



**Mutafari v Luteshi (Environment & Land Case 168 of 2016)
[2024] KEELC 4659 (KLR) (11 June 2024) (Ruling)**

Neutral citation: [2024] KEELC 4659 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KITALE
ENVIRONMENT & LAND CASE 168 OF 2016
FO NYAGAKA, J
JUNE 11, 2024**

BETWEEN

JOHN WEKESA MUTAFARI PLAINTIFF

AND

REBA KHAVERE LUTESHI DEFENDANT

RULING

1. This matter came up today for mitigation by and sentencing of the Contemnor, the Plaintiff herein, following his conviction for contempt of court on 19/03/2024.
2. The brief overview of the matter is that the Plaintiff sued the Defendant herein for the reliefs of an injunction against her, her family, servants or any other person claiming through her from trespassing onto parcel No. Kiminini/Matunda Block 7/152, special damages of Kshs.4030/=, costs of the suit and any other relief the court would grant. The Defendant filed a defence and counterclaim to the suit. In the counterclaim she prayed for an order that the report of the Land Registrar dated 22/02/2017 be implanted. It transpired that after the Plaintiff filed suit the Land Registrar visited the suit land in the company of a surveyor and made a report to the effect that the Plaintiff was the one who had encroached into a road reserve.
3. The hearing proceeded and in the end the Plaintiff's suit was dismissed, and the Defendant's counterclaim allowed. The Plaintiff appealed the decision but the same was dismissed. After the dismissal of the appeal the Defendant sought to implement the judgment. The Plaintiff was unhappy about it and challenged the same by way of applications to set aside and review but they were not merited. Ultimately the judgment had to be implemented. The implementation was simple: The County Surveyor only required to visit the ground and establish the boundary between the Plaintiff's parcel and the road reserve.



4. On 20/12/2022 the Surveyor, in the company of the Officer Commanding Station (OCS) Kiminini, visited the site at 2pm. The parties representatives were present but the Plaintiff was called to the site. He arrived at 3pm and found the Surveyor having established the boundary and erected four beacons to demarcate the road reserve. The Plaintiff caused commotion and chased away the Surveyor, the Police Officers and the persons present.
5. This incident prompted the filing of an application dated 12/6/2023 in which the Defendant sought the punishment of the Plaintiff for contempt of court over the disobedience of the order issued on 14/2/2022 when the decree was issued. This court heard the application and determined that the Plaintiff was guilty of contempt of court. It reserved a date for mitigation and sentencing, and called on the Plaintiff to purge the contempt first. At first the Plaintiff did not oblige but when the matter was adjourned twice and the court imposed bond terms on the Contemnor, which terms he could not raise at once, he was in custody for four days after which he was released on the bond terms given. Afterwards the Surveyor went to the ground and established the boundary once more, in the presence of the Plaintiff and Defendant. It is upon that background that the Plaintiff now appear before me for mitigation and sentencing.
6. In mitigation, the Plaintiff states that he is remorseful, has been properly advised by learned counsel on what ought to be done in such circumstances. He was deeply sorry and prayed for leniency. He asked the court to take into account the Plaintiff's age of 70 years and disability in the form of hearing impairment which he developed in the course of the instant matter. He stated that at first, he did not understand why survey could be done in his absence but he had since co-operated and had the boundary re-established. He prayed for a non-custodial sentence.
7. In response the Defendant confirmed that the Plaintiff had since not interfered with the road reserve since the re-establishment of the boundary. All that he wished was for the Plaintiff not again to interfere with the road reserve.
8. I have considered the mitigation of the Contemnor. I note that his age is advancing but seventy (70) years age is not as debilitating as 80 years and above. Even the *Bible* recognizes that the years of man are seventy and if by any strength they are eighty, their boast is only labour and sorrow (Psalms 90:10). Also, the court take judicial notice of the fact that in this age of advancement, with proper care and medication human beings remain strong and active physically and mentally to the age above 80 years. That is why, for instance, in the United State of America, currently the ages of the presidential candidates this year, 2024 is 81 years and 77 for the incumbent president Joe Biden and the challenger Donald Trump respectively. Thus, other than the disability in hearing that has set in on the Plaintiff, he is strong and going. In any event, when on 02/02/2024 this court watched the video clip that showed how the Plaintiff uprooted the beacons on the material date, it formed the opinion that a man who would strongly command the police away saying "about-turn" and proceed to uproot beacons in their presence with a lot of strength and single-handedly was indeed stronger than claimed.
9. Contempt of court is a very serious offence that greatly lowers the dignity of the court and not only threatens the rules of law but portends anarchy and social disorganization. It breeds impunity and high handedness besides social decay. It inculcates negative values to both young and old and particularly potentially destroys the future of young people, society and institutions that support society. It must be abhorred and punished severely.
10. I have considered the fact that the Plaintiff has apologized, he co-operated with the process of purging the contempt, the Defendant (neighbour) particularly pleaded on behalf of the Plaintiff when she submitted that all she wants is for the Plaintiff not to interfere with the road reserve. The court notes also that lately, the demeanor of the Plaintiff changed, especially after having spent four days in custody.



The spirit of defiance in him which he used to have whenever this court ordered or directed him to take a certain step has mellowed down. The lion in him has turned into a meek lamb, hopefully not for a short while. For these reasons I sentence the Contemnor to a fine of Kshs.1,000/= (One Thousand Only), in default of which he shall serve one (1) day in prison.

11. After the fine is paid or sentence served, the Contemnor shall be free unless otherwise lawfully held. Further, the surety shall be discharged and the instruments of surety released to him upon signing for their release. The Contemnor and all who claim through him shall ensure that he does not interfere with the road reserve in question for as long as it lawfully exists or endures.
12. Orders accordingly.

RULING DATED, SIGNED AND DELIVERED AT KITALE IN OPEN COURT ON THIS 11TH DAY OF JUNE, 2024.

HON. DR. *IUR* FRED NYAGAKA

JUDGE, ELC KITALE

Delivered in the Presence of:

Wanyonyi for the Plaintiff

Barongo for the Defendant.

