



**Shah & another v Kigotho & another; Munge (Interested Party) (Environment and Land Case Civil Suit 1167 of 2013) [2024] KEELC 3381 (KLR) (24 April 2024) (Ruling)**

Neutral citation: [2024] KEELC 3381 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT AND LAND CASE CIVIL SUIT 1167 OF 2013**

**LN MBUGUA, J  
APRIL 24, 2024**

**BETWEEN**

**TUSHAR SHAH ..... 1<sup>ST</sup> PLAINTIFF**

**BEEJAL SHAH ..... 2<sup>ND</sup> PLAINTIFF**

**AND**

**JOHN MARIARA KIGOTHO ..... 1<sup>ST</sup> DEFENDANT**

**TUMNGA LIMITED ..... 2<sup>ND</sup> DEFENDANT**

**AND**

**JOHN MUNGE ..... INTERESTED PARTY**

**RULING**

1. Judgment was entered for the plaintiff herein on 11.11.2021.
2. The plaintiff has filed a Notice of Motion application dated 16.10.2023 seeking orders to have the defendants cited for contempt of court orders. The contemnors mentioned include the directors of the 2<sup>nd</sup> defendant namely; Godfrey Ngatia, and Thomas Waweru.
3. The plaintiffs contend that the defendants did not comply with the above mentioned judgment in that; they failed to vacate the suit property, and to pay damages of Kshs 3,000,000. To this end, the plaintiffs seek orders that the defendants be ordered to vacate the suit property, pay the stipulated damages, and that the contemnors be punished for contempt of court orders.
4. The application is premised on the grounds set out on its face, the supporting affidavit as well as a supplementary affidavit. The gist of their case is that they were declared as the rightful owner of parcel LR 9104/205, that the defendants were ordered to vacate the suit land and also to pay Kshs 3,000,000 as



- damages. The plaintiffs aver that the judgment was not complied with and the gate to the suit property remains locked.
5. In their submissions dated 22.12.2023, the plaintiffs have reiterated the averments set out in their affidavits.
  6. The 1<sup>st</sup> defendant opposed the application vide his replying affidavit dated 6.11.2023 where he contends that he has never been in occupation of the suit property. In his submissions dated 6.2.2024, the 1<sup>st</sup> defendant contends that no orders were made against him in the aforementioned judgment.
  7. The 2<sup>nd</sup> defendant did not participate in the prosecution of the application even though they were served.
  8. I have considered all the arguments raised herein including the rival submissions. The issues falling for determination are whether the defendants including directors of the 2<sup>nd</sup> defendant should be cited for contempt, be ordered to vacate the land and to pay the Kshs 3,000,000.
  9. On contempt, reference is hereby made to the provisions of Section 5 of the Judicature Act to the effect that the law governing contempt of court proceedings is the English law applicable in England at the time the alleged contempt is committed.
  10. In the case of *Fred Matiangi the Cabinet Secretary, Ministry of Interior and Co-ordination of National Government v Miguna Miguna & 4 others* [2018] eKLR, cited in *Sophinah Kalondu Mbiti v Arun Mabendra Adalja & 3 others* [2021] eKLR, it was held thus:

“When courts issue orders, they do so not as suggestions or please to the persons at whom they are directed. Court orders issue ex cathedra, are compulsive, peremptory and expressly binding... This Court, as must all courts, will deal firmly and decisively with any party who decides to disobey court orders and will do so not only to preserve its own authority and dignity but the more to ensure and demonstrate that the constitutional edicts of equality under the law, and the upholding of the rule of law are not mere platitudes but present realities.”
  11. While in *Refrigeration and Kitchen Utensils Ltd v Gulabch and Popatlal Shah & another*, Civil Application No 39 of 1990, cited in the Court of Appeal case of *Woburn Estate Limited v Margaret Bashforth* [2016] eKLR, it was observed that:

“A party who knows of an order, whether null or valid, regular or irregular, cannot be permitted to disobey it....”
  12. What resonates from the cited law is that court orders must be obeyed. In the case at hand, the plaintiffs have not been able to enjoy the fruits of their judgment due to the fact that the said judgment was apparently not obeyed. The 2<sup>nd</sup> defendants have been missing in action, they tendered no evidence despite the fact that they had duly filed a defence.
  13. As a response to the application, the 1<sup>st</sup> defendant contends that since the suit was filed, he has never been to the suit premises. That averment is however at variance with his claim during the trial where he maintained that he had entered into the suit premises legally (see paragraph 7 of the judgment as well as paragraph 2 of his witness statement). There is no evidence to indicate the point at which he left the suit premises. In the circumstances, I find that the defendants including the directors of the 2<sup>nd</sup> defendant are in contempt of the judgment.



14. On whether, an order should be issued for the defendants to vacate the suit premises, I find that the answer is plainly set out at paragraph c) and d) of the judgment where defendants were found to be trespassers. I need not belabor that point save to give the appropriate order for the defendants to vacate the suit land.
15. On the payment of Kshs 3,000,000, the order is already there at clause e) of the judgment and I need not rehash the same.
16. In the end, the application dated 16.10.2023 is allowed in terms of prayers numbers a)- e) and the defendants are condemned to pay costs of the application.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 24<sup>TH</sup> DAY OF APRIL, 2024 THROUGH MICROSOFT TEAMS.**

**LUCY N. MBUGUA**

**JUDGE**

In the presence of:-

Court assistant: Eddel

**AMENDED AND SIGNED IN NAIROBI THIS 29<sup>TH</sup> DAY OF APRIL, 2024**

**LUCY N. MBUGUA**

**JUDGE**

