



Mukira & 2 others v County Government of Nyeri (Environment & Land Case 62 of 2016) [2024] KEELC 7108 (KLR) (31 October 2024) (Ruling)

Neutral citation: [2024] KEELC 7108 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYERI
ENVIRONMENT & LAND CASE 62 OF 2016**

**JO OLOLA, J
OCTOBER 31, 2024**

BETWEEN

**JOEL MUGAMBI MUKIRA 1ST PLAINTIFF
NJORA MWANGI 2ND PLAINTIFF
ZAWERIA WANGARI 3RD PLAINTIFF**

AND

COUNTY GOVERNMENT OF NYERI DEFENDANT

RULING

1. By the Notice of Motion dated 5th July 2023, the three (3) Plaintiffs acting on their own behalf and on behalf of Kimathi Residents Welfare Group pray for the following:
 3. That an order does issue for the committal to prison of the Chief Officer or the acting Chief Officer in his personal capacity and also in his capacity as such Chief Officer or Acting Chief Officer of the Defendant/Respondent for a period of six months for contempt;
 4. That the Honourable Court be pleased to order the Defendant to purge the contempt and restore the Plaintiffs' possession and occupation of their respective houses;
 5. That the Defendant be condemned to pay costs of this application.
2. The application is supported by an affidavit sworn by the 1st Plaintiff- Joel Mugambi Mukira and three (3) other Plaintiffs and is premised on the grounds:
 - i). That this court did in the presence of Counsels for both parties issue an order in the suit in regard to the Plaintiffs' occupation of their houses within Kimathi Estate, Nyeri;
 - ii). That in blatant breach of the said order, the Defendant through its agents and servants did on 4th July 2023 embark on an unlawful and contemptuous acts of evicting the Plaintiffs from



the houses and repossessing their houses which activity is still being undertaken with a view of allocating the houses to other parties; and

- iii). That in the circumstances it is only mete and just that the orders sought be granted to safeguard the Plaintiffs' rights as beneficiaries of the said order and further to uphold the dignity of this Honourable Court.
3. The County Government of Nyeri (the Defendant) is opposed to the application. By their Grounds of Opposition dated 12th July 2023, the Defendant objects to the application on the grounds that:
 1. The application is misconceived and incompetent;
 2. The application is bad in law, a gross abuse of the process of the court and untenable;
 3. The application is fatally and incurably defective;
 4. The application is frivolous and vexatious; and
 5. The Application is otherwise without merit and should be dismissed with costs.
4. In addition to the said Grounds of Opposition, the Defendant has through its Principal Housing Officer Mark Mutitu Karani sworn an Affidavit in Reply filed herein on 19th September 2023. The Defendant avers that the Court Order issued on 4th July 2023 required the parties to maintain the status quo but the same did not direct the Plaintiffs not to pay rent or bar the Defendant from taking measures to recover the same.
5. The Defendant avers that contrary to the Plaintiffs' claim, they had only issued demand letters on 16th August 2023 to four (4) of the Plaintiffs who were in arrears of rent. It is their case that when the said Plaintiffs failed to pay up, their goods were distressed for the outstanding rent. The Defendant therefore asserts that no eviction has been contemplated and /or undertaken by itself as stated by the Plaintiffs.
6. I have carefully perused and considered the Motion as well as the response thereto. I have similarly perused and considered the submissions and authorities placed before the court by the Learned Advocates representing the parties herein.
7. By their application before the court, the Plaintiffs pray for an order to issue committing to prison, the Defendant's Chief Officer, for a period of six (6) months for being in contempt of this Court's Orders. In addition, the Plaintiffs urge the court to be pleased to direct the Defendant to purge the said contempt by restoring the Plaintiffs into possession and occupation of their respective houses within Kimathi Estate in Nyeri.
8. It is the Plaintiffs' case that by a Ruling rendered herein on 23rd October 2019, this court issued an order requiring both sides of the dispute to maintain the status quo in regard to their occupation of their respective houses within the said estate. The Plaintiffs aver that in blatant breach of the said orders, the Defendant had on 4th July 2023, deployed its agents and servants to embark on an unlawful and contemptuous acts of evicting the Plaintiffs from their houses and repossessing the same.
9. On its part, the Defendant avers that no eviction has been contemplated or put in motion by its officers. It is the Defendant's case that all they did was to distress for rent against some of the Plaintiffs who had failed to pay rent and that they had no intention whatsoever of going against the orders that had been issued by this court.



10. As it were, contempt of court is that conduct or action that defies or disrespects the authority of the court. Because such conduct tends to impair the fair and efficient administration of justice, Section 5 of the *Judicature Act* confers jurisdiction on the Superior Courts to punish for contempt.

11. As Ibrahim J (as he then was) observed in *Econet Wireless Kenya Ltd -vs- Minister for Information and Communication of Kenya & Another* (2005) KLR 828:

“It is essential for the maintenance of the rule of law and order that the authority and 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 a 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.”

12. Be that as it may, contempt of court is in the nature of criminal proceedings and therefore requires a higher standard of proof than that of a balance of probability which is usually required in ordinary civil cases. This is so because the liberty of the subject is usually at stake and the applicant must therefore prove willful and deliberate disobedience of the court order if he were to succeed. This was aptly captured in the case of *Gatharia K. Mutitika -vs- Baharini Farm Limited* (1985) KLR 227 where the court held as follows:-

“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 had to the process of 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....

13. In the matter before me, it was not in dispute that on 23rd October 2019, the Honourable Lady Justice M.C. Oundo delivered a Ruling herein in which the Learned Judge ordered as follows:

- “1. That an order of status quo to be maintained by all parties it being understood that the Plaintiff/Applicants are still in possession of the houses and therefore there shall not be repossession of the Plaintiff/Applicants’ houses;
2. That such status quo is to be maintained by all parties until the matter is heard and determined. Keeping in mind the situation at the moment where the station has no Judge and the matter is part heard, at the earliest opportunity when a Judge is posted to the station; and



3. That the costs of the applications dated 17th June 2019 and 10th July 2019 shall be in the cause.”
14. Those then are the orders that the Defendant is accused of breaching. It was the Plaintiffs’ case that contrary to the express orders of maintenance of status quo, the Defendant had proceeded to contemptuously evict a number of them from the houses they had occupied at the time the orders were issued.
16. I have taken a keen look at the pleadings filed by the parties herein as well as the two applications that led to the Ruling by the Learned Judge. It was the Plaintiffs’ case that they have been tenants of the Defendant at the Defendant’s Kimathi Estate for more than 30 years. The Plaintiffs were concerned that the Defendant and its predecessor in title, the Municipal Council of Nyeri, have recently been alienating public plots of land within the estate and allocating them to individuals and private entities.
17. On that account, the Plaintiffs pray for the following orders in their Plaint dated 6th April 2016:
 - a). A permanent injunction to restrain the Defendant from further alienating any public plot/land to private individuals or entities in what is commonly referred to as Kimathi Estate without consulting the Plaintiffs;
 - b). A permanent injunction to restrain the Defendant from planning and/or developing the said estate for any other purpose without involving the Plaintiffs; and
 - c). An order directing the Defendant to offer the Plaintiffs the first priority and preference to own these premises and the entire estate in view of the many years they have lived and paid for these (sic) houses.
21. By their application dated 17th June 2019, the Plaintiffs came to court asserting that despite the pendency of their suit, the Defendant continued to engage in allotting and further alienating plots within the estate to private individuals and developers. They accused the Defendant of issuing them with a document titled an inventory which they found unsettling as they were further apprehensive that the Defendant planned to allocate the estate to other people. It is on the basis of those fears that the Plaintiffs sought for and were granted the orders of status quo by the court on 23rd October 2019.
22. I was unable in the circumstance to discern how those orders could be construed to mean that the Plaintiffs would not perform their obligations as tenants of the Defendant. While the Plaintiffs claim that the Defendant had embarked on an exercise to evict all of them, it was apparent from the material placed before the court by the Defendant that the exercise had only affected four (4) houses whose occupants were in rent arrears.
23. From the Replying Affidavit of Mark Mutitu Karani, it was apparent that all those who were affected by the exercise were each in arrears of rent not paid for long. All the four Plaintiffs who swore the Further Affidavits did not deny that they each owed the Defendant rent arrears ranging from Kshs. 138,000/= on the lower side to Kshs. 227,000/=.
24. In the premises, I was not persuaded that the orders of status quo exempted the Plaintiffs from meeting their rent obligations. I was also not persuaded that by seeking to recover rent arrears from the Plaintiffs, the Defendant could be construed to have been in willful disobedience of the said orders.
25. Accordingly the Motion dated 5th July 2023 is hereby dismissed with an order that the costs be in the cause.



DATED, SIGNED AND DELIVERED AT NYERI THIS THURSDAY 31ST DAY OF OCTOBER, 2024.

In the presence of:

No appearance for the Plaintiffs.

Mr. Wahome Gikonyo for the Defendant.

Court Assistant: Kendi

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J. O. OLOLA

JUDGE

