



REPUBLIC OF KENYA



KENYA LAW
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Njiriri & 5 others v County Government of Nairobi & another (Civil Application E262 of 2023) [2023] KECA 1667 (KLR) (15 December 2023) (Ruling)

Neutral citation: [2023] KECA 1667 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CIVIL APPLICATION E262 OF 2023
S OLE KANTAI, F TUIYOTT & PM GACHOKA, JJA
DECEMBER 15, 2023**

BETWEEN

**GEORGE NGACHA NJIRIRI 1ST APPLICANT
KELLYANN WANJIKU NJIRIRI 2ND APPLICANT
SUSAN NJOKI NJIRIRI 3RD APPLICANT
HANNAH WANGARE NJIRIRI 4TH APPLICANT
SAMUEL NGACHA NJIRIRI 5TH APPLICANT
JOSEPH NGACHA NJIRIRI 6TH APPLICANT**

AND

**COUNTY GOVERNMENT OF NAIROBI 1ST RESPONDENT
ROBERT MBATIA 2ND RESPONDENT**

(Being an application for citation of contemnors of contempt of Court orders of the Ruling of this Court (Musinga (P), Laibuta & Ngenye, JJ.A.) dated 14th April 2023 in CA. No. E262 of 2023)

RULING

1. These are contempt of court proceedings in which the applicants bring a Notice of Motion dated 13th June 2023 said to be under a raft of provisions of the law; section 5 of the *Judicature Act*, rule 5(2)(b) of the *Court of Appeal Rules*, sections 1A, 1B, 3, 3A of the *Civil Procedure Act* and under 51 of the *Civil Procedure Rules*.
2. In it, it is sought that we cite for contempt the County Secretary of the 1st respondent, County Government of Nairobi and Mr. Robert Mbaka, the 2nd respondent herein, and order their committal to civil jail for a term of six months or thereabout for disobedience of the orders issued on 14th April



2023 in Civil Application No. NRB E442 of 2022; the Court do issue warrants of arrest of the cited persons or impose such other sanctions as the Court will deem fit; and direct that the said contemnors appear before the Court on a date to be appointed to show cause why they should not be committed to civil jail for deliberate disobedience of the aforesaid Court orders.

3. The application was not opposed and the following events and their chronology as set out in the two affidavits of George Ngacha Njiriri are uncontroverted. Briefly.
4. On 14th April 2023, this Court (Musinga (P), Laibuta, Ngenye- Macharia, JJ.A) made an order for maintenance of the *status quo* regarding plot numbers 34/A, D, E, F, and G (the suit properties) and which status quo was defined to be that there would be no further construction or development of the suit property; the respondents were restrained from evicting the applicants or any of them from the suit property; and the 1st respondent was restrained from charging or transferring the proprietary interests in the suit property.
5. Despite being aware of the ruling and orders of the Court, the 2nd respondent, with the assistance of the 1st respondent, was at some time before or on 13th June, 2023 constructing on the suit properties. On 16th June 2023 at 9.58 am., the current application was served on Musyoki Musau & Co. advocates, advocate for the respondents. Again, notwithstanding knowledge that the contempt proceedings were pending, the respondents continued with the construction and had by 27th June 2023, the date of the further affidavit, completed the construction.
6. At the hearing of the contempt motion neither the alleged contemnors nor their counsel appeared notwithstanding that a hearing notice had been served on their advocate on 9th October 2023.
7. We emphasize that the application and the averments in the affidavits have neither been challenged nor contested by way of replies or appearance at plenary hearing by the respondents and we have no reason to disbelieve them. A party who is aware of a court order but elects to disobey it is in contempt of Court. Such conduct not only prejudices the party in whose favour the order is made but brings disrepute to and undermines the authority of the court. It is not conduct to be condoned.
8. While the 2nd respondent is identified by name (Robert Mbatia), the 1st respondent is cited as the County Secretary of the County Government of Nairobi. A charge of contempt of court in civil proceedings is akin to a criminal charge and the person to suffer the possible penal consequences must be the actual transgressor. It is for this reason that the officer of the county government who is guilty of the contempt has to be the person or persons who occupied the office of County Secretary at the time or times of disobedience of the Court order.
9. Ultimately, we find and order as follows:
 - i. Robert Mbatia and the person or persons occupying the office of the County Secretary, County Government of Nairobi between 14th April 2023, and 16th June 2023 are guilty of disobeying the order of this Court made on 14th April 2023 in Civil application No. E422 of 2022 George Ngacha Njiriri and 5 Others and County Government of Nairobi, Robert Mbatia.
 - ii. Robert Mbatia and the person or persons occupying the office of the County Secretary County Government of Nairobi found to be contemnors in Order (i) above shall attend Court to show cause why they should not be committed to civil jail.
 - iii. The Registry of this Court shall, on priority basis, give a date for hearing of the notice to show cause and the advocate for the applicants herein shall serve a hearing notice upon the contemnors and the advocates on record for the respondents.



DATED AND DELIVERED AT NAIROBI THIS 15TH DAY OF DECEMBER 2023.

S. ole KANTAI

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JUDGE OF APPEAL

F. TUIYOTT

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JUDGE OF APPEAL

M. GACHOKA, CIArb, FCIArb

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JUDGE OF APPEAL

I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR

