



Morjaria & 2 others v Nairobi City County (Environment & Land Case E110 of 2023) [2025] KEELC 3561 (KLR) (30 January 2025) (Ruling)

Neutral citation: [2025] KEELC 3561 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE E110 OF 2023**

**JG KEMEI, J
JANUARY 30, 2025**

BETWEEN

**LALITA MORJARIA 1ST PLAINTIFF
VIJAY MORJARIA 2ND PLAINTIFF
BHAVIN MORJARIA 3RD PLAINTIFF**

AND

NAIROBI CITY COUNTY DEFENDANT

RULING

[In respect to the Applicant’s application dated the 11/11/24 seeking orders for contempt and committal to civil jail]

1. The Applicants moved this Court under the Provisions of Section 5[1] of the Judicature Act Cap 8 of the Laws of Kenya, Section 3A of the Civil Procedure Act , Order 51 Rule 1 of the Civil procedure Rules and all the enabling provisions of the law seeking orders; that the Court do cite the Respondents, namely the County Secretary of the Nairobi City County and the County Executive, Built Environment and Urban Planning for contempt of the orders issued on 26/10/23 due to their deliberate disobedience of the said orders for continuing construction taking possession and granting third parties access and possession of the Plaintiffs property LR No 209/13426 formerly 209/12786.
2. In addition, the Applicants seek an order of committal against the named officials of the Respondent committing them to civil jail for a period deemed appropriate by this Hon Court .



3. The application is premised on the grounds annexed thereto and the supporting affidavit of vijay Morjaria who deposed that the Respondent is in breach and disobedience of the Court orders aforesaid despite service of the same. That despite being fully aware of the binding nature of the said orders, the Respondent has deliberately refused to comply and has continued to authorize and permit construction on the property, and facilitated unauthorized access and possession of the suit land. That its continued non-compliance puts the Applicant's rights in the property at great risk. Moreover, the actions of the Respondent demonstrate an intentional and willful refusal to honour the orders of the Court, which actions amount to contempt of court rendering them liable to civil jail. It was further averred that the intentional refusal of the Respondent to comply with the Court orders undermines the dignity and authority of the Court.
4. In support of their application, the Applicants have attached a number of photographs marked as vM 3[a] and [b] showing the state of the property before and after the commencement of the unauthorized construction and encroachment.
5. The Respondent filed a replying affidavit sworn on 5/12/24 by one Godfrey Akumali, the County Secretary of Nairobi City County, on his own behalf and on behalf of Patrick Mbogo, the County Executive Committee Member in charge of Build Environment and Urban Planning under the authority to plead dated the 5/12/24 and filed on record.
6. The deponent avowed that the application is misconceived, malicious and a non starter because it is based on gross misapprehension of relevant facts and the applicable law regarding the possession and use of the suit land. He faulted the Applicants for failing to demonstrate evidence linking the Respondent to the construction and encroachment of the suit land. He termed the Applicants claim that the Respondent has entered and taken possession and carried out construction on the land as unfounded and baseless. Further that the Applicants have failed to produce evidence such as tender documents, building approvals or any reports from the Built Environment and Urban Planning. In addition, the deponent contended that it has not connived or authorized any third parties to carry out the alleged construction works on the suit land. He termed the pictorials supplied by the Applicants as lacking in probative value in the absence of a project signboard that mentions the Respondent either as the employer or contractor at the alleged construction site.
7. In closing, he deposed that the impugned Court orders issued by the Court on 27/10/23 are unenforceable against the Respondent since the alleged ongoing developments have been undertaken by other actors without the authority and or control of the respondent.

Directions of the Court

8. On the 10/12/2024 the parties elected to canvass the application by way of written submissions. The written submissions of the Applicants were filed by the law firm of Maina & Macharia Advocates LLP while those of the Respondent were filed by the law firm of L M Njeru & Co Advocates. I have read and considered the written submissions.



Analysis and Determination.

9. The key issue falling for determination is whether the Respondent is guilty of contempt of this Court's orders issued on 26/10/23 and secondly whether the named officials of the Respondent should be punished for contempt of Court .
10. Black's Law Dictionary, 9th Edition at page 360 defines contempt as follows;

“Contempt is a disregard of, disobedience to, the rules, or Orders of a legislative or judicial body, or an interruption of its proceedings by disorderly behaviour or insolent language, in its presence or so near thereto as to disturb the proceedings or to impair the respect due to such a body.”
11. Contempt is therefore necessary for the maintenance of law and Order in a civilized society and also so that the dignity of the Courts is upheld. It is trite law that every person against whom a Court Order is made has unqualified obligation to obey the Order however unpalatable the Order may be until or unless the Order is discharged or set aside.
12. This was the dicta pronounced by the Court in the case of *Hadkinson v Hadkinson*, [1952] ALL ER 567 as follows;

“It is the plain and unqualified obligation of every person against, or in respect of, whom an order is made by a Court of competent jurisdiction to obey it unless and until that 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 an order believes it to be irregular or even void.
13. Similarly, Lord Cottenham, L.C., had this to say in the case of *Chuck v Cremer* [1] [1 Coop. temp.Cott 342]:

“A party, who knows of an order, whether null or valid, regular or irregular, cannot be permitted to disobey it... It would be most dangerous to hold that the suitors, or their solicitors, could themselves judge whether an order was null or valid- whether it was regular or irregular. That they should come to the Court and not take upon themselves to determine such a question. That the course of a party knowing of an order, which was null or irregular, and who might be affected by it, was plain. He should apply to the Court that it might be discharged. As long as it exists it must not be disobeyed.”
14. Another compelling reason for contempt orders is stated in the case of *Teachers Service Commission v Kenya National Union of Teachers & 2 others* [2013] eKLR where Ndolo J observed as follows:

“The reason why Court s will punish for contempt of Court is to safeguard 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”



15. The constitutional imperative of contempt was captured in the case of Kenya Human Rights Commission v Attorney General and Another [2018] eKLR, the Court observed as follows:

“ Article 159 of *the Constitution* recognizes judicial authority of the Courts and tribunals established under *the Constitution*. Courts and Tribunals exercise this authority on behalf of the people and for that reason they must not only be respected and obeyed but must also be complied with in order to enhance public confidence in the Judiciary which is vital for our Constitutional democracy. The Judiciary acts in accordance with the laws [Article 160] and exercises its authority through its judgments, decrees and orders or directions to check government power, keep it within the Constitutional stretch, hold the Legislature and Executive to account and thereby secure the rule of law, administration of justice and protection of Human rights. For that reason, the authority of the Courts and dignity of their processes are maintained when Court orders are obeyed and respected thus Courts become effective in the discharge of their Constitutional mandate...

16. It is therefore a fundamental rule of law that Court orders be obeyed and where an individual is enjoined by an order of the Court to do or refrain from a particular act, he has a duty to carry out that order. The Court has a duty to commit that individual for contempt of its orders where he deliberately fails to carry out such orders.

17. Section 63[C] of the *Civil Procedure Act* provides as follows;-

“In order to prevent the ends of justice from being defeated, the Court may, if it is so prescribed—

[a]

[b]

[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.”

21. Order 40 rule 3 of the Civil Procedure Rules provides the consequences of contempt which includes in case of disobedience or breach of any terms of Court Order, an order for 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 6 months unless the Court directs otherwise. This goes to show that the punishment for contempt is not light, other than attachment of the property of the guilty contemnor, the liberty of the contemnor is also at stake.

22. The standard of proof in such proceedings was articulated by the Court of Appeal in the case of Mutitika v Baharini Farm Limited [1985] KLR 227 as follows:

“... In our view the standard of proof in contempt proceedings must be higher than proof on a balance of probabilities, almost but not exactly, beyond reasonable doubt. We envisage no difficulty in Courts determining the suggested standard of proof. 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 offences which can be said to be quasi-criminal in nature...”

22. For an application for contempt to succeed the Applicant is duly bound to prove the following 4 elements; -



- a. the terms of the Order [or injunction or undertaking] were clear and unambiguous and were binding on the Defendant;
 - b. the Defendant had knowledge of or proper notice of the terms of the Order;
 - c. the Defendant has acted in breach of the terms of the Order; and
 - d. the Defendant's conduct was deliberate.
22. It is not in dispute that the orders were clear and free from any ambiguity as to its terms and obligations imposed on the respondent. It is also not in dispute that the said orders were issued in the presence of the respondent's Counsel. In addition, the record bears witness that the Applicants served the orders upon the Respondent and its legal Counsel as can be demonstrated vide the affidavit of service marked as vM2. In any event the Respondent has not alleged any ambiguity or lack of knowledge or notice of the existence of the orders.
 23. The issue then remains whether the Respondent has acted in breach and deliberately disobeyed the terms of the orders. It is the case of the Applicants that they have while the Respondent has denied any involvement with the alleged encroachment, fencing and construction of the property.
 24. The Applicants averments have been backed with photographs marked vM-3[a] and vM-3[b] showing the status of the property before and after the filing of the suit. The Respondent has denied the claim of the Applicant and has urged the Court to find that there is no iota of evidence linking it to the said construction. Without adducing any evidence whatsoever, the Respondent has attributed the construction to an undisclosed member of the County Assembly [MCA].
 25. The Court has perused the defence filed by the Respondent dated the 11/12/23. In its defence, the Respondent has made several averments contained in paras 4-11 that it is the registered owner of the suit land; it conceded that it is in possession as of right; it is carrying out the construction on the suit land as of right as a land owner ;it has fenced the suit land using iron sheets and that it has erected a signboard to signify the said construction; that the Respondent is in bonafide possession of the suit land and its entry into the property is legal.
 26. Parties are bound by their pleadings and the Respondent cannot be allowed to depart from its averments in its defence. The Court takes notice that the defence is dated the 11/12/23 while the orders of the Court were issued on 26/10/23 and therefore by the time of making the averments in the defence the Respondent was aware of the orders and the need to comply and further its implications for non-compliance. It is manifestly clear that the evidence adduced by the Applicants in form of pictorials is in concurrence with the pleadings of the respondent. The Respondent has admitted that it has encroached onto the land, fenced it with iron sheets, commenced construction and continues in occupation contrary to the orders of the Court issued on the 26/10/23.
 27. The persons cited in the contempt proceedings have stated under oath that they are employees of the respondent, for whom the orders were directed at.
 28. In the case of Michael Sistu Mwaura Kamau v Director of Prosecutions & 4 others [2018] EKLR Courts have held that for a person to be cited for contempt it must be evidence that the Court order was deliberately disobeyed. This Court is satisfied that the Respondent has disobeyed the orders of the Court issued on 26/10/23 and therefore has committed contempt of Court.

Disposal orders

22. In the end, I allow the application and make the following orders;



- a. Godfrey Akumali, the County Secretary of the Respondent and Patrick Mbogo, the County Executive Committee Member in charge of Built Environment and Urban Planning of the Respondent are found to be in contempt of the Court orders issued on 26/10/23.
- b. They are hereby directed to purge the contempt within the next 20 [twenty] days and comply with Court order.
- c. In default of the compliance with b] above a notice to show cause be and is hereby issued against them to appear in person before this Court on the 27/2/25 to show cause why they should not be committed to civil jail for the disobedience of the Court orders issued on 26/10/23.
- d. Costs shall be in favour of the Applicants.

23. Orders accordingly

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 30TH DAY OF JANUARY 2025 THROUGH MICROSOFT TEAMS.

Delivered Online in the presence of:

Ms. Juma holding brief for Kamau Muturi for Applicants

Ouma holding brief for Sonaiya for defendant

Yvette – Court Assistant

J G KEMEI

JUDGE

