



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT OF KENYA**

**AT NYERI**

**E.L.C CASE NO. 107 OF 2015**

**LUCY WANJIKU MURIITHI ..... PLAINTIFF/APPLICANT**

**-VERSUS-**

**JOSEPH MWANGI MATHENGE**

**PETER KINYUA GITHINJI**

**VIRGINIA KARIAH ..... DEFENDANTS/ RESPONDENTS**

**RULING**

1. On **23<sup>rd</sup> April, 2015** this court restrained Joseph Mwangi Mathenge, Peter Kinyua Githinji and Virginia Kariah (hereinafter referred to as the respondents) from interfering with the plaintiff/applicant's quiet and peaceful possession of the parcel of land known as L.R Number **Iriani/Chehe/1606** pending the hearing and determination of the suit herein.
2. On **29<sup>th</sup> February, 2016** the plaintiff/applicant, Lucy Wanjiku Muriithi, filed the notice of motion dated **25<sup>th</sup> February, 2016** urging court to commit the respondents to civil jail for allegedly having disobeyed the orders herein.
3. In the affidavit sworn in support of the application, the applicant has deposed that the respondents have, in blatant breach of the orders herein, entered the suit property and began picking tea leaves there from.
4. In response to the allegations leveled against them, the respondents swore affidavits denying the allegations leveled against them. Besides denying the allegations leveled against them, the respondents have deposed that the application is scandalous and an abuse of the court process.

**Analysis and determination**

5. The sole issue for determination is whether the applicant has made up a case for warranting the issuance of the orders sought. In this regard, having read and considered the affidavit evidence adduced in this case, I note that the applicant has merely made unsubstantiated allegations against the respondents, which allegations the respondents have denied.
6. Contempt proceedings being criminal in nature, it behooved the applicant to prove the allegations leveled against the respondents by way of cogent evidence. In this regard see the cases cited hereunder:-

1. Sam Nyamweya & 3 others v Kenya Premier League Limited & 2 Others (2015)eKLR where it was held:-

**“...contempt proceedings are of a criminal nature and involve, if proved, loss of liberty, the applicant must therefore endeavor to prove all facts relied on beyond reasonable doubt. ..”**

2. Eliud Muturi Mwangi (Practising in the name and style of Muturi & Company Advocates) v LSG Lufthansa Services Europa/ Africa GMBH & another [2015] eKLR where Gikonyo J., stated:-

**“...the appropriate standard of proof which must be attained is as was set out in the case of OCHINO & OTHERS –VS- OKOMBO & OTHERS (1989) KLR 165, by the Court of Appeal that:-**

**“...the standard of proof in contempt proceedings must be higher than proof on a balance of probabilities, almost but not exactly beyond reasonable doubt.”**

3. North Tetu Farmers Company Ltd v. Joseph Nderitu Wanjohi (2016)eKLR, where Mativo J, stated:-

**“Contempt proceedings are *quasi-criminal* in nature and since the liberty of a person is at stake, the standard of proof is higher than in civil cases. This principle was reiterated in the case of *Gatharia K. Mutikika vs Baharini Farm Ltd* where it was held as follows:-**

***“The Courts take the view that where the liberty of the subject is, or might be involved, the breach for which the alleged contemnor is cited must be precisely defined. A contempt of court is an offence of a criminal character. A man may be sent to prison. It must be satisfactorily proved... I 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, in criminal cases. it is not safe to extend it to offence, 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 be had to process of 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 judges 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. A judge must be careful to see that the cause cannot be mode of dealing with persons brought before him. Necessary though the jurisdiction may be, it is necessary only in the sense in which extreme measures are sometimes necessary to preserve men's rights, that is, if no other pertinent remedy can be found... 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 a contempt is threatened or has been committed, and on 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.”***

**In *Peter K. Yego & Others vs Pauline Nekesa Kode* the court recognizing that contempt of court is criminal, held that it must be proved that one has actually disobeyed the court order before one is cited for contempt. The applicant in a application for contempt must prove beyond peradventure that the respondent is guilty of contempt....”**

7. In the current application, no evidence at all of the allegations leveled against the respondents was adduced to warrant committing them to civil jail. Consequently, I dismiss the application with costs to the respondents.

**Dated, signed and delivered at Nyeri this 4th day of October, 2016.**

**L N WAITHAKA**

**JUDGE**

**In the presence of:**

Ms Wanjira h/b for Wahome Gikonyo for plaintiff

N/A for the defendant

Court assistant - Lydia