



Onditi & another v Kenya Rural Roads Authority & 2 others; National Land Commission (Interested Party) (Environment & Land Petition E001 of 2023) [2024] KEELC 3430 (KLR) (25 April 2024) (Ruling)

Neutral citation: [2024] KEELC 3430 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT VIHIGA
ENVIRONMENT & LAND PETITION E001 OF 2023**

E ASATI, J

APRIL 25, 2024

BETWEEN

EDWIN OMULAMA ONDITI 1ST PETITIONER

EMILLY M'MBONE MULINYA 2ND PETITIONER

AND

KENYA RURAL ROADS AUTHORITY 1ST RESPONDENT

WORLD SYSTEM ENGINEERING LIMITED 2ND RESPONDENT

**LAND REGISTRAR, VIHIGA DISTRICT LAND REGISTRY 3RD
RESPONDENT**

AND

NATIONAL LAND COMMISSION INTERESTED PARTY

RULING

1. This ruling is in respect of the Notice of Motion application dated 12th February 2024 brought pursuant to the provisions of sections 3 and 5 of the Judicature Act Cap 8, sections 3,13 and 14 of the Environment and Land Court Act Section 1A, 1B, 3A, 38 (a) and 63(e) of the Civil Procedure Act and Order 22 Rule 7(2), Order 51 Rule 1 of the Civil Procedure Rules, 2010. The application seeks for orders that:
 - a. The court declares that Mr. Hillary K. Langat, the Land Registrar Vihiga District Lands Registry has willfully disobeyed the lawful court Decree herein date 19th July 2023 and issued on 27th July 2023 and consequently find him to be in contempt of court.



- b. Mr Hillary K. Langat, the Land Registrar, Vihiga District Land Registry be arrested and committed to jail for six months or such other period that the honorable court may order.
 - c. Mr Hillary K. Langat the Land Registrar, Vihiga District Land Registry be condemned to personally pay such fine as shall be commensurable or reasonably proportional to punishment for disobedience of the court order dated 19/7/2023 and issued on 27/7/2023.
 - d. Costs be borne personally by Mr. Hillary K. Langat the Land Registrar, Vihiga District Land Registry
2. The grounds upon which the application was brought are that vide the decree of this honourable court dated 19/7/2023 and issued on 27/7/2023, an *order of mandamus* was issued compelling the 3rd Respondent to fix the boundary of the suit land as it was before the actions complained of in the petition. That the 3rd Respondent has disobeyed the decree and that the Decree Holder fears that if the court does not intervene in the matter, the process of administration of justice will suffer and that the Decree Holders may be denied an opportunity to enjoy the fruits of the Judgment herein dated 19/7/2023.
 3. The application was supported by the averments contained in the Supporting Affidavit sworn by Edwin Onditi Omulama, the 1st petitioner on 12th February 2024.
 4. The application was not opposed. Affidavit of service sworn by Edwin Onditi Omulama on 19/2/2024 indicate that on 19/2/2024 at 2.14 pm the 3rd Respondent was served with the Notice of Motion application dated 12/2/2024 together with a notice that the same was due for inter partes hearing on 12/3/2024. There was no response to the application, there was no attendance by or on behalf of the 3rd Respondent for the hearing of the application. The application was therefore heard ex parte.
 5. Section 5 of the *judicature Act* pursuant to which the application is made provides;
 - i. The High court and the court of Appeal shall have the same power to punish for contempt of court as it for the time being possessed by the High court of Justice in England and such power shall extend to upholding the authority and dignity of the subordinate courts
 - ii. 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 exercise of the ordinary original criminal jurisdiction of the High court”
 6. Section 3 of the *Environment and Land Court Act* provides for the overriding objectives of the *Act*, the principle one of which is to enable the court to facilitate just, expeditious, proportionate and accessible resolution of disputes governed by the *Act*. Section 13 provides for the jurisdiction of the court while section 14 provides for enforcement of court orders.
 7. The substantive relief sought is to have the 3rd Respondent punished for contempt of court. Contempt of court in a civil case is the willful breach or disobedience of a court Judgment, decree or order directions or other process of court or willful breach of an undertaking given by the court. In *Michael Sistu Mwaura Kamau vs Director of Public Prosecution & 4 others* (2018) eKLR the court of Appeal held that

“It is trite law that to commit a person for contempt of court, the court must be satisfied that he has willingly and deliberately disobeyed a court order that he was aware of”.



And in the case of *Jobari School Limited vs Rosemary Wambugu t/a Jobari School* (2021) eKLR the ingredients of contempt of court were stated to be; the existence of a court order whose terms are clear and unambiguous and binding on the Respondent, that the Respondent had knowledge or proper notice of the terms of the order, that the Respondent acted in breach of the terms of the order and that he acts or conduct of the Respondent were deliberate.

8. Regarding the existence of a court order, the petitioners' case is that the court issued an order of mandamus vide its judgment dated 19/7/2023 compelling the 3rd Respondent to fix the boundary of the suit land as it was before the actions complained of in the petition. To the Supporting Affidavit, the applicants annexed and marked as E001 and E004 a copy of the decree and the judgment of this court herein dated 19/7/2023. It is evident from perusal of the Judgment that one of the reliefs granted was an order of mandamus compelling the 3rd Respondent to fix boundary of the suit land as it was before the actions complained of in the petition. The applicants have demonstrated the existence of the judgment and decree that it contained clear and unambiguous order directed to and binding upon the 3rd Respondent.
9. The next ingredient is that the Respondent being cited for contempt had knowledge or proper notice of the existence of the court order. It is the petitioners' case that the decree of the honorable court dated 19th July 2023 was served upon Mr. Hillary K. Langat, the Land Registrar, Vihiga District Land Registry on 3/8/2023. That upon being served with the decree, Mr. Hillary K. Langat indicated that he would conduct a site visit on the suit property for the boundary fixing exercise on 5/12/2023. That he indicated that the decree holder should collect the requisite Boundary Dispute Summons from his office on 20/11/2023 for purposes of service upon the relevant parties to ensure attendance on 5/12/2023. That the petitioners collected the said summons for service. To prove this, the applicant annexed to the Supporting Affidavit and marked E002 a copy of letter dated 3/8/2023 under cover of which the judgment and decree were served upon the 3rd Respondent, and E003 a copy of the Boundary Dispute Summons dated 20/11/2023 issued by the 3rd Respondent. I have perused the letter dated 3rd August 2023 from the 1st applicant to the 3rd Respondent. It shows that it had enclosures namely; judgment dated 19/7/2023 and decree, and that the same was received by K. Langat who duly signed it and remarked "Site visit on 5th December 2023. Summons collection 20th November 2023." I have also perused the Boundary Dispute Summons dated 20/11/2023 addressed to KERRA (Kenya Rural Roads Authority) copied to the applicant among other people and signed by H.K Langat informing the parties, inter alia, of the Land Register's visit to the boundary on 5th December 2023 between 10.00 am – 5.00pm. I am satisfied that the Land Registrar had knowledge and /or sufficient notice of the existence of the court decree and what it required of him to do.
10. As to whether the Respondent acted in breach or disobedient of the court order, the applicants' case is that on the date appointed by Mr. Hillary K. Langat, the Land Registry for him to visit the site and comply with the decree, he outrightly refused to leave the registry and attend to the boundary fixing exercise claiming that he was "short of man power" and therefore the exercise did not take place. It is clear that he Land Registrar despite having been served with the Decree has to date not complied. Though no timelines were given in the decree for compliance, the Land Registrar ought to have complied forthwith. In any event, he had issued Boundary Dispute Summons for the same. The applicants have deposed in paragraph 8 of the Supporting Affidavit that the Land Registrar told them that they could sue him for contempt of court if they so wished.
11. The objective of contempt of court proceedings is, inter alia, to uphold the dignity of the court and to ensure that court orders are complied with and due process of the law respected. Hence a court of law will take an allegation of contempt of court seriously and act firmly to ensure that this objective



is achieved. However, contempt proceedings being quasi- criminal in nature, the contempt must be proved to the required degree. In *Githiga & 5 others vs Kiru Tea Company Ltd* (Petition 13 of 2019) [2023] KESC 41 (KLR) (16 June 2023) (Judgement) the Supreme Court held that

“Due to the quasi-criminal nature of contempt proceedings and the gravity of the consequences that flowed from contempt proceedings, courts required to adhere to the principles of natural justice, procedural fairness and a right to be heard...because contempt proceedings being quasi-criminal, required a higher standard of proof than in normal civil cases and one could only be committed to civil jail or penalized on the basis of evidence that left no doubt as to the contemnor’s culpability.”

12. The court notes that the Land Registrar took steps towards implementation of the decree by appointing a date on which he was to visit the site and fix the boundary, issuing Boundary Dispute Summons and releasing them for service. The court notes that the Land Registrar gave an explanation as to why he could not visit the site and fix the boundary on the appointed date; namely that he had shortage of man power. Further, the court notes that the decree had no timelines within which the fixing of the boundary was to be done. In these circumstances, I find that the failure by the Land Registrar to visit the site and fix the boundary on 5/12/2023 was not deliberate.

13. In *Republic vs Ahmad Abolfathi Mohammed & Another* [2018]eKLR the Supreme Court held that

“the 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 Respondents to establish that the alleged Contemnor’s conduct was deliberate, in the sense that he or she willfully acted in a manner that flouted the Court Order.”

14. The court therefore finds that although the Land Registrar failed to attend the site and fix the boundary on 5/12/2023, in the circumstances already referred to herein, the action and/or omission did not amount to contempt of court. The application is therefore hereby dismissed with no order as to costs. The court hereby orders the Land Registrar, Vihiga to implement the decree herein and file a report of the implementation in court within sixty (60) days of the date of service of this order.

Orders accordingly.

RULING DATED AND SIGNED AT KISUMU, DELIVERED VIRTUALLY THIS 25TH DAY OF APRIL, 2024 THROUGH MICROSOFT TEAMS ONLINE APPLICATION.

E. ASATI,

JUDGE.

In the presence of:

Maureen- Court Assistant.

Omulama for the Applicant.

No appearance for the Respondent.

