



**Nyawira & another v Archer Dramond Morgan Ltd (Environment & Land
Case 110 of 2009) [2024] KEELC 3991 (KLR) (29 April 2024) (Ruling)**

Neutral citation: [2024] KEELC 3991 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS
ENVIRONMENT & LAND CASE 110 OF 2009**

**A NYUKURI, J
APRIL 29, 2024**

BETWEEN

NANCY NYAWIRA 1ST PLAINTIFF

RICHARD WAMBUGU NGIBUINI 2ND PLAINTIFF

AND

ARCHER DRAMOND MORGAN LTD DEFENDANT

RULING

Introduction

1. Before court is a Notice of Motion dated 27th October 2022 filed by the plaintiffs seeking the following orders;
 - a. Spent
 - b. That the Chief Inspector, Ramadhan Mjomba, O.C.S, Athi River Police Station, be ordered to appear in court to show cause why he should not be cited for contempt of court order and punished accordingly.
 - c. That in order to purge the said contempt of court, the said Chief Inspector Ramadhan Mjomba, O.C.S, Athi River Police Station, be directed to execute the warrants of eviction issued by this court requiring the defendant herein, Archer Dramond Morgan Limited, its servants and agents, to be evicted from the suit property known as Unit No. 8 of Phase 1, Hillcrest Park on L.R. No. 27317, off Mombasa Road, to enable the Plaintiffs take possession thereof.
 - d. That the costs of this application be paid by the Chief Inspector Ramadhan Mjomba.



2. The application was based on grounds on the face of it and supported by the affidavit of Gikandi Ngibuini, advocate for the applicants. He deposed that the applicants had successfully obtained a judgement and a decree against the defendants. He stated that the plaintiff obtained warrants of eviction of the defendant to be executed by the court bailiff with the assistance of the OCS, Athi River police station. He further averred that the OCS Athi River police station wrote a letter to court dated 1st December 2021 to countercheck the validity of the said warrants, which the court confirmed as being valid. He states that the said eviction was to be carried out on 24th May 2022 but the Chief Inspector Ramadhan Mjomba, OCS, Athi River, does not seem interested at all in ensuring that the said warrants of eviction are executed, which is unacceptable in law. He prayed that the orders sought are granted as it is in the interest of justice.
3. The application was opposed. The defendant filed grounds of opposition dated 12th November 2022 wherein they challenged the application for lacking merit and being an abuse of the court process. It was also their ground that the contemnor has no mandate in law to carry out civil eviction but powers limited to offer police protection/supervision and/or ensure maintenance of law and order during an eviction.
4. On his part, Chief Inspector, Ramadhan Mjomba, OCS Athi River, the respondent herein, filed a replying affidavit dated 24th March 2023. He averred that the application herein offends mandatory requirements of the Judicature Act and Order 52 Rule 3 of the Rules of the Supreme Court of England, that it is unknown in law, spurious, frivolous and devoid of merit and full of falsehoods and misrepresentations.
5. He stated that he was aware of provisions of Articles 243 and 244 of the Constitution of Kenya which spell out the establishment and functions and duties of the Kenya Police Service, including protection of life and property and maintaining law and order. It was his averment that he was bound by law to obey court orders but that his name and that of officers working under him were unnecessarily dragged to this application to ridicule and tarnish his office.
6. It was his further assertion that neither him nor his office were party to the suit that led to the issuance of the subject orders and that no orders were issued against him and that he had never been personally served with the order dated 24th November 2021. He stated that he did not participate in commission or omission of any acts that would be construed to imply breach of the orders of 24th November 2021. He maintained that in implementation of the said orders, the office of the Inspector General had taken the requisite steps in verifying the orders and that they had written to the applicant's advocates on 12th June 2022 explaining that the Sub County Security Committee was yet to meet for purposes of approving the respondent's offices to render assistance in execution of court orders and ensure that law and order is maintained during the execution process. He stated that on 8th June 2022, he wrote to the Sub County Police Commander Athi River asking that the Sub County Security Committee considers the implementation of the order herein at their next meeting.
7. He also cited provisions of Part IV section 41 of the Police Standing Orders requiring anyone intending to use the police to apply in writing, specifying why he needs to use the officers but that the applicants had not made such an application. He faulted the supporting affidavit for being sworn by an advocate when it referred to contested matters, arguing that the supporting affidavit was incompetent as this was a contentious matter, contrary to provisions of Rule 9 of the Advocates' Practice Rules. He concluded by stating that the application was defective as no leave was sought before commencing the proceedings or joining him, no statement of facts was filed nor was there a notice served upon the Attorney General as required by law.



8. The application was canvassed by way of written submissions. On record are submissions filed by the plaintiffs, defendant and those filed by the respondent.

Submissions by the plaintiffs/applicants

9. Counsel for the applicants reiterated the contents of their supporting affidavit and submitted that the O.C.S had failed to execute the subject decree or answer to the instant application, despite verifying the said orders as valid. They cited the cases of *B v Attorney General* [2004] 1 KLR 431 and *Teachers Service Commission v Kenya National Union of Teachers & 2 others* Petition No. 23 of 2013 emphasising that court orders must be respected and implemented. Counsel argued that the application was not filed on the basis of malice but to ensure the orders issued by court were implemented. They submitted that they had no malice against the O.C.S and that he could be accorded 14 days within which to comply, in default of which the O.C.S be directed to serve a prison term of six months for contempt of court. The applicant further cited the case of Nairobi ELC Case No. E3993 of 2021 Marianne Jebet Kitany v Franklin Mithika Linturi, arguing that in the said case, Kenya police had quickly executed eviction orders yet the instant case has taken over two years with execution yet to be done.

Submissions by the defendant

10. Counsel for the defendant submitted that the orders as issued were ambiguous as the Plaintiffs were only entitled to Unit No.8 whereas the orders as issued refer to the entire L.R. No. 27317 which consist of 618 units of the Hillcrest Park, making the orders sought unenforceable as there is no room for ambiguity in contempt proceedings. On the orders sought against the OCS, they argued that the only person who can execute court warrants in a civil suit is the court bailiff or an auctioneer whereas the role of the police is simply to maintain law and order, hence the application is calling for actions beyond the OCS's call of duty.

Submissions by the OCS respondent

11. Counsel for the respondent submitted that the application was defective since an advocate cannot file contempt proceedings on behalf of their client and that the respondent was never personally served with the said orders. It was also their contention that no act of contempt was proved against the respondent to the standards required for contempt proceedings, backed with the fact that the respondent's mandate is maintenance of law and order which is done under laid down administrative procedures. As for the prayers sought, counsel argued that the jurisdiction of the court in contempt proceedings is limited to punishing the offenders and not compelling the implementation of the court order.

Analysis and determination

12. The court has considered the application, the affidavit in support thereof, the responses thereto together with rival submissions by the parties. The only issue that arise for determination is whether Chief Inspector Ramadhan Mjomba OCS Athi River police station, is in contempt of the orders made by this court.
13. Contempt of court is defiance of the authority and dignity of the court, and interferes with the administration of justice. The Black's Dictionary 11th Edition defines contempt as;
The act or state of despising. The quality, state or condition of being despised. Conduct that defies the authority or dignity of a court or legislature. Because such conduct interferes with the administration of justice, it is punishable, usually by fine or imprisonment.



14. The law governing contempt of court is provided for in Section 5 of the *Judicature Act* as follows;
 1. The High Court and the Court of Appeal shall have the same power to punish for contempt of court as is for the time being possessed by the High Court of Justice in England, and that power shall extend to upholding the authority and dignity of subordinate courts.
 2. An order of the High Court made by way of punishment for contempt of court shall be appealable as if it were a conviction and sentence made in the exercise of the ordinary original criminal jurisdiction of the High Court.
15. In the case of *Econet Wireless Kenya Limited v Minister for Information and Communication Authority of Kenya* [2005] eKLR the court stated as follows: -

It is essential for the maintenance of the rule of law and order that the authority and the dignity of our courts are upheld at all times. The Court will not condone deliberate disobedience of its orders and will not shy away from its responsibility to deal firmly with proved contemnors. It is the plain and unqualified obligation of every person against whom an order is made by court of competent jurisdiction, to obey it unless and until the order is discharged. The uncompromising nature of this obligation is shown by the fact that it extends even to cases where the person affected by the order believes it to be irregular or void. (emphasis)
16. Likewise, in the case of *T.N Gadavarman Thiru Mulpad v Ashok Khot & another* [2005] 5 SCC, the Supreme Court of India in emphasizing the dangers of disobeying court orders held as follows: -

Disobedience of this Court's order strikes at the very root of the rule of law on which the judicial system rests. The rule of law is the foundation of a democratic society. Judiciary is the guardian of the rule of law. Hence, it is not only the third pillar but also the central pillar of the democratic State. If the judiciary is to perform its duties and functions effectively and remain true to the spirit with which they are sacredly entrusted to it, the dignity and authority of the Courts have to be respected and protected at all costs. Otherwise, the very corner stone of our constitutional scheme will give way and with it will disappear the rule of law and the civilized life in the society. That is why it is imperative and invariable that Court's orders are to be followed and complied with.
17. To prove contempt, an applicant must demonstrate that there is an order in unambiguous terms, demanding the respondent's compliance, which the respondent having been aware of the order, willingly breached its terms (See *Katsuri Ltd v. Kapurchand Depor Shar* [2016] eKLR.
18. In the instant case, the applicant argues that although the court issued warrants of eviction against the defendant to the court bailiff, the respondent has been uncooperative and therefore the warrants have not been executed because he has failed to provide security as ordered. In response, the respondent states that his mandate is to provide security during eviction and that to do that, he needs the approval of the sub county security committee which approval is yet to be granted.
19. The record and warrants of 24th November 2021 are clear that the respondent is to assist the court bailiff in the eviction of the defendant from Unit No. 8 of Phase 1 Hillcrest Park on L.R No. 27317. While I agree with the respondent that the mandate of the police is to provide law, order and security during an eviction, I do not agree that execution of an order made by the court ought to be approved by a security committee, before it is implemented. I have considered the letter by the Deputy Inspector General of the Kenya Police Service dated 16th March 2020, which the respondent has relied upon to argue that they cannot supervise an eviction without approval of the county security committee. That letter does not support the respondent's position. The same states that due to the fact that some unscrupulous litigants have been obtaining eviction orders without disclosing to court of other pending cases, leading



to evictions which may expose the police service to litigation for supporting illegalities, therefore, eviction orders must first be verified by their legal officer before assistance of the police is offered. Therefore, there is no directive that the security committee should approve eviction, before it is carried out. If eviction orders were to be executed at the whim of the county security committee as suggested by the respondent, then access to justice especially for the indigent, the vulnerable and the poor will be a mirage, because only those with the wherewithal to get the security committee's approval would be the only ones that will be able to have eviction orders implemented.

20. It is my view that while the police service is entirely right before offering security during evictions, to first verify the authenticity of any court order given to them for implementation so as to ensure the order is from court and is a genuine order and also to conduct due diligence to ensure unscrupulous litigants are not using the justice system or the courts to obtain orders without disclosing other pending cases against them; neither the police nor the county security committee or any other committee has any power whatsoever to approve the execution of a court order. Unless and until a court order is set aside or stayed, it is an authority in itself above everyone and all bodies and entities, including the court that issued it, and its sanctity must be upheld by all. Therefore, a county security committee, or any other committee or entity, does not have the power to approve execution of a court order, once it has been verified to be authentic. Once the court orders its execution and the manner of such execution, it ought to be executed unless it is stayed or set aside by the court.
21. In this case, the respondent Mr. Ramadhan Mjomba wrote a letter dated 1st December 2021 to the Registrar of this court seeking to verify the court order of 24th November 2021. The Deputy Registrar responded on the same date of 1st December 2021 confirming the authenticity of the order and stating that the same was issued by this court on 24th November 2021. The respondent then wrote a letter dated 8th June 2022 to the SCPC Athi River indicating that he was in receipt of the order dated 24th November 2021 and a ruling dated 24th May 2022 and he sought that the two be brought to the attention of the subcounty security committee for execution by the OCS/respondent as ordered by the court. The respondent has not suggested that the order in issue was unscrupulously obtained without disclosure of other pending cases which could expose him to litigation. Indeed, the eviction order herein was issued on 5th July 2019 and the applicant has been waiting for the execution of the said order to date. It is only fair, just and in the interests of justice that the orders herein for eviction of the defendant be executed with the respondent's assistance as ordered.
22. The respondent having demonstrated by his letters stated above that he was aware of the orders requiring him to offer security during eviction in this matter, and having not offered such security to the court bailiff to execute the warrants, it is clear that he is in violation of the orders of this court made on 24th November 2021. I therefore find and hold that the respondent Chief Inspector Ramadhan Mjomba is in contempt of the orders made by this court on 24th November 2021 requiring him to offer security during eviction of the defendant from the suit property.
23. In the premises, the application dated 27th October 2022 is hereby allowed. Chief Inspector, Ramadhan Mjomba is hereby found to be in contempt of the orders of 24th November 2021 and is hereby ordered to appear before court on 18th July 2024 for mitigation and sentence.
24. It is so ordered.

DATED, SIGNED AND DELIVERED AT MACHAKOS VIRTUALLY THIS 29TH DAY OF APRIL, 2024 THROUGH MICROSOFT TEAMS VIDEO CONFERENCING PLATFORM

A. NYUKURI

JUDGE



In the Presence of;

Mr. Wachira for defendant

Mr. Kuria for contemnor

Court assistant – Abdisalam

