



**Family Shade Africa Limited v Mukuria & another (Environment & Land  
Case 100 of 2020) [2024] KEELC 6666 (KLR) (27 June 2024) (Ruling)**

Neutral citation: [2024] KEELC 6666 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND CASE 100 OF 2020**

**MD MWANGI, J  
JUNE 27, 2024**

**BETWEEN**

**FAMILY SHADE AFRICA LIMITED ..... PLAINTIFF**

**AND**

**JAMES GITAU MUKURIA ..... 1<sup>ST</sup> DEFENDANT**

**JANE WANJIKU GITAU ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

**Background**

1. On 30<sup>th</sup> August, 2023 a judgment was delivered in this matter by Wabwoto J, in the presence of the Advocate for the Plaintiff and the Advocate for the Defendants. The court entered in favour of the Plaintiff against the Defendants issuing: -
  - a. A permanent injunction restraining the Defendants from trespassing on the suit property known as Dagoretti/Waithaka/846, and
  - b. An order directing the Defendants to vacate the suit property known as Dagoretti/Waithaka/846 within 90 days from the date of service of the Decree herein failure to which an order of eviction shall issue.
  - c. Costs of the suit to be borne by the Defendants.
2. Pursuant to the said judgment of the court, a Decree was issued on 13<sup>th</sup> December, 2023. The application under consideration is the Plaintiff's Notice of Motion application dated 15<sup>th</sup> December, 2023. The Plaintiff prays that the OCS Mutuini Police Station be ordered to provide police escort and assistance to the Plaintiff's directors, agents and or servants for the purpose of maintaining peace and order and protection of property during the process of eviction of the Defendants herein, James Gitau



Mukuria and Jane Wanjiku Gitau, their agents and or servants from Land Parcel known as Dagoretti/Waithaka/846.

3. The Plaintiff/Applicant avers that the Defendants have failed to vacate the suit property in spite of the period of 90 days having expired. The continued stay of the Defendants in the suit premises amounts to disobedience of the court order.
4. The application is opposed by the Defendants who in the replying affidavit sworn by James Gitau Mukuria aver that the order of eviction was to take effect 90 days after service of the Eviction Notice/Decree. He alleges that no order of eviction has been served (upon them) to date.
5. The Defendants term the Plaintiff's application as misconstrued since the Plaintiff has calculated the 90 days from the date of the judgment as opposed to the date of the eviction notice. He therefore asserts that the 2<sup>nd</sup> Defendant/Respondent is rightfully occupying the suit property and is not in contempt of the court orders.

#### **Court's Directions.**

6. The court's directions were that the Plaintiff's application be canvassed by way of written submissions. Both sides complied and filed their respective submissions which the court has had an opportunity to read and consider.

#### **Submissions by the Parties**

7. The Plaintiff's submissions are dated 30<sup>th</sup> April, 2024. He submits that the Defendants in defiance of the court order have refused to vacate the suit premises voluntarily. In the circumstances they have to be evicted.
8. The Plaintiff notes that the Defendants have not denied that they are still in occupation of the suit premises. He urges the court to allow his application and grant him the prayers sought; for purpose of enforcing the court's judgment. The said judgment has not been appealed from, neither set aside nor vacated.
9. The 1<sup>st</sup> and 2<sup>nd</sup> Defendants/Respondents on their part submitted that the Plaintiff/Applicant has not followed the required procedure as articulated by law in regard to evictions. They further assert that the judgment stipulated that they were to leave the suit premises 90 days after service of the decree. They assert that they have neither been served with the decree in person nor through their Advocates on record in this case to date.
10. The Defendants further submit that the process of eviction is stipulated in Section 152E of the [Land Act](#). They affirm that the section has mandatory requirements which include giving an eviction notice in writing of not less than three (3) months of the intended eviction date and in the national or official language. They make reference to the case of [Atik Mohammed Omar Atik & 3 others – vs – Joseph Katana & Ano](#), where the court elaborated on the procedure of eviction of persons unlawfully occupying either public, community or public land.
11. The Defendants submit that the Plaintiff/Applicant is seeking to bypass the lawful eviction process using this application. They pray for the dismissal of the Plaintiff's application with costs to themselves.



### Issues for Determination.

12. Having considered the Plaintiff's application, the reply by the Defendants and the respective submissions filed by the parties, this court is of the view that the only issue for determination is whether the Plaintiff's application is merited.

### Analysis and Determination.

13. I must point out that at this juncture that there is no dispute in regard to the judgment of the court issued on 30<sup>th</sup> August, 2023. The Defendants at paragraph 4 of the submissions acknowledge the said judgement and categorically state that:-

‘Judgment was entered in favour of the Plaintiff/Applicant.’

14. I had earlier on noted that the judgment was delivered in the presence of the Advocate for the Plaintiff and the Advocate for the Defendants.
15. I need to state plainly and categorically from the and for avoidance of any doubt that every person has an obligation to obey and comply with court orders. Court orders are not made in vain.
16. The Court of Appeal in the case of *A.B & Ano – vs – R.B* (2016) eKLR, cited with approval the pronouncement by the Constitutional Court of South Africa in *Burchell – vs – Burchell* where the court held that: -

“Compliance with court orders is an issue of fundamental concern for a society that seeks to base itself on the rule of law. The *constitution* states that rule of law and supremacy of the *constitution* are fundamental values of our society. It vests the judicial authority of the state in the court and requires other organs of the state to assist and protect the court. It gives everyone the right to have legal disputes resolved in the courts or other independent and impartial tribunals. Failure to enforce court orders effectively has the potential to undermine confidence in recourse to law as an instrument to resolve civil disputes and may thus impact negatively on the rule of law.”

17. In the now famous case of *Hadkinson – vs – Hadkinson* (1952) 2 ALLER 567, the court held that: -

“It is the plain and unqualified obligation of every person against or in respect of whom an order is made by a court of competent jurisdiction, to obey it unless and until that order is discharged. The uncompromising nature of this obligation is shown by the fact that it extends even to cases where the person affected by an order believes it to be irregular or void.”

18. For emphasis purpose, I find it fit and appropriate to quote Lord Diplock in the case of *Attorney General - vs – Times Newspapers Ltd* (1974) A.C 273, where he stated that,

“There is an element of public policy in punishing civil contempt (to enforce court orders), since the administration of justice would be undermined if the order of any court of law could be disregarded with impunity.”

19. The Defendant's explanation of their failure to comply with the orders issued by the court in its judgment of 30<sup>th</sup> August, 2023, after the expiry of 90 days, is that they are yet to be served with the decree of the court either personally or through their Advocates. A decree is defined under the *Civil Procedure Act* as the formal expression of an adjudication which so far as regards the court expressing it,



- conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit. For purposes of appeal, decree includes a judgment.
20. Undoubtedly, the judgment of the court in this matter conclusively determined the rights of the parties in this suit with regard to all the matters that were in controversy.
  21. The Defendants are aware and have indeed been aware all through, about the court's determination from the time it was delivered in the presence of their Advocate. Their insistence on service of the decree is just but a mere excuse to justify their continued disobedience of the clear and unambiguous orders of this court. In fact, in their replying affidavit, the Defendants attached a copy of the judgment, a clear demonstration that they are aware of it. They cannot feign ignorance.
  22. The concern of the court, in determining whether a party has disobeyed an order or not is not whether the party has been formally served rather the concern is whether the party is aware of the contents and terms of the order which he has willfully disobeyed.
  23. Justice cuts both ways and must not be hindered by procedural technicalities. The Defendants in their opposition to the Plaintiff's application are hanging on mere technicalities. Their arguments hold no water.
  24. The Defendants have additionally in their submissions sought refuge under Section 152E of the Land Act. That Section however cannot apply in the circumstances of this case.
  25. I say so because the eviction order in this case was issued by the court after due consideration of the case of each of the parties and after a full hearing. Indeed, the decision that the Defendants seek to rely on in support of their position is explicit that the intention of the eviction notice provided for under Section 152E is to enable the persons affected (by the intended eviction), an opportunity to seek relief from court. Under the Section, any person(s), served with the eviction notice may apply to court for relief against the notice.
  26. In this case, the Defendants have already had their day in court. They have no choice but to obey the court orders issued by the court. Since the Defendants have failed to vacate the suit property voluntarily, even after expiry of the 90 days, an eviction order issues as ordered by the court in its judgment of 30<sup>th</sup> August, 2023.
  27. The OCS, Mutuini Police Station is hereby ordered to provide police escort and assistance to the Plaintiff's directors, agents and or servants for the purposes of maintaining peace, order and protection of property during the process of eviction of the Defendants, James Gitau Mukuria and Jane Wanjiku Gitau, their agents, and or servants from the land parcel known as Dagoretti/Waithaka/846.
  28. The Plaintiff/Applicant shall also have the costs of this application.
  29. It is so ordered.

**RULING DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 27<sup>TH</sup> DAY OF JUNE 2024.**

**M.D. MWANGI**

**JUDGE**

In the virtual presence of:

Ms. Wangui h/b for Mr. Mungai for the Plaintiff/Applicant.

Ms. Kariuki for the Defendants/Respondents.



Court Assistant: Yvette.

**M.D. MWANGI**

**JUDGE**

