



**Kamano (Suing as the Lawful Attorney of George Kamano) v Kamano (Environment & Land Case E017 of 2023) [2024] KEELC 897 (KLR) (15 February 2024) (Ruling)**

Neutral citation: [2024] KEELC 897 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND CASE E017 OF 2023  
MD MWANGI, J  
FEBRUARY 15, 2024**

**BETWEEN**

**SOPHIA MARY NGONYO KAMANO (SUING AS THE LAWFUL ATTORNEY OF GEORGE KAMANO) ..... PLAINTIFF**

**AND**

**JOSEPH KAMOYO KAMANO ..... DEFENDANT**

*(In respect of the Plaintiff's application dated 29th August, 2023 seeking committal of the Respondent for contempt of court and other orders)*

**RULING**

**Background**

1. The Applicant herein filed a Notice of Motion Application dated 29th August, 2023 under Section 5 of the [Judicature Act](#), Rule 28 (K) of the Practice Directions on Proceedings in the Environment and Land Courts, Order 40 Rule 3 of the Civil Procedure Rules, 2010 Laws of Kenya seeking for the following orders:
  - a. Spent;
  - b. That the Officer Commanding the Police Station nearest to the suit property plot No. Kangemi/ Dagoretti/ 1030 be ordered to ensure that the property is preserved and specifically, that there shall be no further construction until further orders of the court.
  - c. That the contemnor, Joseph Kamoyo Kamano, be found to be in contempt of court for the breach of the status quo orders issued on 26th July, 2023.
  - d. That upon a citation for the contempt the contemnor, Joseph Kamoyo Kamano, be detained at Industrial Area GK Prison in Nairobi or any other prison or rehabilitation facility for a period of six (6) months or for such period and on such terms as the court may determine.



- e. That there be an order of sequestration of the contemnor's properties wherever they may be in the Republic of Kenya and upon such order being made, such sequestration shall remain in force on such terms as the court will order until the contempt is purged.
- f. That costs be provided for.
2. The application is premised on the grounds that this court issued Status quo orders preserving all that property known as plot No. Kangemi/ Dagoretti/ 1030 on 26th July, 2023 in the presence of the Defendant/Respondent's Advocates.
3. The Applicant avers that despite the court order, the Defendant/Respondent is still conducting construction on the said property. The said construction therefore disparages the court; is a ridicule to the proceedings before the court and brings the administration of justice into disrepute and contempt. The Applicant asserts that by proceeding with the construction, the Defendant/Respondent has willfully and maliciously disobeyed the status quo order issued on 26th July, 2023.
4. The Application is supported by the Affidavit of Sophia Mary Ngonyo Kamano, the Plaintiff/Applicant deponed on the 29th August 2023. The Plaintiff/Applicant reiterates the grounds stated on the face of the application save to add that after issuance of the order, the matter was referred to court annexed mediation by mutual consent of the parties. The Defendant/Respondent accuses the Plaintiff/Applicant of failing to co-operate in the mediation process thus delaying the mediation proceedings.

#### **Defendant/Respondent responses**

5. The Defendant/ Respondent opposed the application vide the Grounds of opposition dated 6th October, 2023 as well as the Replying Affidavit deponed on the 11th October, 2023. In the grounds of opposition, the Defendant/Respondent states that the Plaintiff/Applicant has failed and/or neglected to participate in the medication proceedings and has not come to court with clean hands.
6. He argues that the Plaintiff's application is an afterthought, concocted and manufactured with a sole intention of frustrating and obstructing the course of justice. The application is therefore misconceived, incurably defective, a nullity and an abuse of the court process.
7. In his Replying Affidavit, the deponent avers that the application is misplaced, frivolous, scandalous and calculated to mislead the court hence should be dismissed with immediate effect with costs to himself.
8. That in utter malice, the Applicant proceeded to court to try and interfere with the construction which was in progress. He avers that he expressly requested to be served with an order stopping construction, which the Plaintiff/Applicant declined. That up to date, he has never been served with any order hence the continued construction.
9. The Defendant/Respondent further states that with the then predicted El nino rains, his Architect advised him that the rains would adversely affect his ongoing construction and the erected masonry walls as they were likely to collapse. The estimated loss was approximately Kshs. 5 Million. It is on that basis that he endeavoured to complete the construction.
10. He further argues that the Plaintiff/Applicant has been quick in filing the contempt proceedings yet she has no goodwill as she has been frustrating the mediation process without any justifiable cause contrary to the court's order.



11. The Defendant/Respondent avers that he has he has been in occupation of the suit property for over 20 years after being shown his portion by his father. He insists that the construction is on his rightful portion. He depones that the Plaintiff/Applicant has her own portion and that she is at liberty to develop hers. As such the application before the court is unmerited and should be dismissed with costs.

### **Court's Directions**

12. By consent of the parties, the court directed that the application be dispensed with by way of written submissions. Both parties complied. The Plaintiff/Applicant's submissions are dated 7th November, 2023 whereas the Defendant/Respondent's submissions are dated 24th November, 2023. The Court has had a chance to read through the said submissions and considered them accordingly.

### **Issues for determination**

13. I have carefully read and put into consideration all the filed pleadings, the submissions, authorities relied on and the relevant provisions of the appropriate and enabling laws. In order to arrive at an informed decision, this honourable court has framed the following issues for its determination:
  - a. Whether the Defendant/Respondent should be cited for contempt; and
  - b. Who should bear the costs of the application.

### **Analysis and determination**

#### **A. Whether the Defendant/Respondent should be cited for contempt**

14. 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.

15. Section 5(1) of the *Judicature Act* 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.”

16. 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.”

17. In the case of *North Tetu Farmers Co. Ltd vs. Joseph Nderitu Wanjohi* (2016) eKLR, Mativo J. (as he then was) stated as follows:

“writing on proving the elements of civil contempt, learned authors of the book *Contempt in Modern New Zealand* have authoritatively stated as follows: -

“there are essentially four elements that must be proved to make the case for civil contempt. The applicant must prove to the required standard (in civil contempt cases which is higher than civil cases - (a) the terms of the order (or injunction or



undertaking) were clear and unambiguous and were binding on the defendant;  
(b) the defendant had knowledge of or proper notice of the terms of the order;  
(c) the defendant has acted in breach of the terms of the order; and (d) the defendant's conduct was deliberate.”

18. It is clear from the record of this court that on 26th July, 2023, this court issued an order in the following terms:

“By the consent of the parties, this matter is referred to the court annexed Mediation through the Deputy Registrar of the Environment and Land Court, Nairobi. In the meantime, status quo to be maintained pending the outcome of the Mediation and or any further orders of this court.”

19. The meaning of the word “status quo” was clarified by the Court of Appeal in the case *Shimmers Plaza Limited vs. National Bank of Kenya Limited* [2015] eKLR as follows:

“Status quo” in normal English parlance means the present situation, the way things stand as at the time the order is made, the existing state of things. It cannot therefore relate to the past or future occurrences or events. We fail to see what can be ambiguous about that order. All it meant was that everything was to remain as it was as at the time that order was given. If there was any transaction of whatever nature that was going on in respect of the land in question, it had to freeze and await the discharging of the Court order.”

20. The order of maintaining the status quo in respect to the suit property was granted by the court in the presence of the Defendant’s Advocates. Indeed, the current jurisprudence only requires a party’s advocate to be aware of the court order for the purposes of an Application for contempt. In the *Shimmers Plaza* case (supra), the Court of Appeal held as follows:

“On the other hand however, this Court has slowly and gradually moved from the position that service of the order along with the penal notice must be personally served on a person before contempt can be proved. This is in line with the dispensations covered under 81.8 (1) (supra). Kenya's growing jurisprudence right from the High court has reiterated that knowledge of a court order suffices to prove service and dispense with personal service for the purposes of contempt proceedings. For instance, Lenaola J in the case of *Basil Criticos vs Attorney General and 8 Others* [2012] eKLR pronounced himself as follows:- “...the law has changed and as it stands today knowledge supersedes personal service.....where a party clearly acts and shows that he had knowledge of a Court Order; the strict requirement that personal service must be proved is rendered unnecessary.” This position has been affirmed by this Court in several other cases including the *Wambora* case (supra).”

21. The Defendant/Respondent avers that he expressly requested to be served with an order stopping construction, but the Plaintiff/Applicant declined. That up to date, he has never been served with any order. He therefore continued with the construction purposely to avoid the losses he would have incurred due to the El nino rains.



22. I note that although the court issued status quo orders, the court did not expressly bar any further construction. It was not until the 28th September, 2023, while issuing directions on the instant application that the court clarified the terms of the order that:

“No construction should be going on awaiting the outcome of the mediation and the hearing and determination of the current application.”

23. There is no evidence that has been placed before this court showing constructions are still on going. Considering that parties are currently engaged in mediation proceedings; the court is hesitant in citing the Defendant/Respondent for contempt. This is so as to encourage parties to resolve disputes amicably considering that they are family members.

24. In view of the foregoing, the Plaintiff/Applicant’s application is disallowed with no orders as to costs. The Defendant/ Respondent is however warned of any disobedience of the Court’s order. The Court will not hesitate in punishing him should he act contrary to the court’s orders which were clearly clarified on the 28<sup>th</sup> September 2023.

It is so ordered.

**RULING DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 15<sup>TH</sup> DAY OF FEBRUARY, 2024.**

**M.D. MWANGI**

**JUDGE**

**In the virtual presence of:**

Ms Muia holding brief for Mr. Gitonga for the Plaintiff

No appearance for the Defendant

Court Assistant: Yvette

**M.D. MWANGI**

**JUDGE**

