



**Wangonde & 9 others v Wangonde (Environment and Land Appeal E005 of 2024) [2024] KEELC 5885 (KLR) (20 August 2024) (Ruling)**

Neutral citation: [2024] KEELC 5885 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NANYUKI  
ENVIRONMENT AND LAND APPEAL E005 OF 2024**

**AK BOR, J**

**AUGUST 20, 2024**

**BETWEEN**

**PRISCILLA WARUKIRA WANGONDU ..... 1<sup>ST</sup> APPELLANT**  
**MOSES MAINA WANGONDU ..... 2<sup>ND</sup> APPELLANT**  
**PATRICIAH WANGECHI WANGONDU ..... 3<sup>RD</sup> APPELLANT**  
**THOMAS WANG'OMBE WANGONDU ..... 4<sup>TH</sup> APPELLANT**  
**HOSEA MWANGI WANGONDU ..... 5<sup>TH</sup> APPELLANT**  
**JENNIFER WAMBUI WANGONDU ..... 6<sup>TH</sup> APPELLANT**  
**SIMON MURIITHI WANGONDU ..... 7<sup>TH</sup> APPELLANT**  
**WINFRED MUTHONI WANGONDU ..... 8<sup>TH</sup> APPELLANT**  
**DAVID MAINA WANGONDU ..... 9<sup>TH</sup> APPELLANT**  
**GRACE WANJIRU WANGONDU ..... 10<sup>TH</sup> APPELLANT**

**AND**

**TERESIA WANGUI WANGONDU ..... RESPONDENT**

**RULING**

1. The Appellants brought the application dated 22/3/2024 seeking stay of execution of the orders issued on 21/3/2024 by Hon. M.N. Osoro in Nyahururu CM ELC Case No. 56 of 2023 pending hearing and determination of the appeal. They also sought to stay the proceedings before the Chief Magistrate Court at Nyahururu.
2. The application was made on the grounds that when this matter came up for mention on 21/3/2024, the trial court erroneously held that it was coming up for notice to show cause why the Appellant



should not be held to be in contempt of the orders that the court issued on 7/12/2023 pursuant to the application dated 14/2/2024 filed by the Respondent. The trial Magistrate proceeded to find the Appellants to be in contempt and directed that a warrant for their arrest was to issue. The Appellants' contention is that no notice to show cause had ever been served on them and that the application dated 14/2/2024 had not been heard or determined owing to the fact that the trial court had not sat since 6/2/2024. Further, that the application dated 14/2/2024 was not served on their advocate who had already entered appearance on 8/2/2024 and but was instead served upon some of the Appellants personally.

3. The other ground is that the Respondent's advocate served on the Appellants' advocate a mention notice for 21/3/2024 which did not give the purpose of the mention. The notice indicated that the Appellants could appear in person or through their representative. When the Appellants' advocate appeared in court and sought time to respond to the application dated 14/2/2024, the court declined to allow the Appellants' advocate time and indicated that the Appellants were required to be in court in person and since they were not, they were found to be in contempt and a warrant for their arrest was issued. The Appellants contend that they were condemned unheard.
4. The other ground raised by the Appellants is that the Respondent misrepresented to the court that she was the wife of the Appellants' father who died on 27/10/2023 yet she had been employed as a house help to assist their father after their mother died. They stated that she was still married to someone else and made certain allegations touching on the transfer of their late father's properties to the joint names of their father and the Respondent just before he died.
5. The application was supported by the affidavit sworn by the 6<sup>th</sup> Appellant, in which she made averments along the same lines as those set out on the face of the application. Ms. Wangondu annexed copies of the authority to plead, the application dated 14/2/2024, order made on 21/3/2024, notices showing that Hon. M. Osoro of Court No. 4 was not sitting on various dates as well as some medical records. They also annexed copies of title deeds and a copy of the death certificate.
6. The Respondent swore the replying affidavit on 22/4/2024 opposing the application in which she averred that the Appellants had not met the principles for the grant of the orders they seek. She added that the Appellants had not denied that the application citing them for contempt of the court orders dated 14/2/2024 was served on them directly. She went further to explain that at the time of service the Appellants' advocate had not served the Respondent's advocate with the notice of appointment of advocate. Further, that the Appellants had not responded to the application or taken steps to obey the orders issued on 14/12/2023 which is the basis why the court issued an order for their committal to civil jail. She deponed that the Appellants chased her chaotically from her matrimonial home after the death of her husband and that they threatened to kill her and grab her personal effects and those of her children. She exhibited copies of birth certificates for her children and photographs of the Appellants which she claimed depicted that they were having a good time in her home in her absence in December 2023. She maintained that she was legally married to the Appellants' late father and that this fact was well known to the Appellants. She annexed copies of the mention notice, certificate of marriage, photographs as well as affidavits that she swore regarding some parcels of land.
7. The court directed parties to file submissions on the application. The Appellants submitted that the Respondent's application for injunction dated 27/11/2023 had not been heard and that while awaiting inter partes, the Respondent filed the application dated 14/2/2024 seeking to have the Appellants cited for contempt of court for disobeying the orders of 7/12/2023. They maintained that the contempt application did not have a hearing date and that no directions had been given on that application. They submitted that the mention notice dated 13/3/2024 indicated that the suit and not the application dated 14/2/2024 was coming up for mention on 21/3/2024. Owing to the confusion, the Appellants



had not filed a response to the application and when they sought time to file a reply the trial court insisted that the Appellants were supposed to attend court in person. They maintained that they were punished without being afforded an opportunity to be heard.

8. The Appellants relied on Order 42 Rule 6 of the Civil Procedure Rules in urging that the application was brought without delay and that substantial loss would result to them since their freedom of movement stood to be infringed if they were locked up on grounds of being in contempt of orders which in the first place they had not defied. They urged that their appeal would be rendered nugatory since by the time it is heard, they will have served six months in jail for contempt.
9. They urged that they had met the conditions for stay and had an arguable appeal. They relied on the decision in *Githiga & 5 Others v Kiru Tea Factory Company Ltd* [2023] eKLR where the Supreme Court stated that due to the quasi-criminal nature of contempt proceedings and the gravity of the consequences, courts were required to adhere to the principles of natural justice, procedural fairness and the right to a fair hearing because in contempt proceedings the liberty of the subject was at stake. Further, that in enforcing compliance with lawful court orders, the procedure adopted by the court must be fair and reasonable with an opportunity being given to the contemnor to defend himself. The court also mentioned that the standard of proof in contempt matters was higher than that in normal civil cases.
10. The Appellants maintained that they were not guilty of contempt since by the time the court issued orders on 7/12/2023 to the effect that the Respondent was not to be evicted from the home, she had already left the home without being chased away. They explained that the photographs which the Respondent exhibited were taken during their father's burial, since their father died on 27/10/2023 and was buried in the first week of November 2023. Regarding the Respondent's contention that she had been denied access to her home, it was the Appellants submission that there was no letter requesting to be given the keys to the house.
11. On her part, the Respondent submitted that the Appellants had disobeyed the orders issued by the court on 7/12/2023. She submitted that she filed the application dated 14/2/2024 for contempt and the Appellants were served in the proper manner but they overlooked the application and did not appear in court which led the court to hold that they were in contempt of the orders issued on 7/12/2023 following which a warrant for their arrest was issued. Further, she submitted that despite being served with the application and the interim orders, the Appellants had willfully disobeyed that order and that after being evicted from her matrimonial home her items remained locked in her house. She was emphatic that the Appellants were served with the order made on 7/12/2023 as well as the application dated 14/2/2024 citing them for contempt of those orders and that they were supposed to appear in person. She added that to date the Appellants had not taken any steps to obey the court orders.
12. The Respondent made further submissions regarding stay of execution and cited several authorities. On stay of proceedings, the Respondent submitted that it was a drastic order that ought to be given only in exceptional circumstances because it restricted the right of a party to be heard. She maintained that there were no special circumstances disclosed by the Appellants for the court to grant the orders sought.
13. The issues for determination are whether the court should stay execution of the orders issued on 21/3/2024 by Hon. M.N. Osoro in Nyahururu CM ELC Case No. E056 of 2024 pending hearing and determination of the appeal, and whether this court should stay the proceedings in that suit.
14. The crux of the dispute is that the Respondent claims that the Appellants evicted her and her children from her home after their father died and that they have denied her access to her matrimonial home



where her personal belongings are. The dispute pits the Respondent, who claims to be the widow of the Appellants' late father, against the Appellants who seem to deny that she was the wife of their father. This is not the right forum to ventilate those issues based on this court's jurisdiction.

15. What this court is called upon to determine at this stage is whether, pending the hearing of the appeal, it should grant stay of execution of the orders for the arrest of the Appellants on allegations that they were in contempt of court and stay the proceedings in the magistrate's court. The Respondent contends that the order in question and the application for contempt were duly served upon the Appellants but that they disobeyed those orders. What the Respondent needed to show is evidence that the court order containing the penal notice was served upon the Appellants as well as the application for contempt. The Respondent did not attach the affidavits of service confirming that service was effected on the Appellants. This court has not seen the ruling made by the trial court on the application for contempt for it to ascertain whether indeed there was disobedience of the court order and whether the Appellants were afforded a hearing. From the Replying Affidavit filed by the Respondent, it is difficult to establish when it is that the Respondent claims to have been chased away from her matrimonial home and what the Appellants did or failed to do in the terms of compliance with the court order.
16. Since the Appellants would be deprived of their liberty if they were to be arrested, the court is satisfied that it ought to grant stay of execution of the orders issued on 21/3/2024 for the arrest of the Appellants.
17. The court grants stay of execution of the orders issued on 21/3/2024 for the arrest of the Appellants after they were found to be in contempt on condition that they grant the Respondent and her children access to her home and that they appear before the Learned Chief Magistrate within 15 days of this ruling to ascertain that they have purged the contempt they were found by the trial court to have committed.
18. The court declines to stay the proceedings before the trial court. It is in the interest of justice that the main dispute before the trial court is heard and determined expeditiously.

Each party will bear its costs.

**DELIVERED VIRTUALLY AT NAIROBI THIS 20<sup>TH</sup> DAY OF AUGUST 2024.**

**K. BOR**

**JUDGE**

In the presence of: -

Ms. Wanjira Mwaniki for the Appellants

Ms. Gladys Wanjiru for the Respondent

Court Assistant: Diana Kemboi

