



M'Mukira & another v Magiri & another (Environment and Land Appeal E018 of 2024) [2024] KEELC 5736 (KLR) (31 July 2024) (Ruling)

Neutral citation: [2024] KEELC 5736 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIRONMENT AND LAND APPEAL E018 OF 2024**

**CK NZILI, J
JULY 31, 2024**

BETWEEN

**JOSPEH KOOME M'MUKIRA 1ST APPELLANT
INTERNATIONAL GOSPEL CENTRE (SUING THROUGH ITS EXECUTIVE
OFFICIALS, NAMELY CHAIRPERSON, SECRETARY, TREASURER AND
PASTOR) 2ND APPELLANT**

AND

**CHARLES MAGIRI 1ST RESPONDENT
ALICE NAITORE MAGIRI 2ND RESPONDENT**

RULING

1. The court is asked by an application dated 26.3.2024 to find the cite guilty of contempt of court. The particulars of the alleged contempt are contained in the application dated 26.3.2024 supported by an affidavit of Joseph Koome M'Mukira dated 26.3.2024.
2. Briefly the applicant avers that the court issued a stay order dated 6.3.2024. In the presence of the citees who failed to comply with it and instead proceeded to plant crops on the suit land subsequent to the issuance of the court orders and denied him access to the suit land.
3. The citees opposed the application through oral evidence tendered before the court. The gist of their defence is that despite court orders being issued on 6.3.2024 the applicant failed to comply with the conditions set therein. They urge the court to find that the applicant has failed to meet the conditions for them to be found guilty of contempt of court.
4. In *Republic v Mohammed & another* Petition 39 of 2018 (2019) KESC 47 (KLR) (15th March 2019) (ruling), the court said that an act in contempt of court constitutes an affront to judicial authority and the court has liberty and empowerment to mete out the penalty for such conduct in a proper case, the



- object being to vindicate the courts authority, secondly, to safeguard its processes so as to sustain the rule of law and the administration of justice.
5. Striving to abide by court orders is not an option. It protects the dignity and the authority and a rule of law. It must be zealously guarded by the court by dealing firmly with any person who deliberately disobeys court orders or attempts to scuttle the court's process.
 6. In *Ochino & another v Okbombo & others* (1989) KLR the court said that as a general rule, no court order requiring a person to do or abstain from doing any act may be enforced by committing him for contempt unless a copy of the order has been served personally on the person required to do or abstain from doing it.
 7. In *Duncan Mamel Murigi v Kenya Railway Corporation* (2008) eKLR the court cited *Bramblevale Ltd* (1970) CH 128 that contempt of court is an offense of a criminal nature and that a man may be sent to prison for it once it is proved that when the man was asked about it, he told lies and that there should be further evidence to incriminate him.
 8. Section 5 of the *Judicature Act* as read together with Section 29 of the *Environment and Land Court Act* are the guiding laws on contempt of court after the Contempt of Court Act was declared unconstitutional. The procedural law remains in Order 40 Rule 3 (1) (1) of the *Civil Procedure Rules* in case of contempt of court.
 9. In *Steward Robertson v Her Majesty's Advocate* (2007) HCA C63, the court said contempt of court is constituted by conduct that denotes willful defiance of or disrespect towards the court or that willfully challenges or affronts the authority of the court or the supremacy of the law whether in civil or criminal proceedings.
 10. The court said that the power to punish for contempt is inherent in a system of administration of justice and such power is held by every judge.
 11. In *BOG Moi High School Kabarak v Malcolm Bell & another* Scok Petition No. 6 & 7 of 2013, the court described the power to punish for contempt as a power of the court to safeguard itself against contemptuous or disruptive intrusion from elsewhere. It identified the power as one of the indisputable attributes of the court's inherent powers without which the protection of citizens' rights and freedoms would be virtually impossible and may reduce courts of law to futile institution spewing forth orders in vain.
 12. In *Heelmore v Smith* 2 (1886) L.R 35, Lord Bowen L. J held that the rationale was the object of the discipline enforced by the court in case of contempt as not to vindicate the dignity of the court or the person of the judge but to prevent undue influence with the administration of justice.
 13. The *Black Laws Dictionary* 9th Edition defines contempt of court as conduct that defies the authority or dignity of a court for it interferes with the administration of justice and is punishable by a fine or imprisonment.
 14. In *Sammy Nyamweya & others v Kenya Premier League Ltd & others* (2015) eKLR, the court observed that the power to punish for contempt of court has never been about protecting a judge's feelings, ego or dignity.
 15. It is to safeguard the rule of law and its supremacy. It has nothing to do with the integrity of the judiciary or the court or even the personal ego of the presiding judge. It is not about placating the applicant who moves the court by taking out the contempt proceedings. It is about assuring a party who walks through the justice door with a court order in his hands that the order will be obeyed by those to whom it is directed.



16. Further the court observed that a court order requiring compliance is not a mere suggestion or an opinion or a point of view. It is a command that is issued after much thought and with circumspection. The court said that an order must be complied with and it is in the interest of every person that it remains the case, otherwise, to see it any other way is to open the door of chaos and anarchy.
17. Additionally, the court said that anyone dissatisfied with an order of a court has avenues to challenge it, otherwise defiance should not be an option.
18. In *K.G.G.A v Francis Atwoli & others* (2012) eKLR the court cited *Clarke & others v ChadBarn & others* (1985) 1 ALL ER P.C 211, that willful disobedience to an order of the court is punishable as contempt of court even if the defendant thought that the injunction was improperly obtained or too wide in its terms, for that does not provide an excuse for disobeying it, the remedy is to vary or discharge it.
19. In *Econet Wireless Ltd v Minister for Information & Communication of Kenya & another* (2005) eKLR, the court observed that where an application for committal for contempt of court orders is made, the court will treat the same with a lot of seriousness and urgency and more often will suspend any other proceedings until the matter is dealt with and if contempt is proven to punish the contemnor or demand it be purged or both, the reason being that a contemnor would have no right of audience in any court unless he is punished or purges the contempt.
20. An applicant for citing contempt has to set out the grounds, identify each alleged act of contempt and rely on evidence.
21. In *Shimmers Plaza Ltd v NBK* (2015) eKLR the court said that knowledge of a court order suffices to prove service and dispenses with personal service for purposes of contempt proceedings.
22. In *Basil Criticos v AG & Others* (2012) eKLR the court said knowledge supersedes personal service and where a party's acts show that he had knowledge of a court order the strict requirement that personal service must be proved is rendered unnecessary.
23. In *Justus Kariuki Mate & Another v Martin Nyaga Wambora & another* C.A No. 24 of 2014 it was held that a court must satisfy itself beyond any shadow of a doubt that the person alleged to be in contempt committed the acts complained of with full knowledge or notice of the existence of the order of the court, forbidding it since the threshold involves possible deprivation of a person's liberty.
24. Contempt proceedings are coercive and or punitive yet very important in the administration of justice.
25. The standard of proof is higher than proof on a balance of probabilities. See *Ocbino & another v Okombo & others* (*supra*). The ingredients of contempt must be met. As held in *Samuel M. N. Maweu & others v National Land Commission* (2020) eKLR the principles for an applicant before the court to be found guilty of contempt of court, the applicant must prove.
 - i. The terms of the order were clear, unambiguous and binding on the citees.
 - ii. The citees had knowledge of or proper notice of the terms of the order.
 - iii. The citees acted in breach of the terms of the order.
 - iv. The conduct was willful and deliberate.
26. What then is the procedure? In *Githinga & others v Kiru Tea Factory Co. Ltd* Petition No. 13 of (2019) (2023) KESC 4 11 (KLR) (16th June 2023) (Judgment), the Supreme Court of Kenya was observed that due to the quasi-criminal nature of contempt proceedings and the gravity of the consequences that



flowed from proceedings courts should adhere to the principles of natural justice, procedure, fairness and the right to fair hearing.

27. The Supreme Court of Kenya held that courts possessed by their inherent powers to enforce compliance with their lawful orders, through sanctions imposed through contempt and that the contempt of Court Act has been declared unconstitutional in Kenya Human Rights Commissions v AG & another (2018) eKLR, the power to punish for contempt by the High Court & Court of Appeal was under Sections 5 (1) of the Judicature Act.
28. The court observed that in enforcing compliance with lawful court orders procedures adopted by the court must be fair, reasonable and be such that a full opportunity is given to an alleged contemnor to defend himself or herself.
29. The court said that under Article 5 (2) of the Constitution the right to a fair hearing is a duty imposed on a court to guarantee the parties to contempt proceedings procedural justice, by evaluating the evidence brought forth and calling the parties. The court held further that procedural fairness in the administration of justice involved fair hearings and the rule against bias.
30. In this application the citees were given an adequate opportunity to defend themselves through viva voce evidence to controvert the contents of the application and affidavit by the applicants.
31. The citees explained that even though aware of the court order they were not aware of whether the applicants had met the conditions set in the stay order by filing a memorandum of appeal within 7 days, subsequent to an undertaking as to costs.
32. The burden of proof was on the applicant to prove service upon the citees of the memorandum of appeal and the undertaking as to costs.
33. The applicants failed to satisfy the court that the citees were aware that there was full compliance with the conditions set in the order for stay. Knowledge of and willful disobedience of a lawful court order by the citees had to be proved.
34. Article 159 of the constitution as read together with Sections 3A & 3B of the Civil Procedure Act expects this court to be fair and just when handling contempt of court proceedings to ensure procedural and substantive justice.
35. The applicants have asked the court to cite the respondents for contempt of court which they did with the seriousness and urgency, required to safeguard the rule of and supremacy of the law.
36. The citees in their defence admitted that though the orders for stay were granted in their presence, they proceeded to till the suit land though under an honest but mistaken belief that the conditionalities attached to the stay order had not been met by the applicants since personal service upon them of the memorandum of appeal and the undertaking as to costs had not been effected.
37. The unfortunate aspect is that the citees also failed to verify the existence of the said documents in the e-portal or with their lawyer before they took the law into their own hands and proceeded to occupy the suit land and undertake acts inconsistent with the stay orders. Had the citees undertaken due diligence they would have established there was compliance with the conditions set in the stay orders in both the miscellaneous file and the new file opened after the appeal was formally filed.
38. There was no ambiguity in the order issued by the court and if the citees were aggrieved by it or uncertain of non-compliance by the applicants there was nothing stopping them from applying for review, appeal, variation or setting aside the said orders for non-compliance. To arrogate themselves the unilateral power to assume non-compliance, ignore, neglect and overlook a lawful court order,



would amount to disobedience of the same. The order had a timeline and therefore, there was need for the citees to come to court to verify and ascertain non-compliance, given that there was a preliminary objection

39. The upshot is I find that the applicant has met all the ingredients of contempt of court for proving willful and deliberate disobedience. See *Mutitika v Baharini Farm Ltd* (1985) KLR 229.
40. The application is dismissed with costs. Lower court file be availed. Mention before court 2 for directions on hearing the appeal.

DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT MERU ON THIS 31st DAY OF JULY, 2024

In presence of:-

C.A Kananu/Mukami

Kerubo for Aketch for the applicants

Parties

HON. C K NZILI

JUDGE

