



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

**Maleb Kenyanya & another v Ahmed & 2 others (Environment & Land
Case 4 of 2022) [2024] KEELC 1278 (KLR) (11 March 2024) (Ruling)**

Neutral citation: [2024] KEELC 1278 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS
ENVIRONMENT & LAND CASE 4 OF 2022
CA OCHIENG, J
MARCH 11, 2024**

BETWEEN

MALEB KENYANYA 1ST PLAINTIFF

JUSTUS BIKERI 2ND PLAINTIFF

AND

ZAHARA ABDI AHMED 1ST DEFENDANT

LAND REGISTRAR NAIROBI 2ND DEFENDANT

ATTORNEY GENERAL 3RD DEFENDANT

RULING

1. What is before Court for determination are two Notice of Motion Applications dated the 25th July, 2023 and 7th August, 2023 respectively.
2. In the Notice of Motion dated the 25th July, 2023, the 1st Defendant sought for the following Orders:-
 1. That this Honourable Court lacks jurisdiction to entertain the Plaintiff's suit which ought to have been filed before the Mavoko Chief Magistrate Court as per Section 9(a) of the Magistrate's Court Act, 2015, as the value of the subject matter is less than Kshs. 20 million.
 2. That the Plaintiffs' suit be struck out with costs to the 1st Defendant.
3. The Application is premised on the grounds on the face of it and the Supporting Affidavit of Zahara Abdi Ahmed where she claims that as per the valuation dated 21st July, 2013 the value of the suit land is Kshs. 16,800,000. She insists that this suit is in contravention of Section 9(a) of the Magistrates' Court Act, 2015. Further, that this court is devoid of jurisdiction to handle this matter.
4. In the Notice of Motion Application dated the 7th August, 2023, the Plaintiffs' seek the following orders:-



1. Spent
 2. That this Honourable Court be pleased to find and hold that the 1st Defendant, one Zahara Abdi Ahmed Of Telephone Number 0722634223 by herself and through her agents, servants, employees or assigns is in contempt of this Honourable Court's Order issued on the 9th December, 2022.
 3. That accordingly, this Honourable Court be pleased to mete out appropriate punishment to the said Zahara Abdi Ahmed for contempt of this Honourable Court's Orders issued on the 9th day of December 2022 including but not limited to detaining her in prison for a period of six (6) months or such period that this Honourable Court deems just and appropriate.
 4. That this Honourable Court be pleased to further direct the 1st Defendant whether by herself, her agents, servants, employees or assigns to comply with Court Orders issued on 9th December, 2022, and in particular order No. 1, an order of injunction which restrained her and the other Respondents thereon whether by themselves, employees, servants and Respondents thereon whether by themselves, employees, servants and/or agents or otherwise assigns or any other person whatsoever acting on his/her behalf and/or under their mandate and/or instructions from alienating, offering for sale, taking possession of, leasing, transferring, charging or otherwise in any manner whatsoever interfering with the quiet possession of Land Reference No. 32632 Deed Plan No. 446607 Land Reference Number 337/2722 Deed Plan No. 450926 within Mavoko Municipality in Machakos County pending the hearing and determination of this suit.
 5. That the OCS in charge of the Police Station where the residence of the 1st Defendant is situated do ensure compliance with the said orders.
 6. That any other further orders of the Court geared towards protecting the dignity and authority of the Court be granted.
 7. That the costs of this Application be provided for in any event.
5. The Application is premised on the grounds on the face of it and the Supporting Affidavit of Melab Kenya and Justus Bikeri where they confirm that the court issued an order of injunction on 9th December, 2022 restraining the 1st Defendant including her assigns/agents from interfering with the suit land. They contend that the 1st Defendant has refused to honour the court order despite being aware of its existence and has erected fences on the suit land and blocked them from accessing the said land. Further, that this has left them in a predicament.
 6. The two Applications were canvassed by way of written submissions.

Analysis and Determination

7. Upon consideration of the two aforementioned Notice of Motion Applications including the respective Affidavits and rivalling submissions, the following are the issues for determination:-
 - a. Whether this Court has jurisdiction to handle this suit.
 - b. Whether the 1st Defendant is in contempt of the orders of the court issued on 9th December, 2022.

As to whether this Court has jurisdiction to handle this suit.



8. The 1st Defendant claims this court does not have jurisdiction to handle this matter since the suit ought to have been filed within the Magistrate's Court.
9. On jurisdiction of this court, Section 13 of the *Environment and Land Court Act* stipulates that:-
 - (1) The Court shall have original and appellate jurisdiction to hear and determine all disputes in accordance with Article 162(2) (b) of *the Constitution* and with the provisions of this Act or any other law applicable in Kenya relating to environment and land. (2) In exercise of its jurisdiction under Article 162(2)(b) of *the Constitution*, the Court shall have power to hear and determine disputes— (a) relating to environmental planning and protection, climate issues, land use planning, title, tenure, boundaries, rates, rents, valuations, mining, minerals and other natural resources; (b) relating to compulsory acquisition of land; (c) relating to land administration and management; (d) relating to public, private and community land and contracts, choses in action or other instruments granting any enforceable interests in land; and (e) any other dispute relating to environment and land.”
10. From a reading of the legal provisions I have cited above, I find that this court is clothed with original and appellate jurisdiction to hear and determine any dispute relating to environment and land. In the foregoing, I find that irrespective of the value of the suit land, this court indeed has jurisdiction to hear and determine this matter.
11. As to whether the 1st Defendant is in contempt of the orders of the court issued on 9th December, 2022.
12. The Plaintiffs have sought for the 1st Defendant to be cited for contempt for the order of the Court dated the 9th December, 2022, as she has fenced the suit land and blocked them from accessing it.
13. Black's Law Dictionary (Ninth Edition) defines contempt of court as follows:-

Conduct that defies the authority or dignity of a court. Because such conduct interferes with the administration of justice, it is punishable usually by fine or imprisonment.”
14. While Section 29 of the *Environment and Land Court Act* stipulates thus:-

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.”
15. In the case of *North Tetu Farmers Co. Ltd v. Joseph Nderitu Wanjohi* (2016) eKLR Justice Mativo (as he then was) described elements of contempt of court 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.’
16. It is not in dispute that the Court issued Orders of injunction on 9th December, 2022 in the presence of the Plaintiffs' Counsel and 2nd and 3rd Defendants Counsel but in the absence of the 1st Defendant.



The Plaintiffs' claim they duly served the 1st Defendant with the impugned court order and she is in contempt of court as she constructed a wall around the suit land.

17. In the case of *Augustine Marete Rukunga vs. Agnes Njeri Ndungire & Anor*, HCCC 2160 the court held that:-

The consequence of a finding of contempt is penal. The standard of proof is beyond reasonable doubt. The applicant therefore had to prove service beyond reasonable doubt and I must be satisfied that the respondents disobeyed the court order made on the 9th December 1998 and that they did so willfully or intentionally.”

18. Further in the case of *Shimmers Plaza Limited Vs. National Bank of Kenya Ltd* (2015) eKLR the court held as follows:-

The notice of the order is satisfied if the person or his agent can be said to either have been present when the order was given or made; or was notified of its terms by telephone, email or otherwise. In our view, ‘otherwise’ would mean any other action that can be proved to have facilitated the person having come into knowledge of the terms of the judgement and/or order. This would definitely include a situation where a person is represented in court by counsel. Once the Applicant has proved notice, the Respondent bears an evidential burden in relation to wilfulness and mala fides disobedience.”

19. Based on the facts as presented while associating myself with the decisions cited above, I am of the view that the Plaintiffs have not demonstrated if they personally served the 1st Defendant with a Penal Notice nor Court Order. Further, from the court record, the 1st Defendant also claims ownership of the suit land and has presented documents of title to that effect, which the Plaintiffs’ insist is a forgery. Contempt proceedings are criminal in nature and the burden of proof is upon the Plaintiffs’ to prove the same commenced after the Court issued its order and is still ongoing. However, from the Plaintiffs’ averments, it is not clear when the same commenced as the 1st Defendant also claims ownership and possession of the suit land.
20. I find that in the current circumstances, the Plaintiffs’ have not proved their allegations of contempt as against the 1st Defendant and will hence decline to allow this prayer.
21. In the foregoing, I find the two Notice of Motion Applications dated the 25th July, 2023 and 7th August, 2023 respectively unmerited and will dismiss them.

Costs will be in the cause.

DATED, SIGNED AND DELIVERED VIRTUALLY AT MACHAKOS THIS 11TH DAY OF MARCH, 2024

CHRISTINE OCHIENG

JUDGE

In the presence of;

Cherop holding brief for Osoro for Plaintiff

Mrs. Momanyi holding brief for Kuria for 2nd and 3rd Defendants

Ms. Kedogo and Kusow for 1st Defendant

Court Assistant – Simon/Ashley

