



REPUBLIC OF KENYA



**KENYA LAW**

THE NATIONAL COUNCIL FOR LAW REPORTING

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**Wuantai & 2 others v Ngussur & 7 others (Environment & Land  
Petition 6 of 2019) [2024] KEELC 3882 (KLR) (24 April 2024) (Ruling)**

Neutral citation: [2024] KEELC 3882 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO  
ENVIRONMENT & LAND PETITION 6 OF 2019**

**MN GICHERU, J**

**APRIL 24, 2024**

**BETWEEN**

**PHILIP S WUANTAI ..... 1<sup>ST</sup> PETITIONER  
JOHN K OLE MUSEI MOITALALLEI ..... 2<sup>ND</sup> PETITIONER  
DAVID N'TILAU SORIMPAN ..... 3<sup>RD</sup> PETITIONER**

**AND**

**PARSERETI OLE NGOMEA NGUSSUR ..... 1<sup>ST</sup> RESPONDENT  
JOHN KAMUYE OLE KIOK ..... 2<sup>ND</sup> RESPONDENT  
MOSES MONIK ..... 3<sup>RD</sup> RESPONDENT  
LAWRENCE OLE MBELATI ..... 4<sup>TH</sup> RESPONDENT  
CHIEF LAND REGISTRAR ..... 5<sup>TH</sup> RESPONDENT  
THE NATIONAL LAND COMMISSION ..... 6<sup>TH</sup> RESPONDENT  
ATTORNEY GENERAL ..... 7<sup>TH</sup> RESPONDENT  
COUNTY GOVERNMENT OF KAJIADO ..... 8<sup>TH</sup> RESPONDENT**

**RULING**

1. This ruling is on the notice of motion dated 17/1/2023. The motion which is by interested party is brought under Article 159(1) (d) of the Constitution of Kenya, Order 40 Rule 3(1) and (3) of the Civil Procedure Rules and all other enabling provisions of the law.
2. The motion seeks two (2) residual orders as follows.



2. The court be pleased to issue a notice to show cause to the contemnors why their property should not be attached and or why they should not be detained in prison for a term not exceeding six (6) months for wilful disobedience of the court orders issued on 28/5/2019.

3. That the costs of this application be in the cause.

3. The motion is based on four grounds and is supported by an affidavit sworn by Augustine Siamito Sekeyian who is the legal officer of the interested party. The affidavit has four annexures. The gist of the entire motion is as follows.

Firstly, on 28/5/2019, this court issued conservatory orders and directed that the respondents be restrained from subdividing, allocating, transferring or in any way dealing with the suit land known as L.R. 12418 measuring 1085.5 hectares pending the hearing and determination of this petition.

Secondly, the contemnors in defiance of the said orders have commenced the process of change of user and subdivision of the suit land which will affect the status quo.

Thirdly, on 20/9/1992 the contemnors, through Real Plan Consultants Limited wrote to the 7<sup>th</sup> Contemnor purporting to change the use of the suit land by doing the following. Creating 1964 agricultural subplots for the resettlement of community members, six plots (numbers 1520-1525) for the compensation of Mr. Sanare and 340 acres for Kibiko Trading Centre. They have also prepared and published a list of 718 beneficiaries and purported to allocate them land. In addition to the above, the contemnors have made public utterances in Ngong, Kajiado County to the effect that they have completed the subdivision of the land and the title deeds for the beneficiaries are ready for issue at any moment.

4. On learning of the activities of the contemnors, the officials of the interested party immediately warned members of the public against purchasing the suit land vide a notice which is annexure 3. For the above and other reasons, the interested party seeks the orders as above.

5. The 2<sup>nd</sup> and 4<sup>th</sup> respondents have opposed the motion and in that regard, the second respondent Parseneti Ole Ngomea Ngussur has sworn a replying affidavit dated 13/4/2023 on his own behalf and that of the 4<sup>th</sup> respondent in which he deposes as follows.

Firstly, neither he nor Community Trust has undertaken any change of user or subdivision of the suit land.

Secondly, the two respondents deny being the author of the letter by Real Plan Consultants directed to the National Land Commission.

Thirdly, the two respondents deny making any public utterances about the subdivision of the suit land and all that they did was to tell their members that their land is safe and they should trust the judicial processes.

Fourthly, annexure AS-2 is not an area list and it bears only one signature and its origin has not been proved.

Fifthly, the interested party is a trustee for the beneficiaries of the suit land and the proper trustees are Moses Parantai, Samuel Matena and Joel Ngairoita.

Sixthly, the interested party has no *locus standi* to move this court because the suit land is neither public nor community land.

Seventhly, there is no evidence presented by the interested party in form of Registry Index Map, approved subdivision plan, titles or certified copies of the register.



Finally, evidence beyond reasonable doubt, like in Criminal Cases, is required in a case such as this and it is lacking and for the above stated reasons, the motion should fail and be dismissed with costs.

6. The 5<sup>th</sup> respondent has filed a replying affidavit dated 22/2/2023 in which he seems to support the motion as far as it is against his fellow contemnors and to oppose it where it relates to him.
7. Only counsel for the applicant and for 2<sup>nd</sup> and 4<sup>th</sup> respondents filed written submission 30/10/2023 and 12/2/2024 respectively. Counsel for both sides are agreed that there is only one issue for determination.
  - i. Whether the actions of the contemnors amount to contempt of court/whether the applicant has satisfied the grounds for an allegation of contempt of court.
8. I have carefully considered the motion in its entirety including the affidavits, the grounds, the annexures, the written submissions and the law cited therein. I make the following findings.
9. Firstly, both sides are in agreement that in order for an applicant to succeed in a case of contempt proceedings three elements need to be proved.
  - i. Terms of the order.
  - ii. Knowledge of (i) above by the respondents and
  - iii. Failure by the respondents to comply with (i) above. This is trite law as can be seen from the two authorities cited by the two counsel in this regard. See *Trusted Society of Human Rights Alliance v Cabinet Secretary for deveolution and Planning and 3 others* [2017] eKLR and *Neson N. Obuba v Itira Mokoro Nyambwatania* [2022] eKLR.
10. Secondly, the 2<sup>nd</sup> and 4<sup>th</sup> respondents do not dispute the first two elements that have been discussed above. What they dispute is the third element of failure to comply with the court order. They contend they have not violated the order dated 28/5/2019.
11. Having narrowed down the question to whether the order of 28/5/2019 was violated and bearing in mind the strict burden on the interested party to prove the breach on a margin higher than a balance of probabilities and almost as high as beyond reasonable doubt I find the motion has no merit for the following reasons.

Firstly, no evidence has been adduced on change of user. The nexus between Real Plan Consultants and the Contemnors has not been proved. The letter of 20<sup>th</sup> September 2022 is not sufficient to prove subdivision. The fact that it has been disowned by the contemnors reduces its probative value as evidence. The same letter refers to proposals forwarded to Kajiado County Government for consideration and to ensure compliance with their requirements. If there were such proposals forwarded to the interested party, then the interested party which is the applicant would have annexed them to this motion.
12. Secondly, on 14/3/2023, even though the applicant was given sufficient time to file evidence which would include the words uttered at Ngong at a public forum, no such evidence together with its translation was ever filed. This failure serves to undermine the creditability of the applicant's witness deposition.
13. Finally, in a case such as this where the liberty of the contemnors is at stake, credible evidence sufficiently corroborated and supported by tangible documents is required. Such evidence is clearly lacking in this case. For the foregoing reasons, I dismiss the motion dated 17/1/2023. Costs in the cause.

It is so ordered.



**DATED SIGNED AND DELIVERED AT KAJIADO VIRTUALLY THIS 24TH DAY OF APRIL  
2024.**

**M.N. GICHERU**

**JUDGE**

