Akeyo v Burkmayer & another (Environment & Land Case 67 of 2018) [2024] KEELC 3356 (KLR) (25 April 2024) (Ruling)

Neutral citation: [2024] KEELC 3356 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MOMBASA

ENVIRONMENT & LAND CASE 67 OF 2018

NA MATHEKA, J

APRIL 25, 2024

BETWEEN

ALPHONCE AKEYO ..... PLAINTIFF

AND

HELMUT BURKMAYER ..... 1ST DEFENDANT

FLORENCE AWINJA ..... 2ND DEFENDANT

RULING

1. The application is dated 23rd August 2023 and is brought under Section IA (3) and 63 of the *Civil Procedure Act* Cap 21 Laws of Kenya and order 40 Rule 3(1 and 4(1) *Civil Procedure Rules, 2010* seeking the following orders;

    1. That this application be certified as extremely urgent.

    2. That this Honourable Court be pleased to commit to civil jail for six (6) months or for such period as this Honourable Court may deem fit the Chief Land Registrar Mombasa.

    3. That this Honurable Court be pleased to make any other or further Order as the justice of the case may demand.

    4. That costs of this application be provided for

2. It is grounded on the following grounds that the Land Registrar Mombasa and or their agents/servants disobeyed the orders of the Honourable Justice Yano made in these proceedings on the 30th of July 2018 and issued on the 27th August 2018. That the Chief Land registrar is a party to this suit and has an obligation to ensure that the orders made against him and their servants and or agents are obeyed. That the said orders have been served upon the lands offices and Land Registrar Mombasa and nothing has been done to date in respect of the said orders this includes registration and issuing of a provisional title deed in respect of plot CR- Number 21646 number 1881 section Il/MN. That the Court should

protect its dignity by expeditiously dealing with issues of disrespect of disregard of Court Orders. That the Chief Land Registrar Mombasa and or their agents/servants are continuously in breach of the law in disregard of Court Orders with impunity.

3. This court has considered the application therein. The application is based on the grounds that the court on the 27th August 2018 issued orders compelling Land Registrar Mombasa to register issue a provisional title deed in respect of plot CR- Number 21646 number 1881 section Il/MN infavour of the Applicant Alphonse Akeyo. The said Order was served on the Respondents on 18th January 2019. The Registrar of Lands has continued to be in breach of the said order. The *Black's Law Dictionary* (Ninth Edition) defines contempt of court as:

> " 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."

This application is anchored on section 63 (c) of the *Civil Procedure Act* which provides that;

> " 63) In order to prevent the ends of justice from being defeated, the court may, if it is so prescribed:-
>
> (c) Grant a temporary injunction and in case of disobedience commit the person guilty thereof to prison and order that his property be attached and sold"

4. Pursuant to section 63(c) aforesaid, it is provided under order 40 Rule 3(1) of the Civil Procedure Rules that;

> " 3
>
> (1) in case of disobedient breach of any such terms, the court granting an injunction may order the property of the person guilty of such disobedience or breach to be attached and may also order such person to be detained in prison for a term not exceeding six months unless in the meantime the court directs his release"

5. In the case of *Teachers Service Commission vs Kenya National Union of Teachers & 2 others* (2013) eKLR the court stated as follows;

> " The reason why courts will punish for contempt of court then is to safe guard the rule of law which is fundamental in the administration of justice. It has nothing to do with the integrity of the judiciary or the court or even the personal ego of the presiding judge. Neither is it about placating the Applicant who moves the court by taking out contempt proceedings. It is about preserving and safeguarding the rule of law."

6. Contempt of court is a grave matter as it concerns the dignity of the court when law and order is threatened and the fact that liberty and fundamental rights and freedoms of the alleged contemnor are at stake. The standard of proof is higher than proof on a balance of probabilities but not as high as

proof beyond reasonable doubt. In the case of *Republic vs Ahmad Abolfathi Mohammed & Another* (2018) eKLR, the Supreme Court stated as follows:

> " We are also conscious of the standard of proof in contempt matters. The standard of proof in cases of contempt of Court is well established. In the case of *Mutitika vs. Baharini Farm Limited* [1985] KLR 229, 234 the Court of Appeal held that:
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> > 'in our view, the standard of proof in contempt proceedings must be higher than proof on the balance of probabilities, almost but not exactly, beyond reasonable doubt…The standard of proof beyond reasonable doubt ought to be left where it belongs, to wit, in criminal cases. It is not safe to extend it to an offence which can be said to be quasi-criminal in nature.'
> >
> > The rationale for this standard is that if cited for contempt, and the prayer sought is for committal to jail, the liberty of the contemnor will be affected. As such, the standard of proof is higher than the standard in civil cases. This power, to commit a person to jail, must be exercised with utmost care, and exercised only as a last resort. It is of utmost importance, therefore, for the respondents to establish that the alleged contemnor's conduct"

7. In the instant case it is on record that the Court, that a consent order was entered on 30th July 2018. The said Order was served on the Registrar 19th January 2019 through an application for registration. The instant application was unopposed. All persons upon whom a court order is served or who are aware of a court order have a duty to obey it. The only avenue available for a party who is not satisfied with an order of the court is to approach the court seeking variation or setting aside, this has not been done. I find that this application is merited and I make the following orders;

    1. That the Land Registrar Mombasa is to is to comply with the court order issued on 27th August 2018 within the next 60 (sixty) days after service of this order failure of which the will be cited for contempt and be directed to pay a fine of Kshs. 50,000/= and in default, the Land Registrar Mombasa to be committed to civil jail for a period of one (1) month.

    2. That costs of this application to the applicant.

It is so ordered.

DELIVERED, DATED AND SIGNED AT MOMBASA THIS 25TH DAY OF APRIL 2024.

N.A. MATHEKA

JUDGE