



**Okumu v Nchoe (Environment & Land Case E014 of 2023)
[2024] KEELC 4002 (KLR) (21 May 2024) (Ruling)**

Neutral citation: [2024] KEELC 4002 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAROK
ENVIRONMENT & LAND CASE E014 OF 2023**

CG MBOGO, J

MAY 21, 2024

BETWEEN

MARK ADEMBA OKUMU PLAINTIFF

AND

KAEKO NCHOE DEFENDANT

RULING

1. Before this court for determination is the Notice of Motion Application dated 19th February, 2024, filed by the plaintiff/applicant and it is expressed to be brought under Sections 1A, 1B, 3A of the [Civil Procedure Act](#) and Section 5 of the [Judicature Act](#) seeking the following orders: -
 - a. Spent.
 - b. That pending the hearing and determination of this application inter partes, this honourable court be pleased to issue an injunction restraining the respondent, his servants and agents from interfering with, alienating, fencing, putting up structures or otherwise dealing in any manner howsoever with the suit property.
 - c. That pending the hearing and determination of the main suit, this honourable court be pleased to issue an injunction restraining the respondent, his servants and agents from interfering with, alienating, fencing, putting up structures or otherwise dealing in any manner howsoever with the suit property.
 - d. That this honourable court be pleased to direct the respondent to vacate the applicant's suit property pending the determination of the main suit.
 - e. That the honourable court be pleased to issue a notice to show cause to the respondent to personally attend court and show cause as to why he should not be cited for contempt of the



orders of this honourable court issued on the 16th of June, 2023, 5th July, 2023 and the 17th of October, 2023.

- f. That the honourable court be pleased to cite the respondent for contempt of its orders.
 - g. That the honourable court be pleased to commit the respondent to civil jail for six (6) months or such other period that the court deems fit in the circumstances, until the contempt of court aforesaid is purged in full.
 - h. That the costs of this application be provided for.
2. The application is premised on the grounds inter alia that vide an order dated 16th June, 2023, this court granted interim relief pending the determination of the application and that on 5th July, 2023, the defendant/ respondent having been served with the application, and the orders, neither responded to the application nor appeared in court on the said date.
 3. The application was supported by the affidavit of the plaintiff/ applicant sworn on even date. The plaintiff/ applicant deposed that by virtue of the court allowing his application dated 15th June, 2023, the defendant/ respondent was restrained together with his servants and agents from interfering with, alienating, fencing or otherwise dealing howsoever with the suit property pending determination of the suit. He deposed that despite the court issuing an injunction restraining the defendant/ respondent, he has continued with his acts of trespass with a view to obtaining possession and subsequently ownership of the suit property by constructing a house which he currently lives in.
 4. The Plaintiff/applicant further deposed that the defendant/ respondent totally restricted his access to the suit property and he went ahead and used crude weapons to deter him and any person acting under his instructions from going into the suit property. The plaintiff/applicant deposed that the orders have neither been varied, nor set aside, and are thus in force and that once a court pronounces itself, its orders are binding and valid.
 5. The plaintiff/applicant deposed that the court record bears witness that he had to use the area chief to serve the defendant/ respondent with the court documents because the defendant/ respondent was known to violently attack people where the question involved property. That in this case, no report to the police station or an injunction from this court has been sufficient to deter the respondent from his acts of trespass and contempt.
 6. While the counsel for the defendant/respondent was in court on 20th March, 2024 when the directions were issued herein on compliance of the court's directions issued on 21st February, 2024, and upon being served with the instant application, the defendant/respondent did not file his response to the application.
 7. On the same date, this court gave directions as to the disposal of the application which was by way of written submissions. None of the parties had filed their written submissions by the time of writing this ruling.
 8. Be that as it may, it is well to state that the application is unopposed. However, even as the court is aware that the application has not been challenged, the court has to be satisfied as to the merits of the application to grant the orders sought.



9. The law is very clear on the obedience of the court orders and gives consequences of such disobedience. Order 40 Rule 3(1) of the [Civil Procedure Rules](#) provides that: -

“In case of disobedience or 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 six months unless in the meantime the court directs his release”.

10. Further Section 63 (c) of the [Civil Procedure Act](#) provides that: -

“In order to prevent the ends of justice from being defeated, the court may if it is prescribed; grant a temporary injunction and in case of disobedience convict the person guilty thereof to prison and order that his property be attached and sold”.

11. The provisions of the [Environment and Land Act](#) also buttress the above position. Section 29 of the said Act reads as follows: -

“Any person who refuses, fails or neglects to obey an order or direction of the court given under this Act, commits an offence and shall on conviction be liable to a fine not exceeding one million shillings or to imprisonment for a term not exceeding two years or both”.

12. On 16th June, 2023, this court granted a temporary order of injunction for 14 days restraining the defendant/ respondent, his servants and agents, from interfering with, alienating, fencing or otherwise dealing in any manner howsoever with the suit property Cis Mara/ Maji Moto/ 721. The said orders were served upon the defendant/ respondent through the Chief of Maji Moto Sub location. Again, on 6th July, 2023, this court granted orders restraining the defendant/ respondent from interfering with, alienating, fencing or otherwise dealing in any manner howsoever with the suit property pending the hearing and determination of the suit. I have perused the record and there is no affidavit of service to show that the orders issued on 6th July, 2023 were served upon the defendant/ respondent. However, there is indication that the defendant/ respondent was served because there is a notice of appointment of advocates filed in court on 8th December, 2023. The defendant/ respondent also filed a statement of defence and counter-claim dated 30th November, 2023.

13. From the above, it appears that the defendant/ respondent went ahead and in total disobedience, sought to deal with the suit property in the manner that he so did by constructing a house on the suit property and further restricting access to the said property.

14. From the deposition raised by the plaintiff/ applicant, this court finds that indeed, the defendant/ respondent is in contempt of the court orders issued on 16th June, 2023 and 6th July, 2023, and he is therefore liable to be punished for contempt of court. This court cannot allow him to get away with deliberate disobedience of the orders of the court.

15. I, therefore, direct that the defendant/ respondent be arrested and arraigned in court on 5th June, 2024 and show cause why he should not be committed to prison or otherwise penalized for contempt of court. I make no orders as to costs.

It is so ordered.

DATED, SIGNED & DELIVERED VIA EMAIL this 21ST day of MAY, 2024.

HON. MBOGO C.G.



JUDGE

21/05/2024.

In the presence of: -

Mr. Meyoki Pere – C. A

