



REPUBLIC OF KENYA



KENYA LAW
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**Kahungu v Wanyonyi & 2 others (Environment & Land Case
E004 of 2023) [2025] KEELC 843 (KLR) (26 February 2025) (Ruling)**

Neutral citation: [2025] KEELC 843 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KITALE
ENVIRONMENT & LAND CASE E004 OF 2023**

CK NZILI, J

FEBRUARY 26, 2025

BETWEEN

JOSEPH KAMAU KAHUNGU PLAINTIFF

AND

ISAIAH WANYONYI 1ST DEFENDANT

LAND REGISTRAR, TRANS-NZOIA 2ND DEFENDANT

LAND ADJUDICATION OFFICER TRANS NZOIA 3RD DEFENDANT

RULING

1. This ruling relates to an application dated 8/7/2024, seeking for the court to find the 1st respondent guilty of contempt of court of the order issued on 8/3/2023 and send him to civil jail. The reasons are set on the face of the application and in a supporting affidavit of Joseph Kamau Kahungu sworn on 8/7/2023,
2. The applicant avers that by an order dated 8/3/2023, he was allowed to continue undertaking farming activities on the land, save to carry out contrary activities would amount to interference with the land. Equally, the 1st respondent was restricted from further development of the land in terms of building, depositing new building materials, or carrying out any activities that could interfere with the quiet possession of the plaintiff, until the suit is heard and determined. He attached the order as an annexure marked JKK'1'.
3. The applicant avers that despite the order, the 1st respondent trespassed into the land using a motor vehicle, Reg. No. KBK 405Y and destroyed his maize plants, causing damage, which episode was reported at Kwanza Police Station as per annexed OB Report No. 23/05/06/2023 and a copy of the crop damage assessment report accompanied by photographs marked JKK '2' and '3', respectively. The applicant terms the said acts as amounting to contempt of the court order and a disregard for the rule



- of law. Similarly, the applicant avers that the orders were issued in the presence of the 1st respondent's advocate on record and urges the court to find the respondent liable for the acts of contempt.
4. The application is opposed by the 1st respondent through a replying affidavit of Isaiah Wanyonyi dated 18/12/2024 for not meeting the threshold for a grant of orders for contempt of court; as a delaying tactic, given he was the one utilizing the land. Though the 1st respondent admits that there was an order issued on 8/3/2023, he denies visiting the land as alleged on 5/6/2024, using motor vehicle Reg. No. KBK 405Y, as alleged or at all; or destroying the crops; otherwise, such a motor vehicle is unknown to him.
 5. According to the 1st respondent, the OB report is false since the police did not summon him or take any action; otherwise, the plaintiff would have recorded a witness statement and taken action against him.
 6. The 1st respondent also avers that whatever the applicant had planted on the land was harvested in September 2024; hence, the allegation cannot be verified if the court were to visit the land. Further, the 1st respondent terms the photographs attached to the supporting affidavit as unclear, taken elsewhere, and unverified. On the contrary, the 1st respondent avers that it is the plaintiff who has violated the order dated 8/3/2023, by constructing on the suit land as per annexure marked IW '4'.
 7. Again, the 1st respondent avers that the applicant used the order issued on 8/3/2023 to gain entry into the land, and for which, on 10/5/2023, he demolished his house, which was at Lintel stage and further destroyed his trees as per annexure marked IW'5'. The 1st respondent avers that he made a report to Zea Police Station as per OB No. 15/5/2023 attached as annexure IW '6'. The 1st respondent avers that on 21/9/2023 at about 18:40 hours, the applicant went back and demolished the house, uprooted his trees, and was reported in Kapkoi Police Station as per the investigation diary, witness statements and photos marked IW '7'; a forest officer's valuation report dated 30/10/2023 as annexures marked IW '8', and summons issued to the plaintiff to attend the police station dated 9/10/2023 marked IW '9'.
 8. In view of the foregoing, the 1st respondent terms the application as made in bad faith and an abuse of the court process. The 2nd and 3rd defendants did not oppose the application.
 9. Contempt of court is governed by Section 5 of the *Judicature Act* as read together with Order 40 of the Civil Procedure Rules and Section 29 of the *Environment and Land Court Act*. It is arrived at in order to uphold the dignity and authority of the court. The ingredients of contempt of court, as set out in Cecil Miller -vs- Jackson Njeru & Another [2017] eKLR, include:
 - (1) The terms of the order are clear, unambiguous, and binding on the defendants.
 - (2) The defendant had knowledge of or proper notice of the terms of the order.
 - (3) The defendant acted in breach of the terms of the order.
 - (4) The defendant's conduct was deliberate.
 10. Contempt of court consists of conduct that interferes with the administration of justice or impedes the course of justice. It includes the failure to comply with a court order or breach of the authority of the court. In Sam Nyamweya & Others -vs- Kenya Premier League Ltd & Others [2015] eKLR, the court observed that contempt of court consists of willful defiance of or disrespect towards the court or the willful challenge or affront to the authority of the court or supremacy of the law.
 11. In this suit, the issuance of the court order issued on 8/3/2023 is not disputed. It had a penal notice. It directed the parties not to interfere with the suit land to the detriment of each other, until the suit is heard and determined. The status quo was that the plaintiff was the one in occupation and use of the land. The order was made in the presence of the parties' advocates. It is not clear if it was served upon



- the parties. Be that as it may, from the rival affidavits, it is clear that the 1st defendant and the plaintiff knew of the terms and conditions of the order. So, as held in *Basil Criticos -vs- Attorney General & Others* [2012] eKLR, knowledge of the orders is sufficient without personal service.
12. Ignoring the order, when one knows its contents and the binding nature of it on him would amount to contempt of court. See *Kenya Tea Growers Association -vs- Francis Atwoli & Others* Petition No. 64 of 2010, and in *SIHhimmers Plaza Ltd -vs- NBK* [2015]eKLR. Equally, parties were ably represented by counsels, when the order was made. Willful and deliberate disobedience has to be proved on a balance higher than in ordinary suits, since contempt proceedings are not only coercive but also punitive, yet they are critical in the administration of justice. It must be shown that the alleged contemnor committed the acts complained of with full knowledge or notice of the existence of the order forbidding it. See *Justus Kariuki Mate & Another -vs- Martin Wambora & Another* C.A. No. 24 of 2014.
 13. In *John Githinga & Others -vs- Kiru Tea Factory Co. Ltd* Petition 13 of 2019 [2023] KESC 11[KLR] (18th June 2023) (Judgment), the court observed that due to its quasi-criminal nature of contempt proceedings and the gravity of the consequences flowing from it, courts should adhere to the principles of natural justice, procedural fairness and the right to fair hearing, even as they exercise their inherent powers to enforce compliance of their court orders or decrees. The court said that the procedure a court adopts to punish for contempt must be fair, reasonable and grant the alleged contemnor an opportunity to defend himself in line with Article 50(1) of *the Constitution* of Kenya.
 14. In this application, the 1st respondent was given an opportunity to answer the allegation of contempt. He does not deny knowledge of the order and its binding nature. He has denied breaching the terms and conditions of the order. The 1st respondent instead levels counter-accusations against the applicant. The plaintiff, on the other hand, has not refuted those counter-allegations.
 15. What comes out clearly is that both parties have, in one way or the other, disregarded the order of maintaining the status quo and engaged in acts that bring disrespect to the dignity and authority of this court. Court orders are not mere opinions. They are not made in vain. A court order is binding on parties until set aside, varied, or reviewed. They must be obeyed at all times by all parties. The court, as held in *Econet Wireless (K) Ltd -vs- Minister for Information & Communication (K) & Another* [2005] 1 KLR 828, will not condone deliberate disobedience of its orders and will not shy away from its responsibility to deal firmly with proved contemnors.
 16. The parties herein must, therefore, choose to obey the court orders or face the consequences of non-obedience. I find that the 1st respondent is guilty of contempt of court and put him on his mitigation, why the court should not sentence him to civil jail. It is not enough for him to say that the plaintiff has also flouted the court orders. Two wrongs do not make a right.
 17. Orders accordingly.

RULING DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT KITALA ON THIS 26TH DAY OF FEBRUARY 2025.

In the presence of:

Court Assistant - Chemutai

Teti for 1st Defendant/Respondent present

Wanjiku for Mugo for the Plaintiff present

HON. C.K. NZILI



JUDGE, ELC KITALE.

