



**Kibunja & another v Kibunja & 5 others; Kihagi & 11 others (Interested Parties) (Environmental and Land Originating Summons 4 of 2021) [2024] KEELC 1484 (KLR) (20 March 2024) (Ruling)**

Neutral citation: [2024] KEELC 1484 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NYERI  
ENVIROMENTAL AND LAND ORIGINATING SUMMONS 4 OF 2021**

**JO OLOLA, J  
MARCH 20, 2024**

**BETWEEN**

**DUNCAN NDEGWA KIBUNJA ..... 1<sup>ST</sup> APPLICANT  
JOYCE MWIHAKI MAINA ..... 2<sup>ND</sup> APPLICANT**

**AND**

**MARIA NYOKABI KIBUNJA ..... 1<sup>ST</sup> RESPONDENT  
STEPHEN MURIITHI KIBUNJA ..... 2<sup>ND</sup> RESPONDENT  
ZACHARIA MUTITU KIBUNJA ..... 3<sup>RD</sup> RESPONDENT  
PAUL GATHOGA KIBUNJA ..... 4<sup>TH</sup> RESPONDENT  
MOSES NDIRITU KIBUNJA ..... 5<sup>TH</sup> RESPONDENT  
ROBERT MAINA KIBUNJA ..... 6<sup>TH</sup> RESPONDENT**

**AND**

**ISAAC NGATIA KIHAGI ..... INTERESTED PARTY  
DANIEL KAGIRI GICHAMBA ..... INTERESTED PARTY  
DAVID WAIHURA MURIUKI ..... INTERESTED PARTY  
ELIJAD WACHIRA WARUI ..... INTERESTED PARTY  
PURITY GATHIGIA MURIUKI ..... INTERESTED PARTY  
JANE WANGUI WARUTERE ..... INTERESTED PARTY  
CHRISTOPHER NGUGI MWANIKI ..... INTERESTED PARTY  
CEASERE GITONGA MWANGI ..... INTERESTED PARTY  
LUCY WATARE WARUTERE ..... INTERESTED PARTY**



**SAMUEL GITONGA NYAHORO ..... INTERESTED PARTY**  
**CHRISTOPHER NGUGI MWANIKI ..... INTERESTED PARTY**  
**CATHERINE WANDIA GITHINJI ..... INTERESTED PARTY**

## **RULING**

1. By the Notice of Motion dated 9<sup>th</sup> October 2023, Duncan Ndegwa Kibunja and Joyce Mwihaki Maina (the Applicants) pray for an order to issue for the committal of the 3<sup>rd</sup> Respondent to Civil jail for a period not exceeding six (6) months or for attachment and sale of his property for disobedience of the Court Order issued on 23<sup>rd</sup> March, 2023.
2. The application which is supported by an Affidavit sworn by the 1<sup>st</sup> Applicant is premised on the grounds that:
  - (i) There is a Court Order on record restraining the Respondents from interfering with the Applicants' possession and use of the suit properties;
  - (ii) In breach of the said order, the 3<sup>rd</sup> Respondent on 9<sup>th</sup> August, 2023 committed various blatant acts on the suit land to the detriment and prejudice of the Applicant;
  - (iii) The 3<sup>rd</sup> Respondent is still persisting in the said acts despite complaints by the Applicants; and
  - (iv) It is paramount to guard the dignity and authority of the Court that the orders sought are granted.
3. Zachary Mutitu Kibunja (the 3<sup>rd</sup> Respondent) is opposed to the application. In his Replying Affidavit sworn on 2<sup>nd</sup> November, 2023 and filed herein on 9<sup>th</sup> November, 2023 the 3<sup>rd</sup> Respondent avers briefly at paragraphs 3 to 5 thereof as follows:
  - “ 3. That the acts I am alleged to have committed were done on the parcel of land LR No. Nyeri/Naromoru/4025 which is under my name;
  4. That I have always been in possession of that parcel of land while the Applicant has been in possession of the adjacent parcel;
  5. That it is therefore not true that I have acted against the Court orders on record.”
4. I have carefully perused and considered the application as well as the response thereto by the 3<sup>rd</sup> Respondent.
5. By their application before the Court, the two Applicants have urged the Court to issue an order for committal of the 3<sup>rd</sup> Respondent to Civil jail for disobedience of orders issued by this Court on 23<sup>rd</sup> October, 2023. In support of their application, the 1<sup>st</sup> Applicant asserts at Paragraph 6 of his Supporting Affidavit that the 3<sup>rd</sup> Respondent has in breach of the said orders deployed earth movers to excavate at his compound.
6. In addition, the Applicants aver that the 3<sup>rd</sup> Respondent has started constructing walls for a permanent building touching the walls of the Applicants' residential house and further that the 3<sup>rd</sup> Respondent has chased tenants away from the Applicants' rental units claiming ownership of the same.



7. The 3<sup>rd</sup> Respondent does not deny committing the said acts. It is however his case that the acts complained of were done on the parcel of land known as LR No. Nyeri/Naromoru/4025 which is under his name. It is the 3<sup>rd</sup> Respondent's case that he has always been in possession of the said parcel of land while the Applicants are in possession of an adjacent parcel of land.
8. By a Notice of Motion application dated 19<sup>th</sup> July 2021, the Applicant had sought an order as follows:
  - “(a) That the Respondents, their servants and/or agents be restrained by a temporary injunction from interfering with the Applicants' possession and use of those parts of the original parcels of land LR No. Nyeri/Naromoru/100 (since subdivided into parcels of land LR No. Nyeri/Naromoru/4021 - 4046) pending the hearing and determination of this suit.”
9. When the said application came up for hearing on 23<sup>rd</sup> March 2021, the Respondents conceded to the same and the application was allowed in the said terms. By this present application, the two Applicants accuse the 3<sup>rd</sup> Respondent of disobeying the said orders by deploying earth movers to excavate the land, constructing a wall thereon touching the Applicants' residential house and chasing tenants from their rental units.
10. According to the 3<sup>rd</sup> Respondent however, those acts were committed on LR No. Nyeri/Naromoru/4025 which he contends was always in his name and possession. From a perusal of the order issued on 23<sup>rd</sup> March 2022, it was clear to me that LR No. Nyeri/Naromoru/4025 is one of the subdivisions arising from the original LR No. Nyeri/Naromoru/100 and that the same was the subject of the orders issued on 23<sup>rd</sup> March, 2022.
11. The 3<sup>rd</sup> Respondent has not denied knowledge of the said order. By dealing with the subject property in the manner stated by the Applicants and conceded by himself, he was certainly acting in disregard of the orders of this Court.
12. As was stated in *Econet Wireless Kenya Limited v Minister for Information and Communications of Kenya Authority* (2005) eKLR:

“It is essential for the maintenance of the rule of law and order that the authority and the dignity of our Courts are upheld at all times. The Court will not condone deliberate disobedience of its orders and will not shy away from its responsibility to deal firmly with proved contemnors. It is the plain and unqualified obligation of every person against whom an order is made by a Court of competent jurisdiction, to obey it unless and until the order is discharged. The uncompromising nature of this obligation is shown by the fact that it extends even to cases where the person affected by the order believes it to be irregular or void.”
13. It follows that I am persuaded that there is merit in the Motion dated 9<sup>th</sup> October, 2023. In the circumstances, the 3<sup>rd</sup> Respondent is hereby found to be in contempt of this Court's orders and is hereby directed to appear before this Court in person on 8<sup>th</sup> May, 2024 for mitigation and sentencing.
14. Orders accordingly.

**RULING DELIVERED, DATED AND SIGNED IN OPEN COURT AND VIRTUALLY AT NYERI THIS 20<sup>TH</sup> MARCH, 2024.**

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**J. O. OLOLA**

**JUDGE**

In the presence of:

No appearance for the Applicants

No appearance for the Respondents

Court assistant - Kendi

