



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU**

**ELRC PETITION NO. E022 OF 2021**

**AGGREY WAFULA..... PETITIONER**

**-VERSUS-**

**PUBLIC SERVICE COMMISSION.....1<sup>ST</sup> RESPONDENT**

**PRINCIPAL SECRETARY,MINISTRY OF**

**LANDS AND PHYSICAL PLANNING..... 2<sup>ND</sup> RESPONDENT**

**CABINET SECRETARY MINISTRY OF LANDS**

**AND PHYSICAL PLANNING..... 3<sup>RD</sup> RESPONDENT**

**ANNE W.KARITHI, DIRECTOR HUMAN RESOURCE**

**MANAGEMENT AND DEVELOPMENT, .....**

**MINISTRY OF LANDS AND PYSICAL PLANNING.....4<sup>TH</sup> RESPONDENT**

**DAVID NYANDORO.....5<sup>TH</sup> RESPONDENT**

**MINISTRY OF LANDS AND PHYSICAL PLANNING...6<sup>TH</sup> RESPONDENT**

**R U L I N G**

1. Before me for determination is the Petitioner/applicant’s Application dated 6<sup>th</sup> October, 2021, filed under certificate of urgency on the 7<sup>th</sup> October, 2021 and brought pursuant to the Inherent powers of the Court, section 5 of the Judicature Act, section 3,3A of the Civil Procedure Act, section 3,12 and 13 of the Employment and Labour Relations Court Act, Order 52 Rule 2(2) of the Rules of the Supreme Court of England 1965, the Contempt of Court Act and Part 8 of Civil Procedure Amendment No. 2, of 2021, laws of England as both amended from time to time and all other enabling provisions of law. The application seeks he following Orders;-

**1) Spent**

**2) THAT notice to show cause do issue to Farida Karoney, Cabinet Secretary, Ministry of Lands & Physical Planning, Nicholas Maraguri, Principal secretary ministry of Lands & Physical Planning, Anne W.Kariithi, Director Human Resource Management & Development Ministry of Lands & Physical Planning and David Nyandoro to show cause why they should not be committed to civil jail and ordered to pay sum of monies as penalty for being in contempt of Court orders given on 23<sup>rd</sup> September, 2021.**

**3) THAT this Honorable Court be pleased to issue a declaration that Farida Karoney, Cabinet Secretary, Ministry of Lands & Physical Planning, Nicholas Maraguri, Principal secretary ministry of Lands & Physical Planning, Anne W Kariithi, Director Human Resource Management & Development, Ministry of Lands & Physical Planning and David Nyandoro are in contempt of Court orders given on 23<sup>rd</sup> September, 2021.**

**4) THAT this Honourable Court be pleased to order that Farida Karoney, Cabinet Secretary, Ministry of Lands & Physical Planning, Nicholas Maraguri, Principal secretary ministry of Lands & Physical Planning, Anne W. Kariithi, Director Human Resource Management & Development, Ministry of Lands & Physical Planning and David Nyandoro be arrested**

and brought before this Honourable Court for sentencing and/or committal to civil jail for a period the court may determine and be ordered to personally pay the sum of monies the court may determine as a penalty for deliberately defying and violating the clear, concise and unequivocal orders of this Honourable Court given on 23<sup>rd</sup> September 2021.

5) THAT the Costs of this Application be borne personally by the 2,3,4 and 5<sup>th</sup> Respondents.

2. The application is based on the following grounds;-

a) That this Court made Orders on 23<sup>rd</sup> September, 2021 in the following terms; **in the meantime, pending the hearing of this application or further orders by this Honourable Court, the Respondents by themselves, their agents or servants be retrained from interfering with the duties of substantive chief land registrar, Ms. Sarah Mwendwa.**

b) That the said orders were made at the inter parte stage where all parties were represented, further that the said Court orders were extracted and served upon the Respondents.

c) Despite the issuance of the said Orders, the respondent have failed to comply with the said orders and continued interfering with the duties of the substantive chief land registrar and even went ahead to close her physical office and prevented her from discharging her duties.

d) Efforts to have the said contemnor purge the contempt fell on deaf ears.

e) The Petitioner thus urged this Court to hold the said Respondent in contempt of Court and punish them accordingly.

3. The Application is also supported by the Petitioner's affidavit deposed upon on 6<sup>th</sup> October, 2021 by **Aggrey Wafula**, which affidavit basically reiterates the ground in the Application.

4. The application is opposed by the Respondents through the replying affidavit deposed upon on the 25<sup>th</sup> October, 2021 by Luka M Kaburu the Assistant Director Human Resource management.

5. The Respondents admitted being served with the orders of the Court however they denied being in contempt of or ever interfering with the duties of the Land Chief registrar as alleged.

6. It is the Respondent position that the allegation that the chief registrar was denied entry to her office is without basis and justification as the Court Bailiff did not demonstrated how he established the door was locked and failed to furnish the Court with any evidence.

7. It was stated that Sarah N. Mwendwa, has never complained or communicated the alleged denial of entry to her office or any interference with her duties therefore.

8. The Respondents avers that it indeed received a letter from the petitioner on 5<sup>th</sup> October, 2021 however that they were given 24 hours to comply and being an office with bureaucracy, the implementation of the orders within the 24 hours was impossible in light of the need to consult within the wide range of their office.

9. The Respondent then stated that the chief land registrar was working for the respondent as late as 15<sup>th</sup> October, 2021 as evidenced by the internal memo dated 15<sup>th</sup> October, 2021 written to Sarah Mwenda and received on 18<sup>th</sup> October, 2021.

10. In further opposition, the 5<sup>th</sup> Respondent filed a replying affidavit sworn on 8<sup>th</sup> November, 2021 denying being in contempt of Court and denied ever being served with the Orders of Court of 23<sup>rd</sup> September, 2021.

11. The Respondent herein avers that Sarah Mwenda, the chief land registrar had earlier under her own name filed a petition in Nairobi ELRC CAUSE NO. 24 OF 2020 and obtained Orders in her favour on 13<sup>th</sup> March, 2020.

12. The 5<sup>th</sup> Respondent avers that he was appointed by the 6<sup>th</sup> Respondent as the senior Assistant Chief Land Registrar and all his communications were done as the Deputy Chief Land Registrar and at no point did he act as the chief land registrar.

13. He stated that his duties as the Deputy Chief Land Registrar are separate from the duties of the Chief Land Registrar as provided for under section 14 of the Land Registration Act.

14. He then stated that he has never usurped any powers and duties ordinarily performed by the chief land registrar, further that no evidence of such interference was produced before this Court. The 5<sup>th</sup> Respondent then urged this Court to decline the Application.

15. The application was disposed of by way of written submission.

#### **Petitioner/Applicants Submissions.**

16. It was submitted for the Applicant that application before Court is competent. It was argued that once orders are made by the Court, the

Receiving party needs to comply with the Orders as they are until the same are reviewed or set aside. The Petitioner submitted further that when the Contempt of Court Act was declared unconstitutional parties were enjoined to revert back to the laws which govern the contempt of Court prior to the enactment of the said Statute therefore avoiding any lacuna. In this the Petitioner cited the case of **Republic V Kajiado County & 2 others ex parte Kilimanjaro Safari Club Limited [2019] eKLR**.

17. It was argued that the supreme Court of England provides for several forms of violations that one can be held in contempt of Court and one of them was for breach of judgment, order or undertaking to do or abstain from doing an act and that in this form of committal there was no need to seek permission or leave before a party is cited for contempt. In this they cited the case of **Christine Wangari Gachigi V Elizabeth Wanjira Evans and 11 others [2014] eKLR**.

18. It was argued that, it is not in dispute that the orders of Court issued on 23<sup>rd</sup> September, 2021 were served upon the Respondent. The Respondent therefore ought to have filed an affidavit demonstrating how they have or intend to purge the contempt instead that an individual called Luka M Kaburu who is a stranger to the Petitioner swore an affidavit merely denying that the Respondent was in contempt when he was not the one cited for contempt neither does he have authority to respond to the contempt application thereof.

19. It was argued that even if the orders were not served upon the Respondents, the Respondents had knowledge of the same which is sufficient to hold them in contempt. In this they cited the case of **Simmer Plaza Limited V National bank of Kenya Limited [2015] eKLR**.

20. It was further submitted that the contemnors ought to be punished by the Court to safeguard the rule of law which is fundamental in the administration of justice. They buttressed their argument by citing the case of **Sam Nyamweya & 3 others V Kenya Premier League Limited & 2 others [2015] eKLR**.

21. The Petitioner therefore submitted that the contemnors continues with their interference with the duties of the land registry and therefore this Court should in the interest of justice and in the bid to preserve the dignity of the Court allow the application as prayed.

#### **Respondent's Submissions.**

22. It was submitted for the Respondents that for a party to succeed in an application for contempt the party must satisfy the court on four elements as cited in the case of **Samuel M. N Mweru and other V National Land Commission & 2 others [2020] eKLR** which are as follows;

- a) The terms of the order were clear, unambiguous and were binding on the defendant.
- b) The defendants had knowledge of or proper notice of the terms of order
- c) The defendant has acted in breach of the terms of the orders, and
- d) The defendants conduct was deliberate

23. It was then submitted that the orders issued on 23<sup>rd</sup> September, 2020 were unclear and ambiguous as they did not state the timelines within which the said orders were to be effected. It was argued that the time in which the respondents were given was short and the petitioner filed this contempt application prematurely.

24. The Respondent argued that the petitioner took photos indicating that there was interference with the duties of the chief land registrar however that the said photos lacked probative value as no time was indicate to affirm whether the same was done after the orders was issued or before. In this they cited the case of **Stephen K Sang and another V Chebii Boiyo and another [2021] eKLR**.

25. It was then argued that the Respondent did not disobey this Honorable Court orders and if there was any act that caused any interference with the said Court orders the same was not deliberately. In this they cited the case of **Samule N. M Mweru and others V National land Commission & 2 others [2020] eKLR**.

26. It was also submitted that the petitioner has failed to prove the allegation of contempt to warrant the issuance of the orders sought. Further that the petitioner lack *locus standi* to bring this Suit on behalf of Sarah Mwenda.

27. I have examined the averments and submissions of the parties herein. The gist of the application is that the contemnor have disregarded the orders issued by this court on 23<sup>rd</sup> September, 2021.

28. The applicants contend that the contemnors have in blatant disregard to the order continued to interfere with the duties of the substantive chief Land Registrar Ms. Sara Mwendwa.

29. The applicants further aver that the respondents have even closed the physical office of the said Sara Mwendwa and prevented her from discharging her duties.

30. The contemnors have denied interfering with Sara's discharge of duty and even indicated that she was busy doing her work as evidenced by the fact that as late as 15<sup>th</sup> October 2021 the applicant was working.

31. Indeed the respondent contemnor have demonstrated that the claimant was working in October 2021.

32. The applicants need to demonstrate in which manner the orders of the court have been disregarded.
33. They indicated that the applicant's office has been closed which the respondents deny.
34. The applicants in my view have not demonstrated that the respondents have committed the acts of contempt complained of.
35. I therefore find that the application as filed has not been proven. I dismiss it accordingly and order the main application to proceed.
36. Costs in the cause.

**RULING DELIVERED VIRTUALLY THIS 20TH DAY OF JANUARY, 2022.**

**HON. LADY JUSTICE HELLEN WASILWA**

**JUDGE**

**In the presence of:-**

Andati for 5<sup>th</sup> respondent – present

Ketter for petitioner – absent

Nyambura for AG – present

Court Assistant - Fred