



Baboon Project Kenya v County Government of Nakuru & 2 others (Environment & Land Petition E004 of 2024) [2025] KEELC 598 (KLR) (17 February 2025) (Ruling)

Neutral citation: [2025] KEELC 598 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT & LAND PETITION E004 OF 2024**

A OMBWAYO, J

FEBRUARY 17, 2025

CITATION: BABOON PROJECT KENYA VS COUNTY GOVERNMENT OF NAKURU AND NAKURU WATER AND SANITATION SERVICES COMPANY LIMITED AND 1 OTHERS

BETWEEN

BABOON PROJECT KENYA APPLICANT

AND

COUNTY GOVERNMENT OF NAKURU 1ST RESPONDENT

NAKURU WATER AND SANITATION SERVICES COMPANY LIMITED & ANOTHER & ANOTHER & ANOTHER & ANOTHER 2ND RESPONDENT

RULING

1. Baboon Project Kenya, hereinafter referred to as the applicant has come to this court for orders that leave be granted to the applicant to effect service of the application herein and any subsequent proceedings on Susan Kihika through the 1st Respondent and that leave be granted to the applicant to effect service of the application herein and any subsequent proceedings on James Nga'ng'a Gachathi through the 2nd Respondent. Messrs Susan Kihika being the Governor, officer, agent or servant of 1st respondent the he be committed to prison for a term not exceeding 6 months for failing to comply with the order of this court made on 26th September 2024. Moreover, that Messrs James Nga'ng'a Gachathi being the Managing director, officer, agent or servant of 1st respondent be committed to prison for a term not exceeding 6 months for failing to comply with the judgment of the court delivered on 26th September 2024.
2. The application is grounded on facts that on 26th September 2024, this Court delivered a judgment in Baboon Project Kenya vs County Government of Nakuru, National Environment Management Authority and The Attorney General/ ELC Petition E004 of 2024, wherein the court made an order inter alia of injunction restraining the Respondents permanently restraining any further refuse disposal



into Lake Nakuru Basin. The judgment was made in open court in the presence of all the parties. The 1st and 2nd respondents have been served with a certified copy of the order of the Court.

3. Notwithstanding being aware of the Order, the Respondent's directors, officers, agents or servants have refused to comply with the said Order. They have continued to dispose refuse, toxic chemicals and industrial wastes into Lake Nakuru Basin. It is necessary to uphold the dignity and authority of this court and the rule of law by having them committed to jail for 6 months for failing to comply with the Order.
4. The applicant contends that it is fair and just to grant the orders sought in order to maintain public confidence in the administration of justice as administered by court. The court allowed the petitioner's petition granted a mandatory injunction compelling the respondents to find alternative disposal sites for toxic chemicals and industrial wastes from the 1st Respondent other than Lake Nakuru Basin.
5. The 1st and 2nd respondent permitted the continued dumping of both solid liquid and toxic wastes into the lake to the great harm of the wildlife. The applicant annexed a flash disk with videos showing the continued disposal of toxic waste despite the existence of a court order. The 1st and 2nd respondent permitted the continued dumping of both solid, liquid and toxic wastes into the lake to the great harm of the wildlife. The applicant photos showing the continued disposal of toxic waste to the lake.
6. The court issued an environmental restoration order against the respondents. In breach of the orders of the court the respondents have not begun any environmental restoration. The applicant contends that the salient features when determining a contempt of court application are:
 - a. There must be an existing court order capable of being disobeyed.
 - b. The contemnor must be aware of the existence of the court order.
 - c. Breach thereof must be proved.
7. According to the applicant, the Order was made in open court in the presence of all the parties. The Respondent's did not lodge an appeal of the judgment nor file a formal application for stay pending appeal, either in this court or in the Court of Appeal. The advocates for the Petitioner/Applicant extracted a draft decree and forwarded it to the Deputy Registrar for sealing and saved it to the respondents. The Petitioner/Applicant have demonstrated that an order was in existence, the respondents were aware of the Order and the respondents are in breach of the Order. Despite the existence of the order and several complaints from the petitioner/Applicant and the community the respondents requesting that the respondents to comply with the Order the respondents has refused, failed and or neglected to do so. The applicants urge that in the circumstances and in order to ensure the observance and respect of due process of law, the application for contempt of court dated 11th November 2024 be allowed.
8. The Managing Director of the 2nd Respondent swore in response stating that the 2nd respondent has appealed against the judgment delivered on the 26th of September, 2024. Moreover, that the said judgment did not specify what the 2nd Respondent was to do to ensure compliance with the said judgment noting that the 2nd Respondent is only mandated to deal with water waste and not solid and toxic waste. The 2nd Respondent does not in any way deal with toxic waste and does not have the mandate to regulate or permit any company to dispose of solid and toxic waste into the lake.
9. According to the 2nd Respondent, she is a licenced water services provider and it is licenced as such under the [Water Act](#), 2016. As a water services provider, it provides services of or incidental to the supply or storage of water and includes the provision of sewerage services. According to the Act and the licence issued to the 2nd Respondent, the 2nd Respondent in the provision of sewerage



services develops and manages infrastructure for the transport, storage, and treatment of wastewater originating from centralized and decentralized systems. Therefore, the 2nd Respondent does not in any way handle or receive solid and/or toxic waste. Furthermore, that the infrastructure developed and managed by the 2nd Respondent cannot receive any solid or toxic waste, and if any is released into it, it will cause blockages and bursts in the system.

10. The 2nd respondent depones that it is clear from the *Water Act* and the Regulations made thereunder that the 2nd Respondent does not permit or licence any person to discharge from any commercial, industrial, institutional or other premises effluent or other solid/toxic waste into the environment including Lake Nakuru. It does not have any such power, in law, to permit or license the same. The 2nd Respondent puts the Applicant to task to present the alleged licences or permits the 2nd Respondent has issued or even just state the name of the persons issued with the alleged licences or permits. Finally, the 2nd Respondent states that she does not have the mandate or the police power to prevent anyone from discharging toxic and solid waste into the lake and therefore cannot be cited for acts beyond her mandate. The 2nd Respondent being a company dealing with water services cannot be cited for contempt of disposal of waste into the lake.
11. The 1st respondent has filed a replying affidavit sworn by the County Secretary of the 1st Respondent stating that the 2nd Respondent was incorporated as a water undertaker for the defunct Nakuru Municipal Council under the *Water Act*, 2002. Under the said Act, the government intended that water services will be commercialized. The said intention was carried into effect by incorporation of Nakuru Water & Sanitation Services Act. The 2nd Respondent is a body corporate capable of suing and being sued in its own name, with a common seal and run independently under the Board of Directors. The Governor of the 1st Respondent is not responsible for the running and operations of the 2nd Respondent. Contempt of court proceedings are proceedings sui generis and therefore requires very strict adherences to procedure. I aver that the performer has not complied with the procedures.
12. Contempt proceedings being quasi criminal requires a higher standard of proof than in normal civil cases. I contend that in the circumstances of this petition the petitioner has not and cannot be able to prove any element of contempt against the governor of the 1st Respondent. She prays that the Petitioner's prayers be declined as against the Governor of the 1st Respondent
13. I have considered the application and rival submissions and do find that the orders granted by this court were clear and unambiguous. I have discerned the photos and videos shown by the applicant and do find that the court order of 26th September 2024 has not been complied with. The court ordered that the respondents to find alternative disposal sites for all toxic chemicals and industrial wastes from the 2nd other than Lake Nakuru basin. Moreover, the court issued a restoration order against the respondents. Lastly, the court issued an order permanently restraining the refuse disposal into the lake Nauru basin. The respondents have not complied with the order.
14. In the case of *Econet Wireless Kenya Limited Vs Minister For Information And Communication Of Kenya Authority* [2005] eKLR Hon Justice Ibrahim (as he then was) stated as follows: -

“It is essential for the maintenance of the rule of law and order that the authority and the dignity of our courts are upheld at all times. The Court will not condone deliberate disobedience of its orders and will not shy away from its responsibility to deal firmly with proved contemnors. It is the plain and unqualified obligation of every person against whom an order is made by court of competent jurisdiction, to obey it unless and until the 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 the order believes it to be irregular or void. (emphasis)



15. Likewise in the case of *T.N Gadavarman Thiru Mulpad v Ashok Khot and anor* [2005] 5 SCC, the Supreme Court of India in emphasizing the dangers of disobeying court orders held as follows:

“Disobedience of this Court's order strikes at the very root of the rule of law on which the judicial system rests. The rule of law is the foundation of a democratic society. Judiciary is the guardian of the rule of law. Hence, it is not only the third pillar but also the central pillar of the democratic State. If the judiciary is to perform its duties and functions effectively and remain true to the spirit with which they are sacredly entrusted to it, the dignity and authority of the Courts have to be respected and protected at all costs. Otherwise, the very corner stone of our constitutional scheme will give way and with it will disappear the rule of law and the civilized life in the society. That is why it is imperative and invariable that Court's orders are to be followed and complied with. The 1st respondent herein does not dispute the fact that there was a court order but state that the governor of the 1st respondent is not responsible for the running and operations of the 2nd respondent. The 2nd respondent states that the judgment delivered on 26th of September 2024 did not specify what the 2nd respondent was to do to ensure compliance with the said judgment noting that that the 2nd respondent is only mandated to deal with water waste and not solid and toxic waste. However, the order directed the 2nd respondent from directing the refuse into the lake basin an act that the 2nd respondent has not stopped.

16. The standard of proof required in cases of contempt is higher than that required in an ordinary civil case. Before a finding of contempt can be made, there must a demonstration of willful and deliberate disobedience of a court order. In *Gatharia K. Mutikika – vs Baharini Farm Ltd* [1985] KLR 227 it was held that-

“A contempt of court is an offence of a criminal character. A man may be sent to prison. It must be proved satisfactorily..... it must be higher than proof on a 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 criminal cases. It is not safe to extend it to offences which can be said to be quasi-criminal in nature.

However, the guilt has to be proved with such strictness of proof as is consistent with the gravity of the charge... Recourse ought not to be heard to process contempt of court in aid of a civil remedy where there is any other method of doing justice. The jurisdiction of committing for contempt being practically arbitrary and unlimited, should be most jealously and carefully watched and exercised with the greatest reluctance and the greatest anxiety on the part of the judge to see whether there is no other mode which is not open to the objection of arbitrariness and which can be brought to bear upon the subject..... applying the test that the standard of proof should be consistent with the gravity of the alleged contempt... it is competent for the court where contempt is alleged to or has been committed, and or an application to commit, to take the lenient course of granting an injunction instead of making an order for committal or sequestration, whether the offender is a party to the proceedings or not.”

17. In the light of the gravity of the personal consequences that would ordinarily flow from a finding of contempt, the law requires proof that the order in question was brought to the attention of the alleged contemnor as proof that he/she had personal knowledge of said order.



18. In Oilfield Movers Ltd – Vs – Zahara Oil & Gas Limited [2020]eKLR the court stated -
- “It is important however that the court satisfies itself beyond any shadow of a doubt that the person alleged to be in contempt committed the act complained of with full knowledge or motive of the existence of the order of the court forbidding it. The threshold is quite high as it involves possible deprivation of a person’s liberty.....”
19. There can be no doubt that the Respondents were at all times aware of the orders made on 26th September 2024. Indeed they intimate that they have appealed.
20. In order to find a person guilty of contempt there must be proof of willful and intentional disobedience of a court order. In Mahinderjit Singh Bitta – Vs Union Of India & Others
21. 1A NO 100 OF 2010 the Supreme Court of India stated as follows: -
- “In exercise of its contempt jurisdiction the courts are primarily concerned with enquiring whether the contemnor is guilty of intentional and willful violation of the order of the court, even to constitute a civil contempt. Every party is lis before the court and even otherwise, is expected to obey the orders of the court in its spirit and substance. Every person is required to respect and obey the orders of the court with due dignity for the institution.
22. This court finds that the respondents were aware of the court order, and the photographic and video evidence is sufficient to demonstrate that the respondents have failed to comply with the court order. Though the photographs are not dated, the author of the same has signed a certificate of electronic evidence and has stated how the photos were taken. It is therefore evident that the photographs were taken at the lake. The photographs depict a sorry state of the lake and it can be seen from the photos what appears to be toxic waste. The respondents have clearly refused to restore the lake to its clean status and clear the toxic waste dumped into the lake and have continued to spew toxic dirt into the lake despite the court order. This court finds that the two respondents are in contempt of the court orders issued on 26th September 2024. The 1st and 2nd respondents are hereby jointly fined ksh 2,000.000 (two million Kenya shillings only) and are ordered to comply with the orders of this court within a period of 6 months. There be liberty to apply.

SIGNED BY: HON. JUSTICE ANTONY O. OMBWAYO

THE JUDICIARY OF KENYA.

NAKURU ENVIRONMENT AND LAND COURT

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THE JUDICIARY OF KENYA

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