



**Ngugi & another v Twalib & 4 others; National Environment Management Authority & another (Interested Parties) (Environment & Land Petition 1 of 2023) [2024] KEELC 5451 (KLR) (23 July 2024) (Ruling)**

Neutral citation: [2024] KEELC 5451 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA  
ENVIRONMENT & LAND PETITION 1 OF 2023**

**NA MATHEKA, J  
JULY 23, 2024**

**BETWEEN**

**PETER WANGO NGUGI ..... 1<sup>ST</sup> PETITIONER**

**PAUL MIGHULO MSABAA ..... 2<sup>ND</sup> PETITIONER**

**AND**

**HON. BADI TWALIB ..... 1<sup>ST</sup> RESPONDENT**

**BAKARI MWAKIFUNDI ..... 2<sup>ND</sup> RESPONDENT**

**HAMADI BAKARI ..... 3<sup>RD</sup> RESPONDENT**

**COUNTY GOVERNMENT OF MOMBASA ..... 4<sup>TH</sup> RESPONDENT**

**THE CHIEF OFFICER LAND PLANNING AND HOUSING MOMBASA COUNTY ..... 5<sup>TH</sup> RESPONDENT**

**AND**

**NATIONAL ENVIRONMENT MANAGEMENT AUTHORITY . INTERESTED PARTY**

**THE NATIONAL LANDS COMMISSION ..... INTERESTED PARTY**

**RULING**

1. The application is dated 3<sup>rd</sup> March 2024 and is brought under Section 63 (a) (c) and (d) of the [Civil Procedure Act](#), Section 3A of the Section 5 of the [Judicature act](#) seeking the following orders;

1. That the 1<sup>st</sup> 2<sup>nd</sup>, and 3<sup>rd</sup> Respondents be ordered to purge the contempt of Court order or be committed to civil jail for contempt of this Honourable Court's order.



2. That costs of this suit application be provided for:
2. It is supported by the annexed Supporting Affidavit of Peter Wango Ngugi and based on the grounds that vide ruling of this court dated 22<sup>nd</sup> February, 2023 the court gave a conservatory order restraining the 1<sup>st</sup>, 2<sup>nd</sup>, and 3<sup>rd</sup> Respondent by themselves, their agents servants, employees and/or any other person acting on their instructions from continuing with construction on the parcel of land located at Kwa Mwanzia in Jomvu Subcounty within Mombasa county That the extracted order was served upon the 1<sup>st</sup>, 2<sup>nd</sup>, and 3<sup>rd</sup> Respondents. That the said order has not been discharged, varied or set aside. That the said order had a penal notice requiring compliance and obedience. That the 1<sup>st</sup>, 2<sup>nd</sup>, and 3<sup>rd</sup> Respondents in utter disregard and disobedience have refused to stop the construction and have not complied with the order of the Court. That the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Respondents have not complied with the said order which order required compliance and obedience and they have continued with the construction in utter disregard of the said order. That it is in the interest of justice and for the dignity and respect of the Court to be upheld that the 1<sup>st</sup>, 2<sup>nd</sup>, and 3<sup>rd</sup> Respondents be ordered to purge the contempt and/or be committed to civil jail for contempt of court.
3. This court has considered the application therein. The application is based on the grounds that the court on the 27<sup>th</sup> August 2018 issued orders compelling Land Registrar Mombasa to register issue a provisional title deed in respect of plot CR- Number 21646 number 1881 section II/MN infavour of the Applicant Alphonse Akeyo. The said Order was served on the Respondents on 18<sup>th</sup> January 2019. The Registrar of Lands has continued to be in breach of the said order. The *Black's Law Dictionary (Ninth Edition)* defines contempt of court as:
- " Conduct that defies the authority or dignity of a court. Because such conduct interferes with the administration of justice, it is punishable usually by fine or imprisonment."
4. This application is anchored on section 63 (c) of the *Civil Procedure Act* which provides that;
- 63)
- " In order to prevent the ends of justice from being defeated, the court may, if it is so prescribed: -
- (c) Grant a temporary injunction and in case of disobedience commit the person guilty thereof to prison and order that his property be attached and sold"
5. Pursuant to section 63(c) aforesaid, it is provided under order 40 Rule 3(1) of the *Civil Procedure Rules* that;
- 3(1)
- " in case of disobedient breach of any such terms, the court granting an injunction may order the property of the person guilty of such disobedience or breach to be attached and may also order such person to be detained in prison for a term not exceeding six months unless in the meantime the court directs his release"
6. In the case of *Teachers Service Commission v Kenya National Union of Teachers & 2 others* (2013) eKLR the court stated as follows;
- " The reason why courts will punish for contempt of court then is to safe guard the rule of law which is fundamental in the administration of justice. It has nothing to do with the integrity



of the judiciary or the court or even the personal ego of the presiding judge. Neither is it about placating the Applicant who moves the court by taking out contempt proceedings. It is about preserving and safeguarding the rule of law.”

7. Contempt of court is a grave matter as it concerns the dignity of the court when law and order is threatened and the fact that liberty and fundamental rights and freedoms of the alleged contemnor are at stake. The standard of proof is higher than proof on a balance of probabilities but not as high as proof beyond reasonable doubt. In the case of *Republic v Ahmad Abolfathi Mohammed & Another* (2018) eKLR, the Supreme Court stated as follows:

“ We are also conscious of the standard of proof in contempt matters. The standard of proof in cases of contempt of Court is well established. In the case of *Mutitika v. Baharini Farm Limited* [1985] KLR 229, 234 the Court of Appeal held 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.’

The rationale for this standard is that if cited for contempt, and the prayer sought is for committal to jail, the liberty of the contemnor will be affected. As such, the standard of proof is higher than the standard in civil cases. This power, to commit a person to jail, must be exercised with utmost care, and exercised only as a last resort. It is of utmost importance, therefore, for the respondents to establish that the alleged contemnor’s conduct”

8. In the instant case it is on record that an order was issued on the 22<sup>nd</sup> February 2023. I have perused the affidavit of service by one Musyoka Samuel dated 3<sup>rd</sup> March 2023 and the 1<sup>st</sup> Respondents was not personally served and the persons served refused to sign. I find that this service is improper. The 2<sup>nd</sup> and 3<sup>rd</sup> Respondent state that they are not in control of the construction as the land is owned by the Constituency Development fund Mombasa and they are not the correct party to be sued. I find that the same raises triable issues and what is curious in this matter is that the order was issued over one year ago and the main petition has never been heard! I find that this application is not merited and I dismiss it with costs.

9. It is so ordered.

**DELIVERED, DATED AND SIGNED AT MOMBASA THIS 23<sup>RD</sup> DAY OF JULY 2024.**

**N.A. MATHEKA**

**JUDGE**

