



**Wanyoike & another v Wainaina; Wainaina v Wanyoike & 4 others (Counter Claim)  
(Environment & Land Case 321 of 2017) [2024] KEELC 5842 (KLR) (29 July 2024) (Ruling)**

Neutral citation: [2024] KEELC 5842 (KLR)

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT THIKA**  
**ENVIRONMENT & LAND CASE 321 OF 2017**  
**BM EBOSO, J**  
**JULY 29, 2024**  
**JACINTA NJERI WANYOIKE ..... 1ST PLAINTIFF**  
**DANIEL WANYOIKE NGUGI..... 2ND PLAINTIFF**  
**VERSUS**  
**TERESIAH WANJIKU WAINAINA ..... DEFENDANT**  
**AND**  
**BY WAY OF COUNTERCLAIM**  
**TERESIAH WANJIKU WAINAINA..... PLAINTIFF**  
**VERSUS**  
**JACINTA NJERI WANYOIKE..... 1ST DEFENDANT**  
**DANIEL WANYOIKE NGUGI ..... 2ND DEFENDANT**  
**BUSHLINE PROPERTIES COMPANY LIMITED ..... 3RD DEFENDANT**  
**LAND REGISTRAR, RUIRU DISTRICT ..... 4TH DEFENDANT**  
**THE HON. ATTORNEY GENERAL .....5TH DEFENDANT**

**RULING**

1. On 3/10/2023, this Court delivered a ruling on an application brought by the defendant seeking injunctive orders. The Court pronounced itself as follows:

“The balance of convenience, in the circumstances of this suit, favours the preservation of the land registers relating to the 14 subdivisions and the suit land itself. The balance of convenience does not, however, favour the restraining of the plaintiffs from occupying, accessing or having possession of the suit land as demanded in the application under consideration...



In the end, the notice of motion dated 20/7/2022 is disposed in the following terms:

- a. Pending the hearing and determination of this suit, the land register relating to land parcel number Ruiru/Ruiru East Block 2/5004 and the 14 subdivision registers resulting therefrom, namely, Ruiru/Ruiru East Block 2/41456 to 41469 are hereby preserved, in that, no entries other than this order shall be registered in the said registers.
  - b. The actual land is similarly preserved, in that, no further construction shall take place on the land. The plaintiffs in the primary suit shall, however, continue to have possession of the land.
  - c. Unless extended by this court, the above preservatory orders shall lapse after six months.
  - d. Parties are directed to prepare and be ready for trial on 12/10/2023.
  - e. Costs of the application shall be in the cause.”
2. Subsequently, the plaintiffs filed a notice of motion application dated 10/10/2023, seeking contempt orders against the defendant. The said application is the subject of this ruling. The application was supported by the affidavit of the 1st plaintiff sworn on 27/10/2023. The application was canvassed through written submissions dated 4/3/2024, filed by M/s Isolina Kinyua & Company Advocates.
  3. The case of the plaintiffs is that, through the ruling rendered on 3/10/2023, the Court ordered that land parcel number Ruiru/Ruiru East Block 2/5004 and the 14 subdivisions resulting therefrom, namely, Ruiru/Ruiru East Block 2/41456 to 41469 [hereinafter referred to as the “suit land”] should remain in the possession of the plaintiffs and should be preserved for 6 months subject to further extension by the Court.
  4. The plaintiffs contend that the defendant in the primary suit has chosen to ignore, disregard and disobey the above court order and has forcefully and violently evicted the plaintiffs from the suit land through hired goons who have camped on the suit land. The plaintiffs further contend that the defendant has erected a high-voltage electric fence around the suit land. The plaintiffs add that they continue to suffer great prejudice as a result of the unlawful conduct and lawlessness of the defendant. The plaintiffs argue that if the actions of the defendant go unchecked by this Court, they will mark the beginning of the end of the rule of law and a depiction of the erosion of the dignity and authority of the justice system and the Judiciary.
  5. The defendant opposed the application through a replying affidavit sworn on 29/1/2024 by herself and written submissions dated 29/1/2024, filed by M/s Kipkenda & Company Advocates. Her case is that she was not aware of the orders issued on 3/10/2023, given that neither she nor her advocates were present in Court during delivery of the ruling. The defendant contends that she was made aware of the existence of the said ruling on 18/10/2023 after her advocates received a letter dated 17/10/2023 from the plaintiff’s advocates. The defendant further contends that the content of the said ruling were brought to her attention after the fence on the suit land had already been erected. She adds that the fence was repaired on 30/9/2023 after it had been brought down by rowdy youth. The defendant contends that she has not undertaken any construction or any activity on the suit land after she was made aware of the ruling on 18/10/2023. The defendant argues that it is worth noting that she has always been in possession of the suit property since August 1988, having been issued with a title deed on 26/8/1988. She adds that it is the plaintiff in the primary suit and the 2nd and 3rd defendants in the counterclaim who invaded and trespassed onto the suit land.



6. The court has considered the application; the response to the application; and the parties' respective submissions. The single question to be answered in this ruling is whether a case of contempt of court has been established by the plaintiffs against the defendant.
7. In Kenya's legal system, contempt of court is generally regarded as conduct that defies the authority or dignity of the court. Contempt of court is considered to be a serious aggression against the rule of law and against the administration of justice. A finding of contempt attracts severe sanctions by the court.
8. In the case of *Econet Wireless Kenya Limited v Minister For Information And Communication Of Kenya Authority* [2005] eKLR, the court stated the following on contempt of court:

"It is essential for the maintenance of the rule of law and order that the authority and the dignity of our courts are upheld at all times. The Court will not condone deliberate disobedience of its orders and will not shy away from its responsibility to deal firmly with proved contemnors. It is the plain and unqualified obligation of every person against whom an order is made by court of competent jurisdiction, to obey it unless and until the 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 the order believes it to be irregular or void."

9. In *Gatharia K. Mutikika v Baharini Farm Ltd* [1985] KLR 227 it was held that:

"A contempt of court is an offence of a criminal character. A man may be sent to prison. It must be proved satisfactorily..... it must be higher than proof on a balance of probabilities, almost but not exactly, beyond reasonable doubt. The standard of proof beyond reasonable doubt ought to be left where it belongs, to wit criminal cases. It is not safe to extend it to offences which can be said to be quasi-criminal in nature.

However, the guilt has to be proved with such strictness of proof as is consistent with the gravity of the charge... Recourse ought not to be heard to process contempt of court in aid of a civil remedy where there is any other method of doing justice. The jurisdiction of committing for contempt being practically arbitrary and unlimited, should be most jealously and carefully watched and exercised with the greatest reluctance and the greatest anxiety on the part of the judge to see whether there is no other mode which is not open to the objection of arbitrariness and which can be brought to bear upon the subject... applying the test that the standard of proof should be consistent with the gravity of the alleged contempt... it is competent for the court where contempt is alleged to or has been committed, and on an application to commit, to take the lenient course of granting an injunction instead of making an order for committal or sequestration, whether the offender is a party to the proceedings or not."

10. In *Oilfield Movers Ltd v Zabara Oil & Gas Limited* [2020] eKLR the court stated:

"It is important however that the court satisfies itself beyond any shadow of a doubt that the person alleged to be in contempt committed the act complained of with full knowledge or motive of the existence of the order of the court forbidding it. The threshold is quite high as it involves possible deprivation of a person's liberty..."

11. Have the applicants demonstrated contempt by the defendant? The order which the defendant is alleged to have disobeyed was issued vide a ruling rendered on 3/10/2023. The ruling was rendered in the presence of Mr Kinyanjui – counsel for the plaintiff. Both the defendant and her advocate were



absent on that day. 26 days later, the plaintiff brought the application dated 10/10/2023, contending that the defendant had acted in contempt of the said ruling.

12. The response which the plaintiff tendered in answer to the application is that she was not aware of the order issued by the court. She further contended that the fence which the plaintiffs allege to have been erected in contempt of this court's ruling was erected in September 2023 as a replacement of a previous fence which had been brought down by hired goons. She added that she became aware of the order on 18/10/2023 after the plaintiff's advocates wrote a letter dated 17/10/2023 to her advocates.
13. Under the *Evidence Act*, the burden of proof is always on the party who alleges. Given that the ruling of 3/10/2023 was rendered in the absence of the defendant, the plaintiffs were under a legal duty to extract the relevant order and serve it on the defendant. Secondly, the plaintiffs were required to demonstrate to the court that the actions constituting contempt were committed by the defendant or the defendant's agent(s) after the defendant had been served with the court order or had been made aware of it.
14. I have read the supporting affidavit of Jacinta Njeri Wanyoike. The affidavit is quiet on the precise time of service of the order of the court. It is also quiet on the precise time when the alleged contempt was committed. In fact it emerges from the materials before court that the application for contempt orders was drawn on 10/10/2023, long before the plaintiff's advocates wrote their letter dated 17/10/2023. No evidence of service or communication of the court order prior to 10/10/2023 was placed before this court to demonstrate that the defendant had been served with or made aware of the court order.
15. Consequently, in the absence of the above crucial evidence, the court has no basis upon which to make a finding of contempt and punish the defendant for contempt. The result is that the application dated 10/10/2023 is rejected on the ground that the applicants have not discharged their burden of proof.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA ON THIS 29TH DAY OF JULY 2024**

**B M EBOSO**

**JUDGE**

In the presence of:-

Ms Oloo for the Plaintiffs/Applicants

Mr Odoyo for the Defendant/Respondent

Court Assistant: Hinga

