



**Ndege v Bogonko & another (Environment and Land Case
113 of 2018) [2025] KEELC 6889 (KLR) (9 October 2025) (Ruling)**

Neutral citation: [2025] KEELC 6889 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT AND LAND CASE 113 OF 2018
MD MWANGI, J
OCTOBER 9, 2025**

BETWEEN

PENINA NDEGE PLAINTIFF

AND

JOSEPH NYAG'AU BOGONKO 1ST DEFENDANT

PENWEL N NYAMWEYA 2ND DEFENDANT

*(In respect of the Notice of Motion application dated 10th February
2017 seeking contempt of court orders pursuant to Section 5 of
the Judicature Act and Section 33 of the Civil Procedure Act)*

RULING

Introduction

1. Before this Court for determination is the Plaintiff/Applicant's Notice of Motion dated 15th March 2017, brought pursuant to Section 5 of the *Judicature Act*, Cap 8 Laws of Kenya and Section 33 of the Civil Procedure Rules. The substantive prayer sought therein is that the 1st Defendant/Respondent be committed to civil jail for contempt of court orders issued on 20th February 2015, together with an order for costs of the application.
2. The application is supported by the affidavit of Penina Ndege, the Plaintiff/Applicant herein, sworn on the same date, and on the grounds that despite this Honourable Court having rendered judgment on 20th February 2015 directing the 1st Defendant to release the original title deed to parcel number Kajjado/Kitengela/16917 upon payment of Kshs. 300,000/= plus interest within sixty (60) days, the Respondent has willfully declined, refused, and/or neglected to comply. It is the Applicant's case that on her part, she duly complied with the said judgment by tendering the payment, yet the Respondent continues to unlawfully withhold the title and remains in occupation of the suit property.



3. In her supporting affidavit, the Applicant deposes that she prepared and forwarded a banker's cheque of Kshs. 300,000/= to the Defendant's advocates in compliance with the decree, but the same was rejected on the basis of a stay order. She further avers that upon the Court rendering its ruling on 28th October 2016 dismissing the 1st Defendant's objections, she re-tendered payment through another banker's cheque, which was again rejected on the ground that the Defendant intended to pursue an appeal. To date, she asserts, the Defendant has failed to release the original title deed and is thereby in blatant violation of the subsisting court orders.
4. The application is opposed through the Replying Affidavit sworn by Joseph Nyangau Bogonko, the 1st Defendant/Respondent herein, who contends that the Motion is fatally defective, incompetent, misconceived, bad in law and devoid of merit. He avers that the application has been brought under the wrong legal provisions, that no decree was ever extracted and personally served upon him together with a penal notice, and therefore the requirements for committal for contempt have not been satisfied.
5. The Respondent further maintains that it is the Applicant who is indeed in contempt of the judgment delivered on 20th February 2015, which directed that the original title deed to parcel number Kajiado/Kitengela/16917 be released upon payment of Kshs. 300,000/- plus interest, within sixty (60) days, failure to which the Respondent would be at liberty to sell the property to recover that amount. He deposes that the cheques tendered by the Applicant in purported compliance with the judgment were insufficient as they did not include interest, and were forwarded long after the lapse of the 60-days' period stipulated by the Court.
6. It is the Respondent's position that by virtue of the Applicant's default, he became entitled to sell the subject property in recovery of the decreed amount, but refrained from doing so in light of his pending appeal. He avers that he lodged Nairobi Court of Appeal Civil Application No. E002 of 2021: Joseph Nyangau Bogonko v Penina Ndege, seeking to ventilate his grievances and protect his proprietary rights, and has persistently pursued an early hearing date. He insists that the Applicant, aware that the appeal has overwhelming chances of success, is attempting through the present application to render the appeal nugatory.
7. The Respondent also deposes that the Applicant has failed to pay the costs due to the 2nd Defendant, which stand at approximately Kshs. 370,000/- which she has also not paid. He states that the Applicant has continued to ignore the express terms of the decree and is instead feigning compliance through non-conforming cheques, while at the same time seeking to secure release of the title deed for purposes that may ultimately frustrate the appeal.

Directions

8. The court directed that the application be canvassed by way of written submissions. I have had the opportunity to read the parties' submissions and the same have been considered in the writing of this ruling.

Analysis and Determination

9. I have carefully considered the application dated 10th February 2017, the Supporting Affidavit thereto, the Replying Affidavit sworn by Joseph Nyangau Bogonko, the 1st Defendant/Respondent, as well as the submissions filed. The issue that arises for determination is whether the Applicant has established a proper basis for this Court to cite the Respondent for contempt of court.
10. It is trite in law that for a party to be found in contempt, the Applicant must establish that:
 - (i) there exists a valid court order or decree;



- (ii) the same was extracted and served upon the alleged contemnor together with a penal notice; and
- (iii) there has been deliberate disobedience of the said order. The Court of Appeal in *Katsuri Limited v Kapurchand Depar Shah* [2016] eKLR, emphasized that:

“The law on contempt is settled. To succeed in an application for contempt, the applicant must demonstrate the existence of an order capable of being disobeyed, knowledge of the order by the respondent, and deliberate disobedience of the order.”

11. In the present matter, the judgment delivered on 20th February 2015 directed, inter alia, that the Applicant refunds the 1st Defendant the sum of Kshs. 300,000/- plus interest from October 2010, within sixty (60) days, failing which the 1st Defendant would be at liberty to sell the land in question to recover the said amount. From the record, it is clear that the Applicant only tendered cheques for Kshs. 300,000/- long after the lapse of the sixty (60) days, and without factoring in interest at court rates as expressly ordered by the court.
12. Accordingly, that decretal sum remains unsatisfied. The Applicant cannot, in the circumstances, be heard to accuse the 1st Defendant of contempt when she herself has failed to honour her obligations under the decree of this Court. Equity demands that he who comes to equity must come with clean hands. The Applicant, being in default of the terms of the judgment applicable to her, cannot turn around to seek punitive orders against the Respondent.
13. Further, Section 94 of the *Civil Procedure Act* is instructive on the execution of decrees before costs are ascertained. It provides that:

“Where the High Court considers it necessary that a decree passed in the exercise of its original civil jurisdiction should be executed before the amount of the costs incurred in the suit can be ascertained by taxation, the court may order that the decree shall be executed forthwith, except as to so much thereof as relates to the costs; and as to so much thereof as relates to the costs that the decree may be executed as soon as the amount of the costs shall be ascertained by taxation.”
14. By dint of the foregoing provision, it is clear that a decree cannot be enforced in part while deliberately ignoring costs or other essential components unless leave is granted and the Court expressly orders so. That ought to be done first before the Applicant can seek to execute the decree.
15. In the instant case, the Applicant has not satisfied the decretal sum in its entirety, inclusive of the component of interest. The attempt to tender the principal sum without interest does not amount to compliance with the judgment. In the premises, I find that the Applicant has not demonstrated any deliberate disobedience of a valid order on the part of the 1st Defendant. On the contrary, it is the Applicant who remains in default of the decree, and as such, her Motion is misconceived, incompetent and devoid of merit.
16. For the reasons set out above, the Notice of Motion dated 10th February 2017 is hereby dismissed in its entirety with costs to the 1st Defendant/Respondent.

It is so ordered.

DATED SIGNED AND DELIVERED AT KAJIADO VIRTUALLY THIS 9TH DAY OF OCTOBER 2025.



M.D. MWANGI

JUDGE

In the virtual presence of:

Ms. Kiboi for the Plaintiff/Applicant

Mr. Odawa for the 1st Defendant/Respondent

N/A by the 2nd Defendant

Court Assistant: Mpoye

