



REPUBLIC OF KENYA



KENYA LAW

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**Gakiwawa Enterprises Limited v Koskei & 4 others (Environment & Land
Case E27 of 2020) [2024] KEELC 1508 (KLR) (20 March 2024) (Ruling)**

Neutral citation: [2024] KEELC 1508 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT & LAND CASE E27 OF 2020**

**A OMBWAYO, J
MARCH 20, 2024**

BETWEEN

GAKIWAWA ENTERPRISES LIMITED PLAINTIFF

AND

JOHN KOSKEI 1ST DEFENDANT

JOHN IMBWAGA 2ND DEFENDANT

MAXWELL KIPROTICH CHERUIYOT 3RD DEFENDANT

CHIEF LAND REGISTRAR 4TH DEFENDANT

ATTORNEY GENERAL 5TH DEFENDANT

RULING

1. John Koskei, John Imbwaga & Maxwell Kiprotich Cheruiyot be committed to prison for a period of six months or such other period as this honorable Court may decide for deliberately violating clear and an unequivocal order of this honorable Court issued on 25th February, 2021 by Hon. Justice J.M Mutungi. That this honorable court fines John Koskei, John Imbwaga & Maxwell Kiprotich Cheruiyot as this honorable Court may decide for deliberately violating clear and an unequivocal order of this Court issued on 25th February, 2021 by Hon. J. M Mutungi. The applicant further prays that the honorable Court does order the Officer Commanding Station (OCS), Sirikwa Police Station, under whose jurisdiction the suit land is located to enforce the Court order. Lastly, that costs of this application be provided for.
2. The application is based on grounds that on 25th February 2021, Hon Justice J.M Mutungi invoking ELC Practice Direction No.32 gave an Order to the extent that the parties maintain the status quo on the ground. On 6th February, 2024 and 13th February, 2024 armed with concealed crude weaponry



and in blatant disregard of the Court Order, the 1st, 2nd and 3rd defendants/respondents invaded LR No.8327/215, LR No.8327.216 & LR No.8327/218.

3. Since 19th February, 2024, the 1st, 2nd and 3rd Defendants/ Respondents have been preventing the Plaintiff / Applicant from carrying out farming and/or cultivating on the Suit Property and have been using violence to assert dominance and have in fact severely injured one of the Plaintiff's workers on the Suit Property.
4. Upon the said invasion, the 1st, 2nd and 3rd Defendants/ Respondents without a care in the world started cutting down the trees, fencing and forcefully cultivating the Suit Property.
5. The 1st, 2nd and 3rd Defendants/ Respondents are well aware of the Court Order owing to the fact that when it was given on 25th February, 2021, their Counsel Mr. Bitok was present in Court.
6. The 1st, 2nd and 3rd Defendants/Respondents are fully aware of the consequences of disobeying a Court order given that the Court Order had a Penal Notice clearly written on the face of it. The dignity and authority of the Court needs to be protected jealously so as to enhance public confidence in the judiciary. It is in the best interest of justice and this Honorable Court duty to uphold integrity and authority of Courts and the rule of law that the orders sought do issue.
7. The supporting affidavit reiterates the grounds of the application. In the replying affidavit, the respondent deny that they have disobeyed the court orders.
8. I have perused the attached exhibits and annexures to the supporting affidavit and do find that there is evidence of an invasion to the suit property with the cutting of trees on the suit property. There is a growing trend of parties using goons to defeat court orders and this trend should be stopped.
9. A claim on contempt of court is a grave issue that the court treats with a lot of seriousness as it goes to the core of undermining the authority of the court. It is a fundamental principle of law that court orders are meant to be obeyed to the letter as they are not issued in vain. Failure to obey court orders would then result in contempt of court.
10. The importance of obedience of court orders was restated in the case of *Econet Wireless Kenya Ltd v Minister for Information & Communication of Kenya & another* [2005] eKLR where the court cited with approval the case of *Gulabchand Popatlal Shah & Another Civil Application No. 39 OF 1990*, (unreported). The Court of Appeal held, inter alia,

“ It is essential for the maintenance of the Rule of Law and good order that the authority and dignity of our courts are upheld at all times. This court will not condone deliberate disobedience of its orders and will not shy away from its responsibility to deal firmly with proved contemnors”

25. The court needs to ascertain whether the applicant herein has met the basic elements set out to prove a case for contempt of court. In the case of *Katsuri Limited v Kapurchand Depar Shah [2016] eKLR*, the court stated that

“The applicant must prove to the required standard (in civil contempt cases which is higher than in criminal cases) that:-

- (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.

11. This court reiterates that court orders ought to be obeyed without conditions. I do warn parties herein to obey the court orders issued on 25th February 2021 by Hon. Justice Mutungi and stop using goons or proxies. In this case it is not clear who cut the trees on the suit land and therefore I do decline to find the applicants in contempt but warn that they should not incite goons to invade the property. Parties are warned to obey court orders. No orders as to the costs.

RULING DATED SIGNED AND DELIVERED VIRTUALLY AT NAKURU THIS 20TH DAY OF MARCH 2024.

A O OMBWAYO

JUDGE

