



**Koech v Koech & another (Environment & Land Case 22 of 2015)
[2024] KEELC 212 (KLR) (25 January 2024) (Ruling)**

Neutral citation: [2024] KEELC 212 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KERICHO
ENVIRONMENT & LAND CASE 22 OF 2015
MC OUNDO, J
JANUARY 25, 2024**

BETWEEN

WILSON KIPNGENO KOECH JUDGMENT CREDITOR

AND

GILBERT KIMUTAI KOECH JUDGMENT DEBTOR

AND

PENINAH NYAMBURA TOO OBJECTOR

RULING

1. The Judgment Creditor/Applicant by way of Notice of Motion dated 6th October, 2023 brought under the provisions of Order 51 of the Civil Procedure Rules, Section 3A of the *Civil Procedure Act* herein seeks for the following orders:
 - i. Spent
 - ii. Pending the hearing and determination of this application a registered surveyor visits the land parcel number L.R No. Kericho/Kaptebengwet/450 to demarcate the boundaries and show the designated beacons thereon to enable the Applicant utilize and fence the subject parcel without trespassing to the neighboring parcel.
 - iii. That the OCS Kaptengwet police station provide security to the surveyor and the Applicant judgment/creditor as they demarcate and fence the parcel pursuant to the identified beacons of the subject parcel.
 - iv. That the Respondent herein named Gilbert Kimutai Koech and Peninah Nyambura Too who have disobeyed the court's order re-issued on 7th July, 2020, be detained in prison for a period not exceeding six (6) months.



- v. That the Respondents do pay costs of this application.
2. The application was premised on the grounds on the face of it and supported by an affidavit of equal date sworn by the Applicant to the effect that the court heard and determined the main suit on adverse possession allegation in respect of L.R No. Kericho/Kaptebengwet/450 filed by the Judgement Debtor/Respondent herein. A judgment was delivered on 18th May, 2018 in the Applicant's favour. That subsequent orders of eviction were then issued on 12th April, 2019 and re-issued on 7th July, 2020 which orders were duly executed on 17th July, 2020 and the Applicant granted vacant possession on the same day. He consequently constructed a house therein and got into occupation of the land.
3. That on account of material non-disclosure and outright deceit to the High Court, the Respondents obtained orders of stay of execution of eviction orders dated 7th July, 2020 issued by the ELC court in this case, yet the said eviction had already been successfully carried out in their presence on 17th July, 2020 and eviction returns had been filed accordingly by the OCS-Konoin Police Station.
4. He deponed that on the strength of the said stay orders, the Judgement Debtor/Respondent, his mother Peninah Nyambura Too, his siblings, Livingstone Kipkorir Koech and Charles Kipngeno Koech and other relatives trespassed into the suit property L.R Kericho/Kaptebengwet/450 in contempt of orders of eviction and permanent injunction dated 7th July, 2020 issued against them. That they destroyed the boundary fence and demolished his house and began constructing a permanent building therein thus unlawfully dispossessing the Applicant who had obtained vacant possession pursuant to the eviction on 17th July, 2020.
5. That on 17th March, 2022, the Applicant filed an application before the Family Court over the contemptuous building of a permanent house by the Judgement debtor/Respondent, his mother and his family in the suit property L.R No. Kericho/Kaptebengwet/450 whereby the court issued orders dated 6th July 2022 prohibiting the building of a permanent house on the suit property by anyone. However, in disobedience of the said orders, the Judgement Debtor/Respondent and his mother proceeded with impunity to complete the construction of the said house and began residing therein.
6. That further, the Judgement Debtor/Respondent has indicated to the Applicant that there is nothing that the said Applicant can do to him and he will not leave the suit land since he was previously a Magistrate.
7. The Application was served upon the Respondent's Counsel who did not file in any Response. However, on 30th October, 2023 when the matter came up for mention, the court was informed that in further disregard of court's order, the Respondents had destroyed the Applicant's boundary further and demolished his house and had established a permanent house in the suit land. The court thus directed that a Notice to Show Cause be served upon the Respondents herein to show cause why (Gilbert Kimutai Koech) should not be punished for disobeying the court orders. The court further directed that the application dated 6th October, 2023 be disposed of by way of written submissions and the Respondents were granted another 7 days to file their response to the said application.
8. Consequently, the Respondents filed a Replying Affidavit dated 3rd November, 2023 sworn by Gilbert Kimutai Koech and Grounds of Opposition to the Applicants Notice of Motion dated 13th October 2023 (sic) and the Application to Show Cause dated 30th October, 2023 (sic) also dated 3rd November, 2023 in opposition of the Applicant's Application.
9. In the said Replying Affidavit, the Judgment Debtor/Respondent deponed that the Application dated 6th October 2023 having been served upon his Advocates on record who delayed in filing a response, the mistake and omission of the said advocate on record should not be used against him thus the Notice



to Show Cause dated 30th October, 2023 against him should be stayed and the application herein be dismissed or heard on merit.

10. That the Objector had lived on the suit land for over 60 years and the eviction orders were against the Judgement Debtor/Respondent only as the Objector was neither a party nor privy to the ELC proceedings that gave rise to the eviction orders hence she could not be said to have trespassed over a land that belonged to her.
11. That the orders sought by the Applicant herein were tantamount to review/appeal against the orders of the Family Division and a fresh illegal eviction against the Objectors camouflages as a visit by a registered surveyor to Kericho/Kaptebengwet/450 to demarcate the boundaries and show the designated beacons to enable the Applicant utilize and fence the subsequent parcel. Further, that the request for demarcation shows that the Applicant did not know the location of the land he was claiming.
12. That if at all there was contempt of the court orders, then the contemnor was the Objector who by her conduct of being a widow had lived on the suit land for more than 50 years. Further that the orders of this court were fully executed against the Objector and the Judgement Debtor/Respondent whereby her house was demolished, therefore there cannot be any form of contempt of the High Court orders dated 23rd July, 2020(sic) which sought to preserve the estate from intermeddling by the Applicant.
13. That he did not commit the actions complained of by the Applicant but the Objector herein sought for preservation of estate in High Court Succession Cause No. 6 of 2020 which orders were granted by the court of equal and competent jurisdiction and which orders were to subsist pending the hearing and determination of the Petition. That the said orders further directed the Applicant to reinstate the Objector but to-date the Applicant had not done so thus the said Applicant had been in contempt of the said orders.
14. He further deponed that the application before the court lacked merit since the Applicant did not appeal against the orders of 23rd July, 2020 and further that the instant application ought to have been filed in the court that issued the said orders.
15. He acknowledged that there were stay orders by the family court but explained that the same stayed the judgement and orders of the Environment and Land court, hence the application before court had been brought in bad faith, was vexatious and lacked merit since no court of competent jurisdiction, by way of review or appeal had varied, and or stayed the orders of the Family Court in Succession Cause No. 6 of 2020.
16. He thus urged the court to dismiss the Applicant's Application dated 6th October, 2023 as the same was an abuse of the court as the issues in dispute were set to be settled vide the judgement slated for 7th December, 2023.
17. The Judgement Debtor/Respondent reiterated the contents of his Replying Affidavit in its Ground of Opposition to the Applicant's Application and the Application to Show Cause.
18. On 8th November, 2023 the court issued a warning to the Respondent herein that his mother and family members currently in occupation of the suit land herein of the danger of the likelihood of being found in contempt of court orders wherein eviction orders would ensue. However, the court reiterated that the Application dated the 6th October, 2023 be disposed of through written submissions to which parties complied and which submissions I shall summarize as herein under.



Applicant's submissions.

19. The Applicant summarized the factual background of the matter as well as the affidavit evidence of both parties before framing his issues for determination as follows;
 - i. Whether the Respondent Gilbert Kimutai Koech and Peninah Nyambura Too should be punished for contempt of court orders issued by the court on 7th July, 2020 and orders issued by family division on 6th July, 2022.
 - ii. Who bears the cost of this application?
20. On the first issue for determination, the Applicant reiterated that the orders issued by this court dated 7th July, 2020 were duly executed on 17th July, 2020 in the presence of the Respondents whereby the Applicant was handed vacant possession of land L.R No. Kericho/Kaptebengwet/450. That no order has been issued setting aside, varying, appealing and/or vacating the same order.
21. That notwithstanding, the Respondent herein elected to circumvent the law by moving the Family division of the High Court to issue belated orders of stay of execution after the said execution had been concluded, which amounted to an abuse of the judicial process and contempt. That no person had the prerogative to decide which court orders they will obey and which ones they will not. That the Respondent chose to obey the orders of the family division dated 23rd July, 2023 since they were issued in their favour.
22. He relied on the decided case of Republic v County Government of Kitui ex parte Fair Plan Systems Limited [2022] eKLR to submit that only the court of law issuing the orders or courts of higher jurisdiction are empowered to interpret court's order.
23. As to who should bear the cost of the application, he submitted that the same should be borne by the Respondents since they were in breach of orders of this court dated 7th July, 2020 and orders of family court dated 6th July, 2022. Reliance was placed in the case of Republic vs. The Kenya School of Law & Another, Miscellaneous Application No. 58 of 2018 (sic).
24. He thus prayed that the court finds and holds that the Respondents herein had disobeyed court's orders and as such are culpable and deserved to be punished.

Respondent's Submissions.

25. The Judgement Debtor/Respondent framed his issues for determination as follows
 - i. Was eviction effected as per the Court Order and does any other court with equal and competent jurisdiction be in conflict with the honorable court here in long after its orders had been affected (sic).
 - ii. Is the Judgement Debtor/Respondent a party to the application that was dismissed by the Court?
 - iii. This being a dispute that has a succession and family fights, what will be the impact of the orders being sought on the succession court matter that is pending?
 - iv. Can the Honourable Court exercise its discretion through a balancing act and give a chance to the Family Decision to render its ruling on distribution? (sic)
26. The Judgement Debtor/Respondent submitted that the orders sought by the Judgment Creditor/ Applicant were tantamount to review/appeal of the orders of the Family Division and an attempt for



- fresh eviction orders against the Objector hence it ought to be denied because if granted it shall unsettle the fragile peaceful co-existence between the family members of the deceased whose estate was due for distribution by the Family court on 7th December, 2023.
27. That there was a misjoinder of the Judgement Debtor/Respondent since he had not been privy to the dismissed application filed by the Objector in pursuance to the suit in reference to their matrimonial home of more than 50 years. That the Judgement Debtor/Respondent does not reside on the suit property and had not at any time obstructed and/or delayed the execution of any court decree. That in fact, the Objector whose application was dismissed was the current occupier of the suit property owing to her marital status to the deceased and the same having been her matrimonial home. His reliance was hinged on the Provisions of Section 38 of the *Civil Procedure Act*.
 28. His further submission was that the Court should in handling the Notice to Show Cause find that he had been wrongly joined in the Objector's case and since he did not reside on the suit property, the Notice to Show Cause for disobeying a court order should be dismissed. He relied on the decided case of Mbugua vs. Mbugua [1992] KLR 448.
 29. That the actions complained of by the Judgment Creditor/Applicant were not committed by the Judgement Debtor but by the Objector herein on the strength of valid orders of a court of equal and competent jurisdiction dealing with a family issue, which orders had been properly issued. Further that the Objector herein was not a party to the proceedings that gave rise to the eviction orders of the court hence it was within her right that she commences succession proceedings in the High Court, the suit property herein being her matrimonial home. He reiterated that the orders issued by the High Court Family Division on 23rd July, 2020 were to subsist pending the determination of the succession cause and the Judgment Debtor/Applicant was directed to re-instate the Objector but to-date the said Applicant had never complied hence he had been in contempt of the said court orders.
 30. He denied breaching any court order together with the Objector and explained that in fact he had been wrongly cited hence the Notice to Show Cause was misdirected, misconceived and issued against a wrong party thus not capable of being executed. That since the Applicant acknowledged that there were stay orders of the family court staying the judgement and orders of the Environment and Land Court, the application before court had been brought in bad faith, is vexatious and lacks merit. He reiterated that the Applicant herein had not moved the court by way of review or appeal to vary or stay the orders of the family court in Succession Court No. 6 of 2020.
 31. He submitted that since the Applicant herein had subjected himself voluntarily to the jurisdiction of the Family Division Court through conduct, acquiescence, active participation during the re-survey of the mother title deed that is Kericho/Kaptebwet/38, failing to appeal against and abandonment of Chamber Summons application dated 17th March 2020, he was estopped from denying the jurisdiction of the Family Division Court when the said court was due to deliver its judgement on 7th December, 2023.
 32. It was the Judgment Debtor/Respondent's submission that the order to secure a surveyor to visit Kericho/Kaptengwet/450 sought by the Applicant herein should be denied since the entire parcel of land is subject of the High Court Family Division. Reliance was placed in the decided case of Kenya Bus Services Ltd & Others vs. Attorney General and Others [2005] 1 EA 111; [2005] 1 KLR 743.
 33. He further submitted that the Notice to Show Cause should equally be dismissed for the reason that the same was with regard to the suit property herein which is a family issue and the High Court Family Division was set to deliver a judgment on the same on 7th December, 2023. He placed reliance on a combination of decisions in the case of Beatrice Wanjiku & Another v The Attorney General



Petition 190 of 2011 (sic), Jayne Wangui Gachoka vs. Kenya Commercial Bank Petition Number 51 of 2010 (sic), Braeburn Limited vs. Gachoka and Another [2007] 2 EA 67 and Republic vs. Permanent Secretary Office of the President Ministry of Internal Security & Another exp Nassir Mwandihhi [2014] eKLR.

34. He thus prayed that the Applicant's application be dismissed with costs.

Determination

35. I have considered the Applicant's application and the response thereto I have also considered the fact that alongside his application for contempt of court, the Applicant has also sought that the court assists him in perfection of the judgment of the court in seeking to have a surveyor to show him the designated beacons of the suit property so that he could fence his portion of land without trespassing into the neighboring parcel. That in order to achieve this, he had sought orders directing the OCS Kaptengewet police station to provide security to both he and the surveyor during this exercise.

36. The Supreme Court of Kenya had supported the holding in the case of Jersey Evening Post Limited vs Al Thani [2002] JLR 542 at 550 to the effect that:

“Proceedings are only fully concluded, and the court functus, when its judgment or order has been perfected.”

37. I find that the Applicant took the right steps by involving the surveyor and that it is within his right to ask the court to assist him with the implementation of the order as the Respondent has been violent making it difficult for him to enjoy the fruits of his judgment. The Applicant seeks the court to assist him by ordering the re-establishment of the beacons which in my view is not in contravention of the provisions of Section 18(2) and 19(2) of the Land Registration Act. Indeed in the case of Barnabas Nyagaka Motari vs. Videlis Nyagwara Nyabuti & Anor [2017] eKLR the court ordered that boundaries not marked by the surveyor be marked physically and upon marking it, the Defendant vacates the portion of land and delivers vacant possession. The order sought herein is therefore allowed.

38. On the second issue, the Black's Law Dictionary (Ninth Edition) defines contempt of Court as:-

“Conduct that defies the authority or dignity of a Court. Because such conduct interferes with the administration of justice, it is punishable usually by fine or imprisonment.”

39. The law guiding the present Application is Order 40 Rule 3(1) of the Civil Procedure Rules which stipulates as follows:-

“In cases of disobedience, or of breach of any such terms, the Court granting an injunction may order the property of the person guilty of such disobedience or breach to be attached, and may also order such person to be detained in prison for a term not exceeding six months unless in the meantime the Court directs his release.”

40. In the case of Woburn Estate Limited v Margaret Bashforth [2016] eKLR the Court of Appeal held as follows:

“For many years in the history of the Judiciary of Kenya the Courts have, pursuant to section 5 (1) of the Judicature Act, resorted to the prevailing law of England in the exercise of the power to punish for contempt of Court.....

Today that position has drastically changed, starting with the establishment of the Supreme Court which was not envisaged when section 5 of the Judicature Act was enacted. By Act



No.7 of 2011, Article 163 (9) of *the Constitution* was operationalized by the enactment of the *Supreme Court Act* (CAP 9A), which among other things, makes express provision for the power of the Supreme Court to punish for contempt.

Under section 29 of the *Environment and Land Court Act*, it is an offence punishable, upon conviction to a fine of not exceeding Kshs.20,000,000 or to imprisonment for a term not exceeding two years, or to both, if any person refuses, fails or neglects to obey an order or direction of the Court given under the Act.

We have gone to this great length to demonstrate how, before the passage of these legislations the powers of the High Court and this Court to punish for contempt of Court were dynamic and kept shifting depending on the prevailing laws in England. Today each level of Court has been expressly clothed with jurisdiction to punish for contempt of Court. The only missing link is the absence of the rules to be followed in commencing and prosecuting contempt of Court Applications”

41. It was in this respect as observed in the case of Republic vs. Returning Officer of Kamkunji Constituency & The Electoral Commission of Kenya HCMCA No. 13 of 2008, that the High Court (read Environment and Land Court) has the responsibility for the maintenance of the rule of law, hence there cannot be a gap in the Application of the rule of law.
42. In addition, in the case of Republic v Principal Secretary, Ministry of Defence Ex parte George Kariuki Waithaka [2019] eKLR, it was held that where there is a lacuna with respect to enforcement of remedies provided under *the Constitution* or an Act of Parliament, or if, through the procedure provided under an Act of Parliament, an aggrieved party is left with no alternative but to invoke the jurisdiction of the Court, the Court is perfectly within its rights to adopt such a procedure as would effectually give meaningful relief to the party aggrieved, in exercise of the inherent jurisdiction granted to the Court by Section 3A of the *Civil Procedure Act* to grant such orders that meet the ends of justice and avoid abuse of the process of Court.
43. Section 29 of the *Environment and Land Court Act* is clear to the effect that;

“Any person who refuses, fails or neglects to obey an order or direction of the Court given under this Act, commits an offence, and shall, on conviction, be liable to a fine not exceeding twenty million shillings or to imprisonment for a term not exceeding two years, or to both”
44. In the case of Samuel M. N. Mweru & Others vs. National Land Commission & 2 others [2020] eKLR the Court held that

‘A Court order is binding on the party against whom it is addressed and until set aside remain valid and is to be complied with. Article 159(1) of *the Constitution* provides that judicial authority is derived from the people and vests in, and shall be exercised by, the Courts and tribunals established by or under *the Constitution*. Under Article 10(1) of *the Constitution* the national values and principles of governance in the Article bind all State organs, State officers, public officers and all persons whenever any of them (a) applies or interprets *the Constitution*; (b) enacts, applies or interprets any law; or (c) makes or implements public policy decisions. Under clause (2) (a) of the same Article the national values and principles of governance include the Rule of Law.

It is a crime unlawfully and intentionally to disobey a Court order.

This type of contempt of Court is part of a broader offence, which can take many forms, but the essence of which lies in violating the dignity, repute or authority of the Court. [36] The



offence has in general terms received a constitutional ‘stamp of approval,’ since the Rule of Law – a founding value of *the Constitution* – ‘requires that the dignity and authority of the Courts, as well as their capacity to carry out their functions, should always be maintained.’

45. It is an established principle of law as was held in the case of Kristen Carla Burchell vs Barry Grant Burchell, Eastern Cape Division Case No. 364 of 2005 in order to succeed in civil contempt proceedings, the Applicant has to prove (i) the terms of the order, (ii) Knowledge of these terms by the Respondent, (iii). Failure by the Respondent to comply with the terms of the order.
46. From the pleadings herein filed, the applicable law and the decided cases, the following issues stand out for determination:-
 - i. Whether the Respondent herein named Gilbert Kimutai Koech was served with or made aware of the judgment of 18th May 2018 and subsequent orders of 7th July, 2020.
 - ii. Whether there was any valid Court order issued by this Court in its judgment of 18th May 2018 and subsequent orders of 7th July, 2020.
 - iii. Whether the Respondent herein named Gilbert Kimutai Koech is guilty of contempt of Court order issued on 7th July, 2020.
47. I shall determine all the three issues together but in order to place the Application in context, a brief background of the salient facts is necessary. On the first issue as to whether the Respondent herein was served with or was made aware of the order of 7th July, 2020, in the case of Kenya Tourist Development Corporation vs. Kenya National Capital Corporation & Another, Nairobi High Court Civil Case No. 6776 of 1992, it was held that the knowledge of an order supersedes personal service.
48. In the instant case, it is worth noting that(for ease of reference we shall refer to the parties as appearing in this Application) Judgment, was delivered on 18th May 2018 in Gilbert Kimutai Koech vs. Wilson Kipngeno Koech [2018] eKLR wherein the Respondent’s claim had been dismissed. In essence the court had exercised its jurisdiction on the proprietorship of land parcel L.R No. Kericho/Kaptebengwet/450. The Applicant successfully applied for the eviction of the Respondent which orders had been granted on 7th July, 2020 and duly executed on 17th July, 2020. The eviction returns had been filed accordingly by the OCS-Konoin Police Station. The Applicant was granted vacant possession of land L.R No. Kericho/Kaptebengwet/450 which he took possession and occupation. No Appeal was lodged and no order was issued setting aside, varying, appealing and/or vacating the orders of the court.
49. An attempt by the Objector/Respondent herein (who is a mother to the Respondent) to suspend the ex-parte Eviction and vacate all the Orders issued in the Judgment of 18th May, 2018 was disallowed by the court’s ruling of dated 28th September 2023. There was no Appeal filed.
50. There has been a mention of orders obtained in the High Court in Succession Cause No. 6 of 2020 that had purportedly stayed the judgment and orders of the Environment and Land court which orders, the Respondent had relied on to go back to the suit land to evict the Applicant, put up a permanent residential house thereon and impose his mother and other family members therein. Suffice to say the said proceedings or order were not annexed to the Respondent’s response and it was thus out of my own motion that I called for and perused the file.
51. It emerges that knowing very well that the proprietorship of the parcel of land L.R No. Kericho/Kaptebengwet/450 had been determined by this court, that the Respondent herein who was once a judicial officer, in cohorts with his mother Peninah Nyambura Too in an attempt to circumvent this



court's orders, filed before the High Court in Succession Cause No. 6 of 2020 an Application dated 12th March 2020 wherein they had sought for and obtained interim orders against the Applicant herein, in relation to his parcel of land L.R No. Kericho/Kaptebengwet/450. Using the illegally acquired orders of 23rd July 2019 from the High Court orders, the Respondent herein, his mother Peninah Nyambura Too (the Objector), his siblings Livingstone Kipkorir Koech and Charles Kipngeno Koech and other relatives violently trespassed into the suit property L.R Kericho/Kaptebengwet/450, destroyed the boundary fence, demolished the Applicant's house and constructed a permanent building where they have been residing.

52. It is evident that through material non-disclosure and outright deceit that the Respondent herein had unlawfully disposed the Applicant from land that he had lawfully and legally taken occupation/possession of.

53. This court cannot delve into the realm as to whether or not the High Court sitting as a Probate and Administration court had jurisdiction to issue interlocutory orders on a matter that had been finalized by this court, as this is the preserve of the Court of Appeal. However to buttress the fact that the orders that had been obtained in the High Court were illegal, the same Court, in its Ruling of 14th December 2023 had pronounced itself at paragraph 10 that;

“.....L.R Kericho/Kaptebengwet/450 no longer forms part of the assets of the estate of Ernest Kipoech Too, deceased. It is apparent that the aforesaid parcel was on 15th May 1999 transferred and registered in the name of Wilson Kipngeno Koech.....”

54. It should be noted that the issue of non-disclosure of material facts to the court is indeed a serious issue which may warrant a court to take decisive action on the culprit. The matter becomes even more serious when the perpetrator, the Respondent herein was a judicial officer who is expected to know the law and who was heard to threaten the Applicant that he would take him nowhere.

55. The question therefore to ask ourselves was whether the action by the Respondent was contemptuous of this court's judgment of 18th May 2018 and its subsequent orders of 7th July, 2020.

56. In the case of Shimmers Plaza Limited vs National Bank of Kenya Limited [2015] eKLR the Court of Appeal had recognized that;

.....that knowledge of a Court order suffices to prove service and dispense with personal service for purposes of contempt proceedings. For instance, Lenaola J., in the case of Basil Criticos v Attorney General and 8 Others This position was affirmed by this Court in several other cases including in the Wambora Case [Justus Kariuki Mate & Another v Hon. Martin Nyaga Wambora & Another Civil Appeal No. 24 of 2014].

57. Pursuant to the eviction of the Respondent herein, there is no doubt in my mind that indeed there had been valid orders issued by the court in its judgment of 18th May 2018 and subsequent orders of 7th July, 2020 to which the Respondent herein named, Gilbert Kimutai Koech had been evicted from the said parcel of land. It cannot therefore be said that after the eviction of the said Respondent, he and his family members including his mother Peninah Nyambura Too had no knowledge of the court orders. Indeed nothing in his response to this application for contempt of court orders has been brought out to deny knowledge of this court's judgment of 18th May 2018 and subsequent orders of 7th July, 2020.

58. As to whether the Respondent herein named Gilbert Kimutai Koech had brazenly disobeyed the orders of the Court, I have considered the submission by the Applicant and the history of the whole matter and the fact that the Respondent herein on the pretext that the orders issued by the High Court “had stayed the judgment and orders of the Environment and Land court” had in cohorts with his mother



Peninah Nyambura Too, his siblings Livingstone Kipkorir Koech and Charles Kipngeno Koech and other relatives, violently trespassed into the suit property L.R Kericho/Kaptebengwet/450, destroyed the boundary fence and demolished the Applicant's house thereby constructing a permanent building where they have been residing, this despite there having been in place, orders of eviction and permanent injunction dated 7th July, 2020 issued by this court.

59. The Scottish case of Stewart Robertson vs. Her Majesty's Advocate, 2007 HCAC 63, Lord Justice Clerk stated that:

“contempt of Court is constituted by conduct that denotes willful defiance of or disrespect towards the Court or that willfully challenges or affronts the authority of the Court or the supremacy of the law, whether in civil or criminal proceedings”

60. Further, Romer L.J in Hadkinson vs. Hadkinson(1952) ALL ER 567 stated that:

“It is the plain and unqualified obligation of every person, against, or in respect of, whom an order is made by a Court of competent jurisdiction to obey it unless and until that 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 an order believes it to be irregular or even void”

61. From the foregoing, it is trite that contempt of Court proceedings and Applications are subtle and criminal in nature and would impose criminal sanctions if a conviction followed.

62. It has been held by the Courts that unless and until a Court order is discharged, it ought to be obeyed. Indeed the Court of Appeal in Central Bank of Kenya & Another vs. Ratal Automobiles Limited & Others, Civil Application No. Nairobi 247 of 2006 held that it was a fundamental tenet of the rule of law that Court orders must be obeyed and it is not open to any person or persons to choose whether or not to comply with or to ignore such orders as directed to him or them by a Court of law.

63. In the case of Awadh vs. Marumbu (No. 2) No. 53 of 2001 (2004) KLR 458, the Court held that it is the duty of the Court not to condone deliberate disobedience of its orders nor waiver from its responsibility to deal decisively and firmly with the approved contemnors.

64. I find that the Respondent herein willfully and intentionally defied orders of the Court despite knowledge of the same. His action of trespassing into the suit property L.R Kericho/Kaptebengwet/450, destroying the boundary fence and demolishing the Applicant's house thereby constructing a permanent building where he, his mother Peninah Nyambura Too, his siblings Livingstone Kipkorir Koech and Charles Kipngeno Koech and other relatives now live, is a deliberate attempt to subvert the Rule of Law, which ran afoul of the terms of the Court orders of 7th July, 2020 which gave the Applicant vacant possession of land L.R No. Kericho/Kaptebengwet/450.

65. The Respondent's action demonstrated a clear picture of his high-handedness in complying with the Court's order where he engaged in tactics that were meant to frustrate the Applicant from enjoying the fruits of his judgment. The issue of obedience to court orders is now topical. One would therefore have expected that the Respondent herein, himself a former judicial officer, would be in the forefront in obeying court orders not only as a demonstration of his allegiance to the rule of law but also, as an example to the people in his village. But instead he chose to abuse the judicial process with wanton abandon.

66. I find that the Applicant's application dated the 6th October, 2023 is merited and proceed to issue the following orders;



- i. A registered surveyor shall visit the land parcel number L.R No. Kericho/Kaptebengwet/450 to show the Applicant the designated beacons.
- ii. That the OCS Kaptengwet police station to provide security to the surveyor and the Applicant during this exercise.
- iii. The Respondent herein Gilbert Kimutai Koech is in blatant contempt of Court orders and I will proceed to punish him for contempt.
- iv. The Applicant shall have costs.

DATED AND DELIVERED VIA MICROSOFT TEAMS AT KERICHO THIS 25TH DAY OF JANUARY 2024

M.C. OUNDO

ENVIRONMENT & LAND – JUDGE

