



REPUBLIC OF KENYA



Nzioka v Muli & 2 others; Land Registrar, Machakos County (Contemnor) (Environment & Land Case 157 of 2018) [2024] KEELC 327 (KLR) (31 January 2024) (Ruling)

Neutral citation: [2024] KEELC 327 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS
ENVIRONMENT & LAND CASE 157 OF 2018
A NYUKURI, J
JANUARY 31, 2024**

BETWEEN

PIUS MWANZIA NZIOKA PLAINTIFF

AND

NDULU NZIOKA MULI 1ST DEFENDANT

LUCIA MBI THE KALINGA 2ND DEFENDANT

ANCIENT MUEMA MUTINDA 3RD DEFENDANT

AND

LAND REGISTRAR, MACHAKOS COUNTY CONTEMNOR

RULING

Introduction

1. Before court is the notice of motion dated September 24, 2021 filed by the plaintiff seeking the following orders;
 - a. That this Honourable Court be pleased to summon the Land Registrar to show cause why he should not be cited for contempt for failure to comply with a consent court order issued on 18th October 2018 and registered on 19th December 2018.
 - b. That the Land Registrar be punished accordingly under the law for disobedience of the Honourable Court order issued on 18th October 2018.
 - c. That costs to abide the application.
2. The application is anchored on the supporting affidavit sworn by Pius Mwanzia Nzioka, the plaintiff/applicant on 24th September 2021. The applicant's case is that the consent order dated 18th December



2018 was paid for, for purposes of registration on 19th December 2018 but that for three and a half years, the Registrar has refused to act on the order. He attached a copy of receipt dated 29th December 2018, consent order of 18th October 2018, order of 7th July 2020 and a letter dated 4th September 2021.

3. The application is opposed. E. C. Cheruiyot, the Principal Land Registrar-Machakos, filed a replying affidavit sworn on 25th October 2022 opposing the application. He deposed that the consent order herein was registered by his office on 4th January 2019, canceling all the subdivisions and reverting to the mother title. He stated that contempt proceedings were unjustified. Further that the applicant failed to show who was served with the order and how and whether there is contempt yet contempt proceedings are quasi-criminal in nature with personal liability and it is only the person alleged to have been in contempt who should be punished. He attached an official search dated 5th October 2022 and a green card/copy of the register dated 19th October 2020 for the three parcels namely; Muputi/Kimutwa/256, 341 and 378.

Analysis and determination

4. I have carefully considered the application herein and the response thereto, and it is my view that the only issue that arise for determination is whether the Land Registrar - Machakos County is in contempt of the consent order of this court made on October 18, 2018.
5. This court has jurisdiction to punish for contempt by virtue of the provisions of section 5(1) of the Judicature Act which provides as follows;

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.

6. Contempt has been defined in the Black's Law Dictionary 11th Edition as;

An 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.

7. Court orders bind parties against whom they are addressed and unless set aside they are valid and must be complied with, even where a party thinks that the order is irregular. Therefore, it is the solemn obligation of the court not to condone deliberate disobedience of court orders, and the court should not hesitate to deal decisively and firmly with proven contemnors (See *Awath v. Marumbi* [2004] 1 KLR 458).
8. The power to punish for contempt is to ensure compliance of court orders which is the cornerstone of a democratic society.
9. In the case of Econet Wireless Ltd v. Minister for Information & Communication of Kenya & Another the court stated as follows;

It is essential for the maintenance of the rule of law and order that authority and the dignity of our courts are upheld at all times. The court will not condone deliberate disobedience of its orders and will not shy away from its responsibility to deal firmly with proved contemnors. It is the plain and unqualified obligation of every person against whom an order is made by court of competent jurisdiction to obey it unless and until the order is



discharged. The uncompromising nature of this obligation is shown by the fact that it extends even to case where the person affected by the order believes it to be irregular or void.

10. In *T. N. Gadavarman Thiru Mulpad v. Ashok Knot & Another* [2006] 5 SCC, the Supreme Court of India stated as follows;

Disobedience of this court's order strikes at the very root of the rule of law on which the judicial system vests. The rule of law is the foundation of a democratic society. Judiciary is the guardian of the rule of law. Hence, it is not only the third pillar but also the central pillar of the democratic state. If the judiciary is to perform its duties and functions effectively and remain true to the spirit with which they are sacredly entrusted to it, the dignity and authority of the courts have to be respected and protected at all costs. Otherwise the very cornerstone of our Constitutional scheme will give way and with it will disappear the rule of law and the civilized life in the society. That is why it is imperative and invariable that court's orders are to be followed and complied with.

11. To prove contempt of a court order, the applicant must show that there is an order with clear and unequivocal terms; that the respondent had actual knowledge of the order; and that the respondent willfully breached the terms of the order.
12. In the case of *Katsuri Limited v. Kapurchand Depor Shar* [2016] eKLR, the court cited with approval the holding in the case of *Kristen Carla Burchell v. Barry Grant Burchell* (Eastern Cape Division Case No. 364 of 2005) where 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 (ii) knowledge of the terms by the respondent; (iii) failure by the respondent to comply with the terms of the order.

13. In the instant suit, the order said to have been breached was issued on October 18, 2018 and in the relevant paragraph 1 provided as follows;

That an order is hereby issued that all subdivisions arising from the suit parcels be collapsed and reverted back to mother title being Nos. Muputi/Kimutwa/378, 341 and 258.

14. In response, the Land Registrar, Machakos Mr. E. C. Cheruiyot, stated that compliance of the order was done in January 2019. He produced official searches and green cards showing that indeed on 4th January 2019, the order of 18th October 2018 was registered cancelling entries that effected subdivision of the suit properties.
15. Having considered the affidavit by the applicant who concedes that the order was registered, and who fails to give particulars of disobedience and in view of the searches and green cards produced by the Land Registrar, it is clear that compliance with the order of October 18, 2018 was done on January 4, 2019 and therefore no contempt has been proved as against the Land Registrar.
16. In the premises, I find no merit in the application dated September 24, 2021 and I hereby dismiss the same with no order as to costs.
17. It is so ordered.

DATED, SIGNED AND DELIVERED AT MACHAKOS VIRTUALLY THIS 31ST DAY OF JANUARY, 2024 THROUGH MICROSOFT TEAMS VIDEO CONFERENCING PLATFORM

A. NYUKURI



JUDGE

In the presence of:

Ms. Kawira for applicant

Mr. Kuria for respondents

Josephine - Court Assistant

