



Githunguri Njiru Farm (1966) Ltd v Nairobi County Government & 174 others (Environment & Land Case 368 of 2015) [2024] KEELC 6398 (KLR) (30 September 2024) (Ruling)

Neutral citation: [2024] KEELC 6398 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 368 OF 2015
LN MBUGUA, J
SEPTEMBER 30, 2024**

BETWEEN

GITHUNGURI NJIRU FARM (1966) LTD PLAINTIFF

AND

NAROBI COUNTY GOVERNMENT & 174 OTHERS DEFENDANT

RULING

1. There are 2 pending contempt of court applications filed by the Plaintiffs, one dated 22.2.2024 citing Kados Paul Kaguathi as the contemnor, and the second one is dated 6.6.2024 citing Hon. Arthur Sakaja Johnson, Mr. Stephen Gathuita Mwangi and Mr. Patrick Analo Akivaga as the contemnors.

The Application dated 22.2.2024

2. The applicants contend that one Kados Paul Kaguathi is in contempt of this court's orders of 14.12.2015 and 31.7.2017, thus he should be committed to civil jail or to serve any other sanction as the court may deem fit. They seek an order declaring that the acts by the Defendants in interfering with the suit land is illegal and a direct affront to the process of this court. They contend that the acts by Paul Kaguathi Kados to threaten, intimidate and attack the officials of the Plaintiff namely; Margaret Wangui Mwaura, Daveday Kimotho Mbugua, Peter Boro Gachau, David Ruthia Kabogo and Stephen Kamau Waweru constitutes an attack on the integrity of this court and its processes.
3. The application is premised on grounds on its face and on the supporting affidavit sworn on 22.2.2024 by David Kabogo. He avers that this court issued injunctive mandatory orders stopping any construction on the suit land, but Mr. Kados Paul Kaguathi who is a local politician in cahoots with the 1st Defendant purported to conduct a public participation exercise on the suit land whose objective is to commence construction of a market on the said land. It is averred that Mr. Kados Paul Kaguathi attended the said meeting in person and gave views to the extent that the suit land is available and belongs to the public.



4. The application is opposed by the 1st Defendant vide the replying affidavit sworn on 24.5.2024 by its physical planner one Dominic Mutegi. He avers that Hon. Kados Paul Kaguathi is a member of the County Assembly representing Mihang'o ward.
5. He contends that parcel LR NO. 6845/16 &9 was subdivided in 1983 into several subplots whereby, portions of the property were surrendered to the government through the 1st Defendant. That the government only sought to get views from the public on what future developments should be undertaken.
6. He avers that the subsisting court order succinctly provided that the Defendants may not subdivide, transfer, sell or further develop the suit properties adding that no construction has been undertaken.
7. He also avers that Hon. Kados Paul Kaguathi is neither an employee of the 1st Defendant nor a party to the suit.

The Application dated 6.6.2024

8. In the above application, the plaintiffs seek an order that Hon Arthur Sakaja Johnson, the Director, Building Services Nairobi County; Mr. Stephen Gathuita Mwangi and Mr. Patrick Analo Akivaga be found to be in contempt of this court's orders of 14.12.2015 and 31.7.2017 and commit them to civil jail or to serve any other sanction as the court may deem fit. They aver that the contemnor's acts in interfering with the suit land is illegal and a direct affront to the process of this court.
9. The application is premised on grounds on its face and on the supporting affidavit sworn on 6.6.2024 by Daveday Kimotho. He avers that despite this court issuing a mandatory orders stopping any construction on the suit land, the intended contemnors in cahoots with the local member of County Assembly have commenced construction on the suit land in express violation of the said orders. Thus the Plaintiffs will continue to suffer unfairly at the hands of the illegal and contemptuous actions of the Respondent.
10. No responses were filed in respect of the second application. Further, despite this court's directions of 22.7.2024 that the pending applications be canvassed by way of written submissions, none of the parties filed submissions.
11. I have considered the issues raised herein. Vide this court's orders of 14.12.2015, directions were given for the Defendants not to subdivide, transfer, sell or further develop the suit properties. There were however no orders given on 31.7.2017 in so far as the proceedings in the file are concerned.
12. The persons who have been cited for contempt of court orders are; Mr. Kados Paul Kaguathi, Hon. Arthur Sakaja Johnson, the Director, Building Services Nairobi County; Mr. Stephen Gathuita Mwangi and Mr. Patrick Analo Akivaga. All the alleged contemnors are not parties in the suit. Therefore, it was imperative that they be served with the instant applications in the interest of natural justice.
13. In that regard, the application dated 22.2.2024 was served upon Mr. Kados Paul Kaguathi and a replying affidavit was filed. However, the affidavit of service sworn on 11.6.2024 by Willis Agayi clearly indicates that Mr. Stephen Gathuita Mwangi and Mr. Patrick Analo Akivaga were not served with the application dated 6.6.2024. Hon Sakaja was however served on whatsapp. In the circumstances, no orders can be issued against the two officers, Mr. Stephen Gathuita Mwangi and Mr. Patrick Analo Akivaga.
14. Can the other officers Kados Paul Kaguathi and Hon. Arthur Sakaja Johnson be cited for contempt of court orders?. Obedience of court orders is one of the cornerstones of a civilized society and protects



the dignity and authority of the court. In Samuel M. N. Mweru & Others v National Land Commission & 2 Others [2020] eKLR the court stated that;

“If courts are to perform their duties and functions effectively and remain true to the spirit which they are sacredly entrusted with, the dignity and authority of the courts has 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 a civilized life in the society.”

15. But again, courts have held that for a person to be cited for contempt, it must be evident that the court order was deliberately disobeyed. In the Court of Appeal case of Micheal Sistu Mwaura Kamau v Director of Public Prosecutions & 4 others [2018] eKLR it was stated that;

“...It is trite that to commit a person for contempt of court, the court must be satisfied that he has wilfully and deliberately disobeyed a court order that he was aware of... Secondly, ... to sustain committal for contempt of court, the order of the court that is alleged to have been deliberately disobeyed must be clear and precise so as to leave no doubt as to what a party was supposed to do or to refrain from doing. Lastly, the standard of proof in committal proceedings is higher than proof on a balance of probabilities, though not as high as proof beyond reasonable doubt...”

16. Courts have on several occasions pronounced that contempt proceedings are quasi criminal in nature due to the committal to civil jail element. As such, for courts to hold persons in contempt, it ought to be crystal clear that court orders were disobeyed.
17. The orders of 14.12.2015 indicated that the defendants were barred from “ subdividing, selling or developing the suit land”. At paragraph 7 of the affidavit in support of the application dated 22.2.2024, the transgressions of Paul Kaguathi are captured as follows; “That the respondent in cahoots with the defendant herein the county government has purported to conduct a public participation exercise on the suit land whose objective is to commence constructions of a market in the land subject of this court.”
18. The above is certainly not an act which can be construed as subdividing, selling or developing the suit land.
19. As for Hon Arthur Sakaja, the paragraph which tends to implicate him is no. 3 in the supporting affidavit in the application dated 6.6.2024 which reads as follows; “That the respondent in cahoots with the local MCA have commenced construction on the suit land this is grave transgression of the orders of this court.”
20. That again doesn’t give a crystal clear account of the acts and or omissions of Hon Sakaja which can be construed as disobedience.
21. That notwithstanding, I can see the photographs annexed to the latest application indicating that that there is a proposed project, but the suit property is not indicated. With this kind of scenario, the applicants should be agitating to have the suit heard speedily on merits so that a final decision is given in the matter instead of sustaining the suit via interlocutory orders given 10 years ago!.
22. In the end, both applications are hereby dismissed and each party is directed to bear their own costs of the applications dated 22.2.2024 and 6.6.2024. Considering that pretrial directions were given way back on 11.7.2018, then the parties should focus on the substantive issues by getting ready for the main trial.



**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 30TH DAY OF SEPTEMBER, 2024
THROUGH MICROSOFT TEAMS.**

LUCY N. MBUGUA

JUDGE

In the presence of:-

Kivuti Mungai and Kabue Thume for Plaintiffs

Mugo holding brief for Cecil Miller for 1st Defendant

Mburu for the Interested Party

Makori for 1st – 3rd Defendants

Odabu for 124 Defendants

Lea holding brief for E. Willis for 175-232 Defendants

Wakwaya for 3rd & 159 – 168 Defendants

Court Assistant: Joan

