



REPUBLIC OF KENYA



**KENYA LAW**  
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**Mbaya v Kawira & another (Civil Application 27 of 2019)  
[2022] KECA 1032 (KLR) (23 September 2022) (Ruling)**

Neutral citation: [2022] KECA 1032 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NYERI  
CIVIL APPLICATION 27 OF 2019  
DK MUSINGA, JA  
SEPTEMBER 23, 2022**

**BETWEEN**

**MIKE MUTHAMA MBAYA ..... APPLICANT**

**AND**

**DINAH KAWIRA NKABO.....1ST RESPONDENT SAMSON**

**MUTUA M'NYIRUU ..... 1<sup>ST</sup> RESPONDENT**

**SAMSON MUTUA M'NYIRUU ..... 2<sup>ND</sup> RESPONDENT**

*(An application for contempt of Court Orders issued on 18th March 2019 and 8th August 2019 pending the determination of an application for stay of execution in an intended appeal from the Judgment of the High Court of Kenya at Meru (A. Ongijo, J.) delivered on 7th February 2019 in H.C. Succ. Cause No. 15 of 2013)*

**RULING**

1. The applicant's Notice of Motion dated October 12, 2020 seeks committal of the 1<sup>st</sup> respondent to civil jail for a period of 6 months for contempt of court regarding this Court's order dated March 10, 2020. The applicant further seeks an order directing the Deputy Registrar of this Court to execute all documents and instruments to effect the transfer of land parcel known as Ntima/igoki/2778 ('the suit property') to the applicant.
2. The order of March 10, 2020 was entered into by consent. The applicant was represented by Mr. Kingirwa and the respondent by Ms. Mugo. It is important to point out that the 1<sup>st</sup> respondent was also present in court. The order reads as follows:

**By consent:**

1. The 1<sup>st</sup> respondent Dinah Kawira Nkaboo shall retransfer title in the property known as Ntima/lgok1/2778 into name of Mike Muthamia Mbaya within thirty (30) days of today.



2. There shall upon the said transfer be maintained status quo whereby the respondent shall not interfere with the title of the property in the name of Mike Muthamia Mbaya or otherwise interfere with the said title or property pending the hearing and determination of Nyeri Civil Appeal No. 325 of 2019.
3. The 1<sup>st</sup> respondent shall pay the costs of the two applications in any event.”
3. The applicant states in his affidavit in support of the application that despite demand, the 1<sup>st</sup> respondent has in blatant contempt and disregard of the aforesaid consent order failed, refused and/or neglected to retransfer the suit property to him. The thirty (30) days period ended on April 9, 2020, and the application for contempt was made 487 days after lapse of the agreed period.
4. The 1<sup>st</sup> respondent filed a replying affidavit and written submissions in response to the application. In the said documents, the 1<sup>st</sup> respondent dwells on the background to the dispute over the suit property that was before the High Court before an appeal to this Court was filed but does not address the core issue in the application, that is, her failure to comply with the aforesaid consent order.
5. The 1<sup>st</sup> respondent argues, *inter alia*, that the applicant’s interest over the suit property was unlawfully acquired and that therefore the applicant had not approached this Court with clean hands and should not be granted the orders sought.
6. As we have already stated, the 1<sup>st</sup> respondent did not explain to this Court why she refused to comply with the consent order issued by this Court on March 10, 2020. The 1<sup>st</sup> respondent did not deny knowledge of the said order or allege any coercion.
7. The backdrop to the consent order is that on March 10, 2020 two applications filed by the applicant against the respondents came up for hearing before this Court (Ouko, (P), W. Karanja and P. Kiage, JJ. A.). The first one (dated March 7, 2019) sought stay of execution of the judgment of the High Court dated February 7, 2019, and in particular stay of transfer of the suit property. On March 18, 2019 and August 8, 2019, this Court had ordered that the status quo as regards the suit property be maintained pending substantive hearing of that application. However, in violation of the order for maintenance of the status quo, the 1<sup>st</sup> respondent purported to transfer the suit property to herself. This action provoked the second application dated December 4, 2019 vide which the applicant sought to have the 1<sup>st</sup> respondent committed to civil jail for contempt of court. The application was compromised through the consent of March 10, 2020 whereby the 1<sup>st</sup> respondent was to retransfer the suit property to the applicant within thirty (30) days from the date of the order. The 1<sup>st</sup> respondent has however refused to do so.
8. We are satisfied that the 1<sup>st</sup> respondent is in blatant contempt of this Court’s order of March 10, 2020. Prior to that, she had also defied the Court’s orders of 18<sup>th</sup> March and August 8, 2019 for maintenance of the status quo. In [Shimmers Plaza Limited v National Bank of Kenya Limited](#) [2015] eKLR this Court stated:

“We reiterate here that court orders must be obeyed. Parties against whom such orders are made cannot be allowed to trash them with impunity. The courts should not fold their hands in helplessness and watch as their orders are disobeyed with impunity left, right and centre.”
9. This Court has power to punish persons for willful breach of its orders. Without obedience to court orders there would be anarchy and lawlessness in society and the court cannot countenance that.



10. We find and hold that the 1<sup>st</sup> respondent is guilty of contempt of this Court's order dated March 10, 2020 and order her committed to civil jail for four (4) months. We hereby direct that the Officer Commanding Chogoria Police Station or any other police station within the precincts of the 1<sup>st</sup> respondent's residence to arrest and escort the 1<sup>st</sup> respondent, Dinah Kawira Nkabo, to Meru Chief Magistrates' Court for issuance of the committal documents.
11. The Deputy Registrar of this Court is hereby directed to execute all the necessary documents and instruments and effect transfer of the suit property, Ntima/Igoki/2778 to the applicant. The 1<sup>st</sup> respondent shall bear the costs of this application. It is so ordered.

This ruling is been delivered in accordance with *rule 34(4)* of the *Court of Appeal Rules 2022*, *Nambuye, J.A.* having retired from service.

**Dated and delivered at Nairobi this 23<sup>rd</sup> day of September, 2022.**

**D. K. MUSINGA, (P)**

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**JUDGE OF APPEAL**

**S. ole KANTAI**

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**JUDGE OF APPEAL**

*I certify that this is a true copy of the original*

*Signed*

**DEPUTY REGISTRAR**

