



REPUBLIC OF KENYA



**Kimulu v Mbukoni Holdings Ltd (Environment & Land Case  
120 of 2011) [2024] KEELC 5700 (KLR) (24 July 2024) (Ruling)**

Neutral citation: [2024] KEELC 5700 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS  
ENVIRONMENT & LAND CASE 120 OF 2011**

**A NYUKURI, J**

**JULY 24, 2024**

**BETWEEN**

**GIDEON KYALO KIMULU ..... PLAINTIFF**

**AND**

**MBUKONI HOLDINGS LTD ..... DEFENDANT**

**RULING**

1. Before court is an application dated 6<sup>th</sup> March 2020 filed by the plaintiff in this matter, seeking the following orders;
  - a. Spent
  - b. The officers of the respondent Thomas Maingi Wambua and Ruth Nzila Maingi be punished for flagrantly disobeying the orders of the Honourable Court issued on 31<sup>st</sup> October 2017.
  - c. The officers of the respondent be ordered to comply with the orders issued by the Hon. Justice O. Angote on 31<sup>st</sup> October 2017.
  - d. Costs of this application be provided for.
2. The application was based on grounds on the face of it and supported with the affidavit dated 6<sup>th</sup> March 2020 sworn by Gideon Kyalo Kimulu, the plaintiff herein. He deposed that the parties herein entered into a consent dated 9<sup>th</sup> June 2017, filed on 12<sup>th</sup> June 2017 and adopted by the court on 31<sup>st</sup> October 2017, marking the suit as fully settled. It was his averment that all the parties and their counsel were in court on the date the consent was adopted.
3. He further stated that the respondent sought for payment of Kshs. 330,000/= as transfer fees for titles, which the applicant paid via two different cheques but that the respondent has plainly disregarded and disobeyed the court order and refused to transfer plot numbers 12, 13, 18, 19, 20, 21, 25, 26, 27, 28, 31, and 32 of Mavoko Town Block 12/64 into the applicant's name. He concluded by deposing that the



respondent is in contempt of court orders which is punishable by law. He attached a sale agreement, consent and court order dated 31<sup>st</sup> October 2017, correspondence and cheques.

4. There is no response to the application despite service.

#### **Analysis and determination**

5. The court has considered the application and the supporting affidavit thereof. The issue before court is whether the respondents are in contempt of the orders of the court made on 31<sup>st</sup> October 2017.
6. The legal framework on contempt is founded on section 5 of the *Judicature Act* which confers jurisdiction on the superior courts to punish for contempt and uphold the dignity and authority of subordinate courts. The *Black's Law Dictionary* (9<sup>th</sup> Edition), defines contempt of court to mean;

The act or state of despising; the conduct of being despised. Conduct that defies the authority or dignity of a court or legislature, because such conduct interferes with the administration of justice.

7. Compliance with court orders is essential for maintenance of the rule of Law and good order which are the cornerstone of a democratic state like ours. Therefore, it is the role of the courts to ensure that the authority and dignity of our courts are upheld at all times, hence deliberate disobedience of court orders cannot be tolerated by the courts.
8. In the case of *Econet Wireless Kenya Ltd v Minister for Information & Communication of Kenya & Another* [2005] KLR 828 the court stated the importance of obeying court orders as follows;

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 proven contemnors. It is the plain and unqualified obligation of every person against whom an order is made by a 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. Similarly, in the case of *T.N. Gadavarman Thiru Mulpad v Ashok Khot & Another* [2006] 5 SCC, the Supreme Court of India weighed in on the risks of disobeying court orders as follows;

Disobedience of this court's order strikes at the very root of the rule of law on which the judicial system rests. The rule of law is the foundation of a democratic Society. Judiciary is the guardian of the rule of law. Hence it is not only the third pillar but also the Central pillar of the democratic state. If the judiciary is to perform its duties and functions effectively and remain true to the spirit with which they are sacredly entrusted to it, the dignity and authority of the courts have to be respected and protected at all costs. Otherwise, the very cornerstone of our Constitutional scheme will give way and with it will disappear the rule of law and the civilized life in the society. That is why it is imperative and invariable that court orders are to be followed and complied with.

10. Contempt proceedings are quasi-criminal proceedings and therefore the standard of proof is higher than that required in ordinary civil suits, but slightly lower than the standard of proof for criminal cases of beyond reasonable doubt, as the liberty of the alleged contemnor is at stake. (See *Mutikika v Baharini Farm Limited* [1985] LR 229. 234).



11. To prove contempt, the applicant must demonstrate clear unambiguous terms of a court order, that the respondent was aware of the terms of the order and that they deliberately and wilfully disobeyed the court order.
12. In the instant case, the applicant has annexed the court order in issue which clearly expressly provided that the respondents transfer plot numbers 12, 13, 18, 19, 20, 21, 25, 26, 27, 28, 31, and 32 of Mavoko Town Block 12/64 into the applicant's name. On that basis therefore, I find and hold that the order in question had clear terms requiring the respondent to comply.
13. The correspondence between both counsel in respect of complying with the orders confirm that the respondents were aware of the order and that is why their advocate sought transfer charges which were paid by the applicants. In the premises, I find and hold that the respondents were aware of the express terms of the orders herein.
14. It is clear from the applicant's deposition which is not denied, that the respondent's officers have failed to comply with the aforesaid orders. On whether the non compliance with the orders of 31<sup>st</sup> October 2017 was deliberate, as the respondent's officers have not offered the reasons or justification for non compliance, it is clear that the non compliance thereof is deliberate and wilful.
15. As the court on 6<sup>th</sup> July 2022, issued orders declaring plot No.23, which subsequently became Mavoko Town Block No.12/10173, as lawfully owned by the interested party one Elector Achieng Akuku, the said plot is hereby exempted from the consent orders in the contempt application.
16. For the above reasons, I find and hold that the application dated 6<sup>th</sup> March 2020 is merited and the same is allowed as follows;
  - a. Thomas Maingi Wambua and Ruth Nzila Maingi are hereby found to be in contempt of the consent order adopted as an order of this court on 31<sup>st</sup> October 2017. They are hereby ordered to purge the contempt forthwith. This matter shall be mentioned for mitigation and sentencing on 7<sup>th</sup> November 2024.
  - b. The respondents shall bear the costs of the application.
17. It is so ordered.

**DATED, SIGNED AND DELIVERED AT MACHAKOS VIRTUALLY THIS 24<sup>TH</sup> DAY OF JULY, 2024 THROUGH MICROSOFT TEAMS VIDEO CONFERENCING PLATFORM**

**A. NYUKURI**

**JUDGE**

In the Presence of;

No appearance for the applicant

No appearance for the respondent

Court assistant – Josephine

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