



Mocho (Suing as the legal administrator of the Estate of Taplule Cherop Saranda) v Chepkengei Posho Mill Group & 3 others (Environment & Land Case 25 of 2019) [2024] KEELC 1714 (KLR) (21 March 2024) (Ruling)

Neutral citation: [2024] KEELC 1714 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KERICHO
ENVIRONMENT & LAND CASE 25 OF 2019
MC OUNDO, J
MARCH 21, 2024**

BETWEEN

PETER KIBET MOCHO (SUING AS THE LEGAL ADMINISTRATOR OF THE ESTATE OF TAPLULE CHEROP SARANDA) PLAINTIFF

AND

CHEPKENGEI POSHO MILL GROUP 1ST DEFENDANT

RICHARD KIPTONUI BETT 2ND DEFENDANT

THE LAND REGISTRAR BOMET 3RD DEFENDANT

THE HON ATTORNEY GENERAL 4TH DEFENDANT

RULING

1. Before me for determination is an Application by way of Notice of Motion dated the 28th March, 2023, brought pursuant to the provisions of S. 3A of the *Civil Procedure Act*, Order 40 *Civil Procedure Rules* and Section 29 of the *Environment and Land Court Act* where the Applicant herein seeks that the Respondent and his sons namely David Kipkoech Bett, Wesley Kiprotich Bett, Weldon Kimutai Bett, Shadrack Kipngeno Bett be arrested and brought to court to be punished for disobeying the court's order dated 27th September 2019 for having prevented /denied him from accessing, occupying and using the land parcel number Kericho/Kapkelei/1250. That Applicant further sought that in the alternative, the Respondent and his sons be cited for disobeying the aforementioned court's order. That there be costs of the Application and the OCS, Ndanai Police Station effects the Warrant of Arrest.
2. The said Application was supported by the grounds on its face and the Supporting Affidavit dated 20th March, 2023 sworn by Augustine Kimilgo Sang who deponed that the Court had issued a ruling dated 27th September, 2019 to the effect that the status quo that had prevailed before the filing of



the instant suit be maintained. That the Respondent had violated the said order and had been cited for Contempt pursuant to an application dated 18th November, 2019 where he had been sentenced to pay Kshs. 50,000/= or serve 1-month imprisonment. That upon being released, the Respondent and his sons namely David Kipkoech Bett, Wesley Kiprotich Bett, Weldon Kimutai Bett and Shadrack Kipngeno Bett had prevented them from entering and ploughing the land on 8th March, 2023 stating that he would continue denying them entry until the suit was determined.

3. That the Respondent was clearly and brazenly violating the Court's order dated 27th September, 2019 by issuing his own orders despite having been convicted of contempt of Court's orders. That the said Respondent and his sons had disrespected the court's orders hence should be punished for that.
4. The Application was opposed by a Replying Affidavit dated 26th October, 2023 sworn by Peter Kibet Mocho, the supposed Respondent herein who deponed that vide Sotik Land Tribunal case No. 21 of 2010, the 1st Defendant/Applicant had sought from Tribunal a determination that Chepkengei Posho Mill had been entitled to 1 acre comprised in L.R No. Kericho/Kaplelei/1 then registered in the name of Taplule Cherop Saranda (deceased) who was the Plaintiff's mother. That the Tribunal had awarded 1 acre of the said land to the 1st Defendant/Applicant on 16th December, 2010 wherein vide an application dated 22nd February, 2019, the said 1st Defendant/Applicant had moved to the Principal Magistrate Court in Sotik seeking orders that a surveyor be accorded security during the survey and fencing of the 1 acre that had been awarded to it so as to take possession of the same.
5. That by an affidavit sworn on 11th April, 2019, the Respondent had opposed the said application for the reason that award by the Tribunal was void ab initio for lack of jurisdiction to hear and determine a dispute with title relating to registered land and further that the Applicant would not be prejudiced in any manner since they had not taken possession of the 1-acre portion that they had been awarded by the Tribunal.
6. That upon their respective counsels reconsidering their respective positions vis-à-vis the respective affidavits in support and opposition, the applicant's application dated 22nd February, 2019 had been stayed pending the hearing and determination of the instant suit. That in the circumstances the instant application did not have a reasonable cause of action, was an abuse of the court's process and should be dismissed with costs.
7. In a rejoinder, the 1st Defendant/Applicant vide its Supplementary Affidavit dated 3rd November, 2023, sworn by Augustine Kimilgo Sang reiterated the contents of its Application dated 28th March, 2023. He further deponed that the 1st Defendant/Applicant group had bought 1-acre portion from the Plaintiff/Respondent's mother in the year 1981 wherein it took possession and had used the same until the date of filing the instant suit in the year 2019 when the Plaintiff/Respondent had violently chased them from the suit land.
8. That the Plaintiff/Respondent in his Replying Affidavit sworn on 26th October, 2023 had raised issues which were not relevant to the contempt hence amounting to deliberate and willful disobedience of the court's orders dated 27th September, 2019 which had directed that the status quo prevailing before the filing of the instant suit be maintained.
9. Despite directions having been issued on 1st November, 2023 that the instant application be canvassed by way of written submissions, only the 1st Defendant/Applicant complied and filed its submissions dated 27th November 2023 wherein they gave a brief background of the matter in question before framing its issues for determination as follows:
 - i. Whether the application was served upon the Plaintiff.



- ii. Whether the Plaintiff had once again violated the contempt of court order dated 27th September, 2019.
 - iii. Whether the parties ought to maintain status quo.
 - iv. Whether the Respondent should be punished.
10. The 1st Defendant/Applicant placed reliance on the decision in the case of Christine Gathenge Wangari vs. Elizabeth Wangari Evans & 11 others [2014] eKLR where it had been held that personal service was very desirable but was not a mandatory requirement in all situations, to submit that this was the second time the Plaintiff/Respondent had been acting with impunity and willful disregard of the court's order.
 11. The Applicant implored upon the court to consider the provisions of Section 29 of the Environment and Land Court Act and Section 63 (c) Civil Procedure Act and Order 40 Rule 3 of the Civil Procedure Rules while meting punishment to the Respondent upon finding him guilty.

Determination.

12. Pursuant to the delivery of the ruling dated 24th November 2022 where the Plaintiff herein was found guilty of contempt of court orders issued in a ruling delivered on 27th September 2019, the Applicant has yet again filed a similar application seeking that the Plaintiff and his sons namely David Kipkoech Bett, Wesley Kiprotich Bett, Weldon Kimutai Bett, and Shadrack Kipngeno Bett be found guilty of contempt of the same orders of 27th September 2019 for having prevented /denied him from accessing, occupying and using the land parcel No. Kericho/Kapkelei/1250.
13. Indeed the impugned court orders of the 27th September 2019 had been that parties do maintain the status quo prevailing before the filing of this case pending the hearing and determination of the suit herein. At the time the order was made, there had been only Plaintiff/Respondent to the suit, to whom the order was directed. There has been no evidence that the Plaintiff has since been amended to bring on board the Plaintiff/Respondent's sons and therefore any adverse orders issued against them would be directed in vacuo, and would be in breach, not only of the law, but also of the Constitution in so far as right to a fair hearing guaranteed by Article 50(1) was concerned.
14. It is further trite that contempt proceedings are of a criminal nature and involve, if proved, loss of liberty wherein the Applicant is therefore tasked to endeavor to prove all facts relied on by way of evidence beyond reasonable doubt. The proceedings of this nature are not like any other ordinary matter.
15. Indeed the Supreme Court of Kenya in Republic vs. Ahmad Abolfathi Mohammed & Another [2018] eKLR had held that;

“The power, to commit a person to jail, must be exercised with utmost care, and exercised only as a last resort. It is of utmost importance, therefore, for the Respondents to establish that the alleged Contemnor's conduct was deliberate, in the sense that he or she willfully acted in a manner that flouted the Court Order.”
16. In the end, I find that the Applicant's application lacks merit and I decline to grant the orders sought and proceed to dismiss the notice of Motion dated the 28th March, 2023 with costs.

DATED AND DELIVERED VIA MICROSOFT TEAMS AT NAIVASHA THIS 21ST DAY OF MARCH 2024.

M.C. OUNDO



ENVIRONMENT & LAND – JUDGE

