



Mungai v Mungai & another (Environmental and Land Originating Summons E003 of 2024) [2024] KEELC 5713 (KLR) (25 July 2024) (Ruling)

Neutral citation: [2024] KEELC 5713 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYANDARUA
ENVIROMENTAL AND LAND ORIGINATING SUMMONS E003 OF 2024**

YM ANGIMA, J

JULY 25, 2024

BETWEEN

CHRISTOPHER KARANJA MUNGAI PLAINTIFF

AND

SIMON KABUGI MUNGAI 1ST DEFENDANT

LUCY WANJA KIRUMBA 2ND DEFENDANT

RULING

A. Plaintiff's Application

1. By a notice of motion dated 25.04.2024 brought under Section 5 of the *Judicature Act* (Cap.8), Order 51 rule 1 of the Civil Procedure Rules, 2010 and all enabling provisions of the law, the Plaintiff sought issuance of summons against the 2nd Defendant to show cause why she should not be punished for contempt of the interim orders dated 14.03.2024 and issued on 02.04.2024 and committed to jail for 6 months.
2. The application was based upon the grounds set out on the face of the motion and the contents of the supporting affidavit sworn by the Plaintiff on 25.04.2024 and the exhibits thereto. It was asserted that an interim injunction was issued against the 2nd Defendant on 02.04.2024 restraining her from, inter alia, entering, fencing, farming, alienating or transferring the suit property and from evicting the Plaintiff therefrom. It was stated that despite service of the order on 03.04.2024 the 2nd Defendant had disobeyed the same by ploughing and cultivating the suit property and demolishing his structures thereon.

B. 2nd Defendant's Response

3. The 2nd Defendant filed a replying affidavit sworn by herself on 26.04.2024 denying any disobedience of the interim injunction granted on 14.03.2024. She conceded service of the relevant order but pleaded



that she had already leased the entire suit property which was ploughed on 28.03.2024. She annexed an extract of the Mpesa payment details dated 28.03.2024 which she contended showed payment of the ploughing charges to the tractor owner.

4. The 2nd Defendant further denied having demolished the Plaintiff's structures on the suit property and suggested the demolition may have been done by the Plaintiff himself and that he had even declined to record a statement with the police service on the said demolition despite request.
5. The 2nd Defendant also filed another replying affidavit shown by John Muchori on 28.05.2024. He stated that his tractor was hired by the lessee, one, Andrew Muthee, and that he ploughed the suit property on 28.03.2024 whereupon he received payment from the lessees' wife via Mpesa on the same date. He further swore that he did not find any structures on the suit property at the time of ploughing the same.

C. Plaintiff's Rejoinder

6. The Plaintiff filed a supplementary affidavit sworn on 10.06.2024 in response to the 2nd Defendant's replying affidavit. He denied that the suit property was cultivated before service of the interim order. He denied that he had been requested to record a statement by the police service in connection with the demolition of his structures. He thus prayed that his application should be allowed as prayed.

D. Directions on Submissions

7. When the application was listed for inter partes hearing it was directed that it shall be canvassed through written submissions. The parties were consequently granted timelines within which to file and exchange their respective submissions. The record shows that the Plaintiff filed written submissions dated 18.06.2024 whereas the 2nd Defendant's submissions were dated 30.06.2024.

E. Issues for Determination

8. The court has considered the Plaintiff's notice of motion dated 25.04.2024, the replying affidavit in opposition thereto as well as the supplementary affidavit on record. The court is of the opinion that the following are the key issues which arise for determination herein:
 - a. Whether the 2nd Defendant should be cited for contempt of court and punished accordingly.
 - b. Who shall bear costs of the application.

F. Analysis and Determination

A Whether the 2nd Defendant should be cited for contempt of court and punished accordingly

9. The court has considered the material and submissions on record on this issue. The elements to be proved in contempt of court proceedings were enumerated in the case of *Samuel M. N. Mweru & Others v National Land Commissions & 2 Others* [2020] eKLR as follows:
 - a. The terms of the order must be clear and unambiguous.
 - b. The alleged contemnor must have had knowledge of the order.
 - c. The alleged contemnor must have acted in breach of the order.
 - d. The breach must have been deliberate.



10. The standard of proof in contempt of court proceedings was considered in the case of *Mutitika v Baharini Farm Limited* [1985] KLR 229 where the Court of Appeal held, inter alia, that:

“In our view, the standard of proof in contempt proceedings must be higher than proof on the 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, in criminal cases. It is not safe to extend it to an offence which can be said to be quasi-criminal in nature.”

11. There is no dispute that the terms of the interim order were clear and unambiguous. In fact, the 2nd Defendant has not contended that there was any ambiguity in the order. The 2nd Defendant did not deny knowledge or service of the order. Both the Plaintiff and the 2nd Defendant are agreed that the relevant order was served on 03.04.2024. The only dispute in this matter is whether or not the suit property was ploughed before or after the service and whether or not the Plaintiff's structures were demolished by the 2nd Defendant.
12. The court has considered the affidavit of the tractor owner, John Muchori, who swore that he ploughed the entire suit property on 28.03.2024 before service of the relevant order. He annexed what appeared to be Mpesa payment details dated 28.03.2024. Although such evidence is not necessarily conclusive evidence that ploughing was done on 28.03.2024, the court is of the view that it casts some doubt on the credibility of the Plaintiff's version of events. The court is thus not satisfied that it has been adequately proved that the suit property was ploughed after 03.04.2024.
13. The court is also not satisfied that the 2nd Defendant was the one who demolished the Plaintiff's structures on the suit property. There was no affidavit from anyone who may have witnessed the demolition. Although the Plaintiff claimed in his supporting affidavit that his structures were demolished and burnt by the 2nd Defendant's servants or agents, he did not disclose the identity of the alleged servants or agents. There is also no indication on record that the Plaintiff has ever recorded a statement with the police service regarding the said demolition. In the event, the court is not satisfied that the alleged involvement of the 2nd Defendant has been adequately proved to the required standard. As a result, the court is not satisfied that the contempt alleged against the 2nd Defendant has been proved to the required standard.

b. Who shall bear costs of the application

14. Although costs of an action or proceeding are at the discretion of the court, the general rule is that costs shall follow the event in accordance with the proviso to Section 27 of the *Civil Procedure Act* (Cap 21). A successful party should ordinarily be awarded costs of an action unless the court, for good reason, directs otherwise. See *Hussein Janmohamed & Sons v Twentsche Overseas Trading Co. Ltd* [1967] EA 287. The court finds no good reason to depart from the general rule. As a result, the 2nd Defendant shall be awarded costs of the application.

G. Conclusion and Disposal Order

15. The upshot of the foregoing is that the court finds and holds that the contempt alleged against the 2nd Defendant has not been proved to the required standard. As a result, the court makes the following orders for disposal of the Plaintiff's application:
- a. The notice of motion dated 25.04.2024 be and is hereby dismissed in its entirety.
 - b. The 2nd Defendant is hereby awarded costs of the application.



c. The suit shall be mentioned on 26.09.2024 for pre-trial directions.

Orders accordingly.

RULING DATED AND SIGNED AT NYANDARUA THIS 25TH DAY OF JULY, 2024 AND DELIVERED VIA MICROSOFT TEAMS PLATFORM.

In the presence of:

Mr. Gakenia Gicheru for the Plaintiff

Mr. Ochang for the 1st and 2nd Defendants

C/A - Carol

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Y. M. ANGIMA

JUDGE

