



**Mwangi v Obegi (Environment & Land Case E184 of 2023)  
[2024] KEELC 3949 (KLR) (30 April 2024) (Ruling)**

Neutral citation: [2024] KEELC 3949 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND CASE E184 OF 2023  
EK WABWOTO, J  
APRIL 30, 2024**

**BETWEEN**

**FRANCIS NJOROGE MWANGI ..... PLAINTIFF**

**AND**

**DARIUS OMAI OBEGI ..... DEFENDANT**

**RULING**

1. By a Notice of Motion application dated 31<sup>st</sup> October, 2023 filed under Section 5 of the *Judicature Act* and Order 40 Rule 3(1) of the *Civil Procedure Rules*, the Applicant sought to have the Defendant/ Respondent cited for contempt of court orders, committed to civil jail together with costs of the Application.
3. The application was supported by the supporting affidavit sworn by Francis Njoroge Mwangi dated 31st October 2023. The application was premised on the following grounds:
  - a. The Honorable Court issued orders on the 11th October, 2023 restraining both parties from interfering in any manner with respect to all parcels of Land LR 1116/1148, LR 1116/1149, LR 1116/1150 and LR 1116/1151 pending the determination of this suit.
  - b. The Defendant/Respondent herein has deliberately disobeyed the said court orders by continuing to undertake activities on the property.
  - c. The said Respondent is still proceeding with landscaping and undertaking various alterations on the properties to this day despite having knowledge of the orders that were issued.
  - d. That the said Defendant/ Respondent is clearly in defiance of court orders without due regard to the rule of law.



- e. That it will be an infringement of the Applicant/Plaintiff's rights and further an abuse of the process of court if the Respondent is not held in contempt of court and made to meet the full consequences thereof.
4. The Applicant also filed written submissions dated 10th January 2024. The Applicant reiterated the application dated 13th June 2023 and the prayers that were sought therein which encompassed the Respondent and/or his agents as such the mere denial that he was not directly involved does not exculpate him from being a contemnor.
5. It was also submitted that the applicant had satisfied the grounds for contempt as stated in *Katsuri Limited v Kapurchand Depor Shah* [2016] eKLR, citing *Kristen Carla Burchell v Barry Grant Burchell* (Eastern Cape Division case No 364 of 2005), it was stated that
- “in order for an applicant to succeed in civil contempt proceedings, the applicant has to prove (i) the terms of the order, knowledge of the terms by the respondent, failure by the respondent to comply with the terms of the order.”
6. The Respondent filed a replying affidavit dated 16<sup>th</sup> November 2023 by Darius Omai Obegi in which the Applicant's averments were denied in toto. It was further averred that any destruction on the property was done by third parties and not the Respondent. It was reiterated that the Plaintiff had not furnished any iota of evidence to prove that the Respondent was responsible for the damage.
7. The Court has considered the application and the rival submissions and is of the opinion that the only issue for determination is whether the Applicant have made out a case for the grant of the orders sought?
8. With regards to the issue of contempt, I have considered the case of *Sam Nyamweya & Others v Kenya Premier League Ltd and Others* [2015] eKLR where it was stated as follows:
- “Contempt of court is constituted by conduct that denotes willful defiance of or disrespect towards the court or that willfully challenges or affronts the authority of the court or the supremacy of the law, whether in civil or criminal proceedings.” [Emphasis mine]
9. The parties do agree that they were individually aware of the Court's orders which in effect maintained status quo upon the premises. The main argument for contempt is proving there is a nexus between the Respondent and the photographic evidence presented as Fnm2-4.
10. Considering the veracity of the evidence is highly disputed, the Court must review the evidence through the lens prescribed under Section 106B of the *Evidence Act* which requires electronic records be accompanied by an Electronic Certificate.
11. The importance of an Electronic Certificate was also underscored in a somewhat similar case of *Samwel Kazungu Kambi v Nelly Ilongo the Returning Officer, Kilifi County & 2 others* [2017] eKLR, where the Honourable Court observed as hereunder;
- “...Sub-section (4) of Section 106B requires a certificate confirming the authenticity of the electronic record. Such a certificate should describe the manner of the production of the record or the particulars of the device. The certificate could also have the signature of the person in charge of the relevant device or the management of the relevant activities.
- The source of the photocopies of the photographs annexed to the affidavit sworn by the Petitioner in support of the Petition was not disclosed. The device used to capture the images



was unknown. The person who took the photographs was not named. The person who processed the images was not named. The Petitioner was not an eyewitness to the incident and he could not therefore tell the court that the photographs were a true reflection of the incident he witnessed.“ [Emphasis Mine]

12. The above discussions not only emphasize the importance of presenting evidence of high probative value but also presenting evidence directly related to the alleged contemnor.
13. In *North Tetu Farmers Co. Ltd v Joseph Nderitu Wanjobi* [2016] eKLR, the Court discussed the threshold that would constitute contempt 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) 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.” [Emphasis mine]

14. It is trite law that to succeed in an application for contempt, the applicant must demonstrate wilful disobedience and the order said to have been disobeyed must be clear enough to leave no doubt as what is to be done or refrained from. See *Micheal Sistu Mwaura Kamau v Director of Public Prosecutions & 4 others* [2018] eKLR. An allegation of contempt of court is a serious matter since it puts the liberty and or property of the contemnor at grave risk. It is for that reason that the standard of proof in contempt proceedings is higher than the usual one in civil proceedings of proof on a balance of probabilities. See *Mutitika vs. Babarini Farm Limited* [1985] KLR 229 and *Fred Matiang'i the Cabinet Secretary, Ministry of Interior and Co-ordination of National Government v Miguna Miguna & 4 others* [2018] eKLR.
15. In so far as the Respondent was aware of the Court's orders, the Court is unable to confirm that the Respondent's actions were deliberate and in breach of the said orders. This Court is not satisfied that the Plaintiff has met the threshold for grant of the orders sought in his application. In view of the foregoing, this Court finds that the application dated 31st October 2023 is devoid of merit and the same is hereby dismissed with no orders as to costs.
16. It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 30TH DAY OF APRIL 2024.**

**E. K. WABWOTO**

**JUDGE**

In the virtual presence of: -

N/A for the Plaintiff/Applicant.

Ms. Kamene h/b for Mr. Ondiek for the Defendant/ Respondent.

Court Assistant: Caroline Nafuna.

