



**Ewins v Abdalla (Environmental and Land Originating Summons  
109 of 2018) [2024] KEELC 34 (KLR) (15 January 2024) (Ruling)**

Neutral citation: [2024] KEELC 34 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MALINDI  
ENVIRONMENTAL AND LAND ORIGINATING SUMMONS 109 OF 2018  
MAO ODENY, J  
JANUARY 15, 2024**

**BETWEEN**

**ELIZABETH MWENI EWINS ..... PLAINTIFF**

**AND**

**WANJIRU YUSUF ABDALLA ..... DEFENDANT**

**RULING**

1. This Ruling is in respect of the application by the Plaintiff/Applicant dated 29<sup>th</sup> July, 2021 seeking the following orders;
  - a. Spent
  - b. That summons do issue from this court to the Respondent to appear before the court and show cause why she should not be punished by way of imprisonment or such other sentence as this court will so order as just and expedient for disobeying, disregarding and violating the order given on the 25<sup>th</sup> September, 2018 and issued on 26<sup>th</sup> September, 2018.
  - c. That should the Respondent fail to appear before this court in answer to the summons, a warrant of arrest for issue against the Respondent to be arrested by court bailiff and the officer commanding station (OCS) Malindi to be brought before this court and be committed to civil jail for a period of six (6) months or such period as this court may order and/or issue such to the Respondent for failing to observe, obey, respect and act upon this Honourable Court's orders given on the 25<sup>th</sup> September, 2018 and issued on 26<sup>th</sup> September, 2018 ordering the Respondent to deliver the original indenture and/or title for Plot Number 1151 ( Original 728/2) Watamu to the Applicant.
  - d. That in the alternative this Honourable court do order that the Respondent sign and executes a transfer in favour of the Applicant for Plot Number 1151 (Original 728/2) Watamu and to deliver to the Registrar of Lands Mombasa the original title to Plot No. 728 (Original 711/18)



Watamu CR No. 26006 as delineated on Survey Plan Number 183008 for the registration of the two subdivision and issuance of two distinct titles failing which the Deputy Registrar of this Honourable court be ordered to sign and execute the said transfers in favour of the Applicant and the Registrar of Lands using a certified copy of Title to Plot No. 728 Watamu do register the subdivision numbers 1150 and 1151 Watamu and proceed and issue the Applicant with the title to Plot No. 1151 (Original 728/2) Watamu.

- e. That the costs of this Application be paid by the Respondent.
2. The application is supported by the affidavit sworn by the applicant Elizabeth Mueni Ewins on the 29<sup>th</sup> July, 2021 where she deponed that by an agreement dated 17<sup>th</sup> February, 2015. She fully paid the Respondent Kshs. 2 Million which amount was inclusive of all costs for the subdivision works and registration of a new title in her favour.
3. She further deponed that she later found out that there was a previous caveat registered by Dr. Rakesh Rajpal who was also claiming an interest on the suit land. She stated That the Respondent failed to undertake the subdivision thus prompting her to file suit against her.
4. The Applicant stated that on 25<sup>th</sup> September, 2018 this court granted orders against the Respondent which were issued on 26<sup>th</sup> September, 2018 ordering her to deliver the original indenture and/or title to portion number 1151 (Original 728/2) Watamu to her for purposes of having a distinct title in her name but the Respondent has been adamant do so and that she only recently realized that the original title is held by Dr. Rakesh Rajpal who also claims a purchaser's interest on the plot.
5. The Respondent filed a Replying Affidavit sworn on the 24<sup>th</sup> September, 2021 and deponed that the Applicant has failed to disclose to the court that there is another matter on the same suit property with the same parties vide Chief Magistrate's court Civil Case No. 189 of 2021 at Malindi where interim orders were granted.

#### **Plaintiff/applicant's Submissions.**

6. Counsel submitted that the court has powers to enforce its orders and decrees to ensure their efficiency and enforcement which power is given by Section 1A, 1B, 3A and 63 of the Civil Procedure Act, Order 22 Rule 28 and Section 13 and 14 of the Environment and Land Court Act.
7. Counsel also submitted that the decree granted by this court on 25<sup>th</sup> September, 2018 and issued on 26<sup>th</sup> September, 2018 were equitable in nature and that a court sitting as a court of equity cannot permit a wrong to go without a remedy and relied on Section 38 of the Civil Procedure Act, Section 51 and 63 of the Civil Procedure Act, Section 3A of the Civil Procedure Act and Order 22 Rule 83 of the Civil Procedure Rules.

#### **Defendant /Respondent's Submissions.**

8. Counsel identified three issues for determination namely:
  - a. Whether the application by the Plaintiff to commit the Defendant to civil jail is an abuse of the court process under Civil Procedure Laws and the Contempt of Court Act (2016) and if the application's procedure and prosecution protocol was followed;
  - b. Whether service of summons to enter appearance was effected upon the Defendant to sustain the process of execution herein.
  - c. Whether the Defendant's replying affidavit dated 24<sup>th</sup> September, 2021 and filed on 28<sup>th</sup> September, 2021 raises any triable issues or it ought to be disregarded.



9. Counsel submitted that the *Contempt of Court Act* (2016) seeks to uphold the dignity and authority of the court; ensure compliance with the directions of court and preserve an effective and impartial system of justice.
10. Counsel argued that any proceedings to try an offence of Contempt of Court provided for under any other written law shall not take away the right of any person to a fair trial and fair administrative action in accordance with Articles 47 and 50 of *the Constitution* and relied on the cases of *Luka Kipkorir Kigen v National Oil Corporation Limited* (2014) eKLR and *Mavuno Industries Limited & 2 Others v Keroche Industries Limited* (2012) eKLR.
11. On the second issue for determination, it was counsel's submission that there was never proper or any service upon the Defendant specifically regarding the order dated 26<sup>th</sup> September, 2018. He further submitted that service of pleadings, court documents forms the formation of any civil proceeding, and without which the foundations of any pleadings are weakened.
12. Counsel relied on Order 5 Rule 8 (1) and the Court of Appeal case of *John Akasirwa v Alfred Inai Kimuso* (C.A. No. 164 of 1999) (UR) as cited in *National Bank of Kenya Limited v Puntland Agencies Limited & 2 Others* (2006) eKLR and that of *Boniface Ooko Ganda v Stanlry Maina & another* (2005) as cited in *Development Bank of Kenya Limited v Riva Oils Co. Limited & 3 Others* (2015) eKLR and submitted that the Defendant was not served with the said order as required by the law.

### **Analysis And Determination.**

13. The issue for determination is whether the Respondent is in contempt of court. The Black's Law Dictionary 9<sup>th</sup> Edition, defines contempt as:

The 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.

Section 5(1) of the *Judicature Act* which provides that:

“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.”

Section 29 of the *Environment and Land Court* 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

14. In the case of *Samuel M. N. Mweru & Others v National Land Commission & 2 others* [2020] eKLR the court held as follows: -

“It is an established principle of law that 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.”

15. It is not in dispute that this Honourable Court issued orders on the 26<sup>th</sup> September, 2018 ordering the Respondent to deliver the original indenture and/or title for Plot No. 1151 (Original No. 728 /2)



- Watamu to the Applicant. However, the Respondent has disputed in her Replying affidavit and submissions that she was never served with the court orders of 26<sup>th</sup> September 2018.
16. This allegation cannot be true as the Respondent subsequently appeared in court and stated that the subdivision has already been done and was to confirm that she had gotten a certificate of subdivision. Counsel informed the court that they had all the documents except the certificate of subdivision of Plot No. 1150
  17. Mr Kilonzo counsel for the Respondent also informed the court on 1<sup>st</sup> December 2021 that the Applicant had already signed and executed the transfers but he was yet to receive the original title.
  18. It seems that the Respondent is hell bent to disobey the court order that obligated her to produce the original title in court for the implementation of the judgment. She even made an application dated 14<sup>th</sup> March 2022 for a temporary order of injunction to restrain the Land Registrar from transferring the suit land into the names of the Plaintiff/Respondent which application was heard and dismissed.
  19. If the Respondent was dissatisfied with the Judgment of the court then she should have filed an appeal. The Applicant prayed for an alternative order for the Honourable court to order that the Respondent signs and executes a transfer in favour of the Applicant for Plot Number 1151 (Original 728/2) Watamu and to deliver to the Registrar of Lands Mombasa the original title to Plot No. 728 (Original 711/18) Watamu CR No. 26006 as delineated on Survey Plan Number 183008 for the registration of the two subdivision and issuance of two distinct titles failing which the Deputy Registrar of this Honourable court be ordered to sign and execute the said transfers in favour of the Applicant and the Registrar of Lands using a certified copy of Title to Plot No. 728 Watamu do register the subdivision numbers 1150 and 1151 Watamu and proceed and issue the Applicant with the title to Plot No. 1151 (Original 728/2) Watamu.
  20. The Respondent had been summoned to court but she did not produce the original title as directed. I find that the application has merit and is therefore allowed in terms of prayer No. (d) for the Deputy Registrar to execute the transfers and the Land Registrar to register and issue a title to the Applicant as prayed.
  21. Respondent to pay costs of the suit.

**DATED, SIGNED AND DELIVERED AT MALINDI THIS 15<sup>TH</sup> DAY OF JANUARY 2024.**

**M.A. ODENY**

**JUDGE**

NB: In view of the Public Order No. 2 of 2021 and subsequent circular dated 28th March, 2021 from the Office of the Chief Justice on the declarations of measures restricting court operations due to the third wave of Covid-19 pandemic this Ruling has been delivered online to the last known email address thereby waiving Order 21 [1] of the Civil Procedure Rules.

