



**Kimemia v Juma & 6 others; Nyandaro & another (Contemnor) (Environment & Land Case 351 of 2008) [2024] KEELC 5610 (KLR) (25 July 2024) (Ruling)**

Neutral citation: [2024] KEELC 5610 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND CASE 351 OF 2008**

**AA OMOLLO, J**

**JULY 25, 2024**

**BETWEEN**

**AURIEL MARIE JOY KIMEMIA ..... PLAINTIFF**

**AND**

**JACOB JUMA ..... 1<sup>ST</sup> DEFENDANT**

**MARY WANJIRU CHEGE ..... 2<sup>ND</sup> DEFENDANT**

**COMMISSIONER OF LANDS ..... 3<sup>RD</sup> DEFENDANT**

**WILLIAM TUMATA SILALA SANO ..... 4<sup>TH</sup> DEFENDANT**

**SUAKEI OLE PARKIRE ..... 5<sup>TH</sup> DEFENDANT**

**LATOO ENE PRIANKA NCHEPAI ..... 6<sup>TH</sup> DEFENDANT**

**KENYA UNITED SPORTS LIMITED ..... 7<sup>TH</sup> DEFENDANT**

**AND**

**DAVID N NYANDARO ..... CONTEMNOR**

**JW KAMUYU ..... CONTEMNOR**

**RULING**

1. The Plaintiff/Applicant filed a notice of motion dated 17<sup>th</sup> October 2023 brought under section 5 of the *Judicature Act* and section 3A of the *Civil Procedure Act*. It is seeking for the following orders;
  1. That David N.Nyandoro, the Chief Lands Registrar and J.W.Kamuyu, the registrar of titles be committed to civil jail for contempt of court for a period of six(6) months each or until such time as they obey and effect orders of this Honourable Court.



2. That David N.Nyandoro, the Chief Land Registrar and J.W Kamuyu, the Registrar of Titles be committed to civil jail for six (6) months each or until such time as they cancel all the illegal subdivisions of on Land Title LR 13873.
  3. That the Respondent do issue a duplicate Certificate of Lease under Section 33 Subsection (3) of [Land Registration Act](#) to the Applicant as the Proprietor of LR 13873.
  4. That the costs of this application be borne by the Contemnors.
2. The motion was based on the statement of facts and verifying affidavit lodged in court on the 14<sup>th</sup> September, 2023. The grounds are inter alia; that this court on 4<sup>th</sup> August 2022 delivered a judgement in favour of the Plaintiff/Applicant as the owner of LR 13873 granting the reliefs on the face of the judgement.
  3. The Applicant stated that through her Advocates, the decree was extracted and served upon the Respondent and she made concerted efforts to get the process of issuance of a duplicate certificate of lease issued under Section 33 of the [Land Registration Act](#) but her several letters and visits to the Respondent's offices were unsuccessful. Further, the Respondent proceeded to gazette the 10 titles for the illegal subdivisions for purposes of mapping onto the Ardhi sasa platform failing to acknowledge the Plaintiff as the registered owner of the suit property.
  4. The Applicant contended that the Respondent has deliberately declined to obey the decree and order of the court and has created a further crisis by enabling the holders of the fraudulent titles to continue holding them as true titles.

### **Replying Affidavit**

5. The 3<sup>rd</sup> Defendant opposed the motion vide replying affidavit sworn on 16<sup>th</sup> April 2024 by David Nyandoro, the Chief Land Registrar working with the Ministry of Lands, Housing, Public Works and Urban Development.  
(There is an affidavit sworn by JW Kamuyu on 2<sup>nd</sup> April 2024 referred to in submissions)
6. Mr Nyandoro deposed that the motion is premised on misinterpretation of section 33 of the [Land Registration Act](#) and misreading of the decree of the court issued on 14<sup>th</sup> November 2022. That they received the application for booking of a decree on 4<sup>th</sup> July 2023 which they have duly registered against the Plaintiffs title and have complied with prayer number 2 of the decree as ordered by the court.
7. Further that the court decree issued declared that the Plaintiff as the lawful owner of the suit land revoking the 7<sup>th</sup> Defendant's title and subdivisions therefrom but did not in any certain terms direct the Land Registrar to issue the Plaintiff with the title either provisional or any.
8. The deponent stated that the Applicant avers to writing a letter received on 23<sup>rd</sup> June 2023 where a statutory declaration was annexed but the same was not attached neither has it been produced herein. The 3<sup>rd</sup> Defendant explained that Section 33 of the [Land Registration Act](#) provides for replacement of lost or destroyed certificates under which the applicant is required to provide a statutory declaration that the title has been lost or destroyed. Thereafter, the Registrar reconstructs the same after making such enquiries as may be necessary and after giving due notice of sixty days in the gazette.
9. That also Section 34 of the [Land Registration Act](#) provides that any person who requires an official search in respect of any parcel shall be entitled to receive particulars of the subsisting entries in the register, certified copies of any document, cadastral map, or plan filed in the registry upon payment



of the prescribed fee. He contended that the Applicant had not made any application for search on E-citizen as all searches are applied, for the same to be declined.

10. With regard to the conversion of titles ordered by the court, the deponent stated that there is no evidence to show the same. That on the allegation in relation to WG-5, it is a system generated search that was obtained in 2022 and was not signed by Mr. Kamuyu as alleged and the entries therein in relation to the sale by auction is a charge that appears to have been made in 2017 before the delivery of judgement revoking the said subdivisions.
11. The 7<sup>th</sup> Defendant also filed grounds of opposition challenging the orders sought in the motion. In summary, they state that prayer 3 in this application was never awarded in the judgement. That the orders sought are intended to render NBI Civil Appeal E301 of 2023 nugatory and the application is incompetent and defective.

### Submissions

12. In support of his motion, the Applicant filed submissions dated 26<sup>th</sup> April 2024 and in opposition the 3<sup>rd</sup> Defendant filed submissions dated 13<sup>th</sup> May 2024. The Applicant acknowledged that the contemnors issued a search dated 24<sup>th</sup> October 2023 showing him as the proprietor of the suit property after being served with the committal application in October 2024. That however, they were yet to obey the second order and cancel the illegal subdivisions of LR 13873 by the 7<sup>th</sup> Defendant and that the third prayer in the application relates to the issuance of certificate of title to the Applicant who had lost the original title, according to the evidence given in court.
13. He submitted that the procedure under section 33 of the *Land Registration Act* is not justifiable in the face of the circumstances of this case because the provision is necessary for the registrar to satisfy himself of the proprietorship of the property and loss of the title being sought to be replaced. That the provisions are administrative and do not override the jurisdiction of the Court nor orders of the court. Thus, the court having made declaration on the proprietorship of the property, in order that this declaration is manifested, the contemnors were enjoined to issue a certificate of title in the name of the Applicant and a search proving that she is the registered owner.
14. The Applicant stated that the contemnors have refused to cancel the subdivisions or issue a certificate of lease to fully manifest the declaration of ownership of the suit property upon her and notes their deliberate failure to address the issue of cancellation showing the contempt with which they hold the court. That instead, David Nyandoro has annexed 4 titles of the subdivisions showing an entry of the decree of the Applicant on the search marked DNN 2 which is not compliance with the court order because the court declared them illegal and word "cancel" does not appear on what was brought before the court failing to provide evidence of their cancellation.
15. In support of their argument, the Applicant cited the case of *Samuel Mweru v National Land Commission and others*, (2020) eKLR where the Court set out what must be proved in contempt proceedings and the case of *Abdi Satarhaji & Another v Omar Ahmed & Another* [2018] eKLR, *Teachers Service Commission V Kenya National Union of Teachers & 2 Others* [2013] eKLR and *Hadkinson v. Hadkinson* (1952) 2 All ER 567 at pg 569 which emphasized the plain and unqualified obligation of every person to obey an order of the court and submitted that in order to ensure proper dispensation of justice and protection of the rule of law David N. Nyandoro, Chief Lands Registrar and J W Kamuyu Registrar of Titles should be made to comply with the orders of the court.
16. In their submissions, the 3<sup>rd</sup> Defendant outlined the court orders in subject and the reliefs sought in the Applicant's application making a comparative analysis that the same are not in consonant with the orders being sought here.



17. They argued that the applicant has shifted gear from the orders of the court in its judgment to the application for issuance of the provisional title to issuance of a search to enable it to apply for a provisional title which is quite a realization that there is no order which has been disobeyed. Indeed you don't need a search to apply for lost title, you can use a copy of your title if you have any or a court decree as herein can suffice which the applicant has not and does not intend to comply with.
18. The 3<sup>rd</sup> Defendant submitted that court orders were declaratory in nature to the extent of affirming that the plaintiff is the genuine owner of the suit land and never directed them to issue either the search nor the provisional title emphasizing that Section 33 of the [Land Registration Act](#) provides for the procedure on issuance of provisional title. He avers that if the applicant was desirous in seeking an order for the court to dispense with the provisions of section 33 of the [Land Registration Act](#), then it ought to have moved the court as such.
19. They stated that the Applicant having already been issued with a search of the property despite not making an application for the same as provided under the applicable law, demonstrates that there has not been any violation of the court order. While citing the case of [Econet Wireless Kenya Limited v Minister for Information and Communication of Kenya Authority](#) [2005] eKLR and [T.N Gadavarman Thiru Mulpad v Ashok Khot and anor](#) [2005] 5 SCC, where the Supreme Court of India in emphasized the dangers of disobeying court orders, the 3<sup>rd</sup> Defendant acknowledged that that obedience of court orders goes to the root of rule of law which is the foundation of a democratic society.
20. They also submitted that standard of proof required in cases of contempt is higher than that required in ordinary civil cases and that before a finding of contempt can be made, there must a demonstration of willful and deliberate disobedience of a court order which the Applicant has failed to do. In support they relied in the case of [Gatharia K. Mutikika - v Babarini Farm Ltd](#) [1985] KLR 227, [Oilfield Movers Ltd - v - Zahara Oil & Gas Limited](#) [2020] Eklr and the Supreme Court of India in [Mahinderjit Singh Bitta - v Union of India & Others](#) 1A NO 100 OF 2010.
21. With regard to the advertisement by the 3<sup>rd</sup> Defendant as produced by the Applicant, they submitted that they have not issued any search to the third party and the same cannot mean that they are dealing with the suit property at all.
22. I have considered the issues raised in the application and the submissions rendered in support thereof. In determining the application, I wish to reproduce the orders that were granted in the judgement rendered on 4<sup>th</sup> August 2022 by Justice S. Okongo. The following reliefs were granted in favour of the Applicant;
  - i. I declare that all that parcel of land known as L.R No. 13873 situated at Karen Plains in Nairobi (the suit property) is wholly owned by the plaintiff and that the plaintiff holds the genuine title in respect thereof.
  - ii. I declare that the titles held by the 1<sup>st</sup> defendant, the 2<sup>nd</sup> defendant, the 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> defendants and the 7<sup>th</sup> defendant in respect of the suit property are fraudulent, null and void and the same are hereby cancelled.
  - iii. I declare that the purported subdivision of the suit property by the 7<sup>th</sup> defendant is illegal, null and void and the same is hereby cancelled.
  - iv. A permanent injunction is issued restraining the 1<sup>st</sup>, 2<sup>nd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> defendants by themselves, their servants, agents and/or assigns from trespassing on or interfering in any way with the suit property and the plaintiff's quiet possession and enjoyment of the same.



- v. Kshs. 141,520/- together with interest at court rates from the date hereof until payment in full as against the 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> defendants being special damages for the loss suffered following the demolition of the plaintiff's site house.
- vi. The plaintiff shall have the costs of the suit and the counter-claims.
23. The decree was extracted and issued on 14<sup>th</sup> November 2022. It is trite law that proof of contempt is on required to be made above the standard of balance of convenience. The burden was upon the Applicant to show this court which paragraph of the decree the 3<sup>rd</sup> Respondent had disobeyed. I have looked at the copy of title annexed to the 3<sup>rd</sup> Defendant's replying affidavit and noted that the decree was registered on the suit title at entry number 5 on 4<sup>th</sup> July, 2023 which declared the Applicant as the owner of the land.
24. The reliefs granted by the court was clear and a reading of the same does not mention any order directing the 3<sup>rd</sup> Defendant to issue the applicant with a provisional title. The correspondences annexed by the Applicant asking to be issued with a provisional title was in my view steps independent of the decree and the decree cannot be used to curtail the statutory provisions in particular, section 33 of the *Land Registration Act*. The only time section 33 was introduced by the Applicant is in the post judgement application dated 18<sup>th</sup> September 2023 seeking leave to take out contempt proceedings.
25. During the hearing of that application, Ms wangui Shaw counsel for the applicant in her submissions to court stated that they were seeking leave in terms of prayer 1 of the chamber summons to initiate contempt proceedings against the 3<sup>rd</sup> Defendant. I granted leave since I found no basis to refuse the applicant to exercise that right. However, inadvertently in the last sentence of my order, I allowed the application as presented to imply that even prayer 3 of that motion was also granted (which prayer sought for issuance of provisional title). This prayer was not addressed and could not be granted in an application for leave so it is an error on the face of the record. Further, the Applicant would not seek to sue for contempt for orders which had not been granted and so the orders complained to be disobeyed are those contained in the decree issued on 14<sup>th</sup> November 2022.
26. In any event, the orders sought in the chamber summons of 18<sup>th</sup> Sept 2023 cannot be used to review a decree issued pursuant to a judgement of the court. I have not see copies of gazette notices issued by the 3<sup>rd</sup> Defendant as is alleged by the Applicant. What is annexed is a newspaper cutting by Keysian Auctioneers and a valuation report by Signified Valuers. The nexus between these documents and the 3<sup>rd</sup> Defendant has not been explained. In respect to the subdivision titles held by the 1<sup>st</sup>, 2<sup>nd</sup>, 4<sup>th</sup> to 7<sup>th</sup> Defendants, they were declared cancelled by the court. They remain cancelled until the said decree is set aside or varied.
27. In the instance where the Applicant now wants to be issued with a provisional title and which did not constitute the reliefs granted then she has to follow the procedure laid down under section 33 of the *Land Registration Act*. Subsection (1) provides; "Where a certificate of title or certificate of lease is lost or destroyed, the proprietor may apply to the Registrar for the issue of a duplicate certificate of title or certificate of lease, and shall produce evidence to satisfy the Registrar of the loss or destruction of the previous certificate of title or certificate of lease."
28. The Applicant's complaint was that they made efforts to have the 3<sup>rd</sup> Defendant issue them with a duplicate title under section 33 of the *Act* to no avail. As sated herein above, the decree did not provide for the issuance of provisional titles hence the Applicant must comply with the provisions of the law as regards replacement of lost or destroyed titles. The second complaint was that the 3<sup>rd</sup> Defendant proceeded to gazette the 10 illegal subdivisions for purposes of mapping but no such gazette notice was



annexed to this application. Consequently, I find no action of disobedience has proved as against the 3<sup>rd</sup> Defendant to the standards required in law. The application dated 17.10.2023 is hereby dismissed for want of merit with costs to the 3<sup>rd</sup> Defendant.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 25<sup>TH</sup> DAY OF JULY, 2024.**

**A. OMOLLO**

**JUDGE**

