



**Kiraga v Nyamweya & 4 others (Environment & Land Petition
E009 of 2022) [2024] KEELC 319 (KLR) (30 January 2024) (Ruling)**

Neutral citation: [2024] KEELC 319 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
ENVIRONMENT & LAND PETITION E009 OF 2022
NA MATHEKA, J
JANUARY 30, 2024**

BETWEEN

ANDERSON KIRAGA PETITIONER

AND

WENDY BRYANT NYAMWEYA 1ST RESPONDENT

LEAH BRYANT 2ND RESPONDENT

REGISTRAR OF TITLES MOMBASA 3RD RESPONDENT

NATIONAL LAND COMMISSION 4TH RESPONDENT

THE HONOURABLE ATTORNEY GENERAL 5TH RESPONDENT

RULING

1. The application is dated 11th November 2022 and brought under Section IA (3) and 63 of the [Civil Procedure Act](#) Cap 21 Laws of Kenya and order 40 Rule 3(1),(3) and 4(1) [Civil Procedure Rules](#), 2010 seeking the following orders;
 1. That this application be certified as extremely urgent.
 2. This Honourable Court be pleased to commit to Civil jail for six (6) months or for such period as this Honourable Court may deem fit the 1st and 2nd defendant.
 3. This Honourable Court be pleased to make any other or further Order as the justice of the case may demand.
 4. That costs of this application be provided for.
2. It is grounded on the following grounds that the 1st and 2nd defendants and or their agents/servants disobeyed the orders of the Honourable Justice N.A. Matheka made in these proceedings on the 12th



of October 2022. The 1st and 2nd defendant are parties to this suit and have an obligation to ensure that the orders made against him and their servants and or agents are obeyed. The said orders have been served upon the 1st and 2nd defendant's advocate and they are well aware of its terms, effect and purport. The disobedience is therefore deliberate and intentional. The Court should protect its dignity by expeditiously dealing with issues of disrespect of disregard of Court Orders. The 1st defendant and or their agents/servants are continuously in breach of the law in disregard of Court Orders with impunity

3. The 1st and 2nd Respondent stated that the status quo as at 12th October 2022 is that they are in possession of the suit property. This possession includes the use and control of the land to the total exclusion of any other person including the Appellant. That the status quo to be maintained was that the Petitioner by himself, his servants and or his agents were to keep off their land and never to interfere with their occupation and possession. From the court records it is true that as at 12th October 2022 the Applicant was not in occupation of any part of the suit property. That contempt of court is a very serious indictment against a party in proceedings. The Petitioner wants the court to believe that they making roads on the suit property. That they are not involved in any road construction on the suit property. That both Plot Nos.MN/I/11352 and MN/I/11353 have all been subdivided into several sub-plots.
4. Before me is a contempt of court application. In the case of *Econet Wireless Kenya Limited vs Minister for Information and Communication of Kenya Authority* (2005) eKLR Hon Justice

Ibrahim (as he then was) stated as follows:

“It is essential for the maintenance of the rule of law and order that the 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 cases where the person affected by the order believes it to be irregular or void”.

5. Likewise in the case of *T.N Gadavarman Thiru Mulpad vs Ashok Khot and anor* [2005] 5 SCC, the Supreme Court of India in emphasizing the dangers of disobeying court orders held as follows;

“Disobedience of this Court's order strikes at the very root of the rule of law on which the judicial system rests. 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 corner stone 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.”

6. The standard of proof required in cases of contempt is higher than that acquired in an ordinary civil case. Before a finding of contempt can be made, there must a demonstration of wilful and deliberate disobedience of a court order.



In *Gatharia K. Mutikika vs Babarini Farm Ltd* (1985) KLR 227 it was held that;

“A contempt of court is an offence of a criminal character. A man may be sent to prison. It must be proved satisfactorily..... it must be higher than proof on a balance of probabilities, almost but not exactly, beyond reasonable doubt. The standard of proof beyond reasonable doubt ought to be left where it belongs, to wit criminal cases. It is not safe to extend it to offences which can be said to be quasi-criminal in nature.

However, the guilt has to be proved with such strictness of proof as is consistent with the gravity of the charge... Recourse ought not to be heard to process contempt of court in aid of a civil remedy where there is any other method of doing justice. The jurisdiction of committing for contempt being practically arbitrary and unlimited, should be most jealously and carefully watched and exercised with the greatest reluctance and the greatest anxiety on the part of the judge to see whether there is no other mode which is not open to the objection of arbitrariness and which can be brought to bear upon the subject..... applying the test that the standard of proof should be consistent with the gravity of the alleged contempt... it is competent for the court where contempt is alleged to or has been committed, and or an application to commit, to take the lenient course of granting an injunction instead of making an order for committal or sequestration, whether the offender is a party to the proceedings or not.”

7. In the light of the gravity of the personal consequences that would ordinarily flow from a finding of contempt, the law requires proof that the order in question was brought to the attention of the alleged contemnor as proof that he/she had personal knowledge of said order.

In *Oilfield Movers Ltd – vs – Zahara Oil & Gas Limited* [2020]eKLR the court stated -

“It is important however that the court satisfies itself beyond any shadow of a doubt that the person alleged to be in contempt committed the act complained of with full knowledge or motive of the existence of the order of the court forbidding it. The threshold is quite high as it involves possible deprivation of a person’s liberty.....”

8. In order to find a person guilty of contempt there must be proof of wilful and intentional disobedience of a court order. In *Mahinderjit Singh Bitta vs Union Of India & Others* 1A No 100 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 willful 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.”

9. I have considered the application and the submissions therein and find that by an order dated 12th October 2022 parties consented to an orders of status quo and to file submissions on the main petition within 14 days. The court held as follows;

1. “That by consent the pending applications are withdrawn and matter to go straight to the petition.
2. That mention on 14/11/2022 for the submissions on the petition.
3. That status quo to be maintained till then.”



10. Submissions have never been filed and one year down the line parties continue to file numerous applications asking for one thing or another hence delaying the trial process. It appears to be that parties are not interested in reaching a conclusion in this matter and all these are delaying tactics. It is impossible to establish the status quo prevailing at that time due to effluxion of time. The status quo has also lapsed. I find that this application is not merited and is dismissed with costs. This court will not entertain any frivolous interim applications and parties are advised to take a mention date for filing of written submissions on the petition.

It is so ordered.

DELIVERED, DATED AND SIGNED AT MOMBASA THIS 30TH DAY OF JANUARY 2024.

N.A. MATHEKA

JUDGE

