispute knowledge of the existence of the order in her replying affidavit, she is taken to have admitted that

she knew of the order. The Plaintiff submitted that the 2nd contemnor purported to make pronouncements in her ruling regarding the legality of the purported sale of the suit land through public auction, which is one of the issues for determination before this court, and that this amounts to undermining the courts' authority.

The Defendant reiterated the averments in her replying affidavit and urged the court to dismiss the application.

The 2nd contemnor submitted that the consent order was neither served upon her office nor was it brought to her personal attention. Further, that the Plaintiff did not furnish the court with an affidavit of service or any proof to show that she was made aware of the order. She urged that it was a cardinal rule that personal service or actual knowledge is a prerequisite for contempt, which is not the case here. She added that she was not a party to the consent order, which was entered into between the Plaintiff and the Defendant without reference to her. She went on to argue that the order did not issue any express directive to her or join her as a party and that she could not be bound by an order which she was neither a party to nor served with. She maintained that she performed her statutory duties and that her actions were administrative in nature devoid of any intention to defeat or undermine the authority of the court. She urged the court to find that she is not guilty of contempt and dismiss the application with costs.

The issue for determination is whether the Defendant and the 2nd contemnor are guilty of contempt of court for willfully disobeying the consent order recorded on 17/2/2022. An applicant who lodges a claim for contempt must demonstrate the terms of the order, knowledge of those terms by the alleged contemnor, and deliberate failure to comply with the order. It is not in dispute that a consent order was recorded on 17/2/2022 between the Plaintiff and the Defendant and that the order was clear and unambiguous and restrained the Defendant from transferring, subdividing or altering the status of the suit land pending determination of the suit. The suit land was to remain registered in the name of the proprietor then that is Michael Njeru Muthi pending further orders of the court.

It is not in dispute that despite the existence of the consent orders, the Defendant caused the suit land to be registered in her name, subdivided it and transferred part of the land to third parties. The Defendant claimed that she acted on the ruling of the 2nd contemnor who directed the land to be transferred to her after she acquired it procedurally through a public auction during a hearing to remove the caution that had been lodged by the Plaintiff. She also claimed that she was under the impression that the parties had submitted to the jurisdiction of the Land Registrar and the fact that the Plaintiff did not challenge the Registrar's findings meant that she could act on those findings. She also claimed that she was not present when the consent was recorded on 17/2/2022 because she was represented by her advocate. The

understanding of this court is that a consent order, by its very nature, signifies that the parties to the suit are of one mind on the agreed terms and have agreed to be bound by the orders consented to.

The suit or dispute is between the Plaintiff and the Defendant, not their advocates, and the Defendant cannot contend that the consent was reached without her knowledge and approval or that she did not understand the implications of the consent. Being a party to the suit and having participated in the recording of the consent order, she cannot now claim that she did not appreciate its legal effect. In this court's view, both the Plaintiff and the Defendant had a duty to bring the existence of the consent order to the attention of the Land Registrar, in order to forestall any dealings inconsistent with the court order. The Defendant's actions of subdividing and transferring the suit land contrary to the consent order demonstrates lack of good faith and was a deliberate attempt to defeat justice and undermine the authority of this court.

The court finds the Defendant guilty of contempt of the court order, which restrained her from dealing with the suit land until the dispute was determined.

Turning to the 2nd contemnor, the Land Registrar, from the evidence before the court and in particular, the proceedings of the hearing to remove the caution, it is evident that she was made aware of an existing court case over the suit land by the Plaintiff and her daughter. There is no evidence that she was

made aware of the consent order of 17/2/2022 either by being served or being expressly told during the hearing. For one to be held to in contempt, there must be proof of deliberate disobedience of a valid and binding order which the contemnor had knowledge of. This court is of the view that, that evidential threshold has not been met as against the Registrar.

Delivered virtually at Embu this 30th day of September 2025.

**K. BOR
JUDGE**

In the presence of: -

Mr. Mwenda Muriungi for the Plaintiff

Mr. Eric Mugo for the Defendant/1st Contemnor

No appearance for the 2nd Contemnor