



**Oundo v Ondiek (Environment & Land Case E013 of 2023)
[2024] KEELC 7401 (KLR) (31 October 2024) (Ruling)**

Neutral citation: [2024] KEELC 7401 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISUMU
ENVIRONMENT & LAND CASE E013 OF 2023
SO OKONG'O, J
OCTOBER 31, 2024**

BETWEEN

ENOS OLANDO OUNDO PLAINTIFF

AND

MAURICE OMONDI ONDIEK DEFENDANT

RULING

1. The Plaintiff filed this suit against the Defendant on 29th September 2023. The Plaintiff averred that he was the owner of all that parcel of land known as Kisumu/Konya/6496 (hereinafter referred to only as “the suit property”). The Plaintiff averred that the suit property was initially owned by the Defendant who charged the same to Equity Bank of Kenya Limited (hereinafter referred to only as “Equity”) to secure a loan. The Plaintiff averred that he purchased the suit property at a public auction on 1st April 2021 at Kshs. 3,000,000/- after the Defendant defaulted on his loan repayment obligations to Equity which put up the property for sale in the exercise of its statutory power of sale. The Plaintiff averred that the suit property was registered in his name on 3rd June 2022 after paying the purchase price in full.
2. The Plaintiff averred that even after the suit property was transferred to his name, the Defendant refused to vacate the suit property and hand over possession to the Plaintiff. The Plaintiff averred that the Defendant had remained in possession of the suit property and was also collecting rent from tenants occupying part of the premises. The Plaintiff averred that the said acts by the Defendant amounted to trespass.
3. The Plaintiff sought judgment against the Defendant for; a declaration that the Defendant’s acts of interference with the suit property were illegal and void, a permanent injunction restraining the Defendant from obstructing, residing on, managing and /or interfering with the suit property, an order for vacant possession of the suit property, damages for trespass and costs of the suit.



4. Together with the plaint, the Plaintiff filed a Notice of Motion application dated 30th September 2023 seeking a temporary injunction restraining the Defendant from obstructing, residing on, managing and/or dealing or interfering in any way whatsoever with the suit property pending the hearing and determination of the suit. The Plaintiff's application was brought on the grounds set out on the face thereof and on the supporting affidavit sworn by the Plaintiff on 30th September 2023. In the affidavit, the Plaintiff reiterated the contents of the plaint. The Plaintiff added that he had on several occasions called upon the Defendant to vacate the suit property but he had refused to do so. The Plaintiff averred that he had a strong case against the Defendant with a high probability of success. The Plaintiff averred further that he stood to suffer grave loss and prejudice if the orders sought were not granted since the suit property was exposed to wastage and damage.
5. The application was opposed by the Defendant through a replying affidavit sworn on 4th October 2023. The Defendant admitted that he took a loan from Equity secured by the suit property a substantial portion of which he claimed to have paid. The Defendant averred that he ran into financial problems that led to his default in keeping up with the loan repayment schedule. The Defendant averred that he pleaded with Equity to reduce the interest that had accrued on the loan so that he could pay a sum of Kshs. 3,000,000/- but Equity insisted that he had to deposit with them a sum of Kshs. 6,000,000/-. The Defendant averred that the suit property was put up for sale without notice to him while he was still negotiating with Equity on the loan repayment terms.
6. The Defendant averred that he did not know of the sale of the suit property until this suit was filed and he was served with the pleadings and a court order. The Defendant averred that the value of the suit property including developments thereon was Kshs. 10,000,000/- and that the same was sold to the Plaintiff at a throwaway price of Kshs. 3,000,000/-. The Defendant averred that the sale of the suit property to the Plaintiff was irregular as due process was not followed. The Defendant averred that the title held by the Plaintiff was in the circumstances invalid. The Defendant averred that he was capable of redeeming the suit property if he was given time by Equity.
7. In a ruling delivered on 8th February 2024, the court found that the Plaintiff had satisfied the conditions for granting the injunction sought. The court stated as follows in part:

“The Defendant has not convinced me at this stage that Equity engaged in any irregularity or procedural impropriety in the sale of the suit property. Even if there was any such incident, that would only entitle the Defendant to damages against Equity but not to set aside the sale since no wrongdoing has been alleged against the Plaintiff. The Plaintiff's contention that he purchased the suit property for valuable consideration in good faith has not been rebutted by the Defendant...I am also persuaded that the Plaintiff stands to suffer irreparable injury unless the orders sought are granted. The Defendant has not repaid a loan of Kshs. 4,080,000/- excluding interest which he obtained from Equity in 2013. There is no evidence that the Defendant would be able to make good any damage or waste committed on the suit property. The Defendant has not denied that he is collecting rent from premises on the suit property. I am not convinced that the Defendant would be able to refund such rent should he lose the case at the trial. There is therefore a risk that the loss likely to be incurred by the Plaintiff if the orders sought are not granted cannot be compensated in damages. The Plaintiff having established a prima facie case against the Defendant and that he stands to suffer irreparable harm, it is not necessary to consider the balance of convenience. I wish to say that even if I were to consider the balance of convenience, the same would tilt in favour of allowing the application. The Plaintiff is the registered owner of the suit property



having purchased the same at Kshs. 3,000,000/-. There is no justification for the Defendant's continued occupation and interference with the property."

8. In conclusion, the court made the following orders;
 1. A temporary injunction was granted in favour of the Plaintiff restraining the Defendant from obstructing, residing in, managing and/or dealing/interfering in any way whatsoever with Title No. Kisumu/ Konya/ 6496 pending the hearing and determination of this suit.
 2. Execution of the order of injunction was stayed for 7 days from the date of the order to give the Defendant time to move out of the suit property in case he was residing thereon.
 3. The Defendant was however barred from collecting rent or interfering with the suit property in any manner whatsoever during this period of 7 days.
 4. The costs of the application were awarded to the Plaintiff.
9. After that ruling, the Defendant brought an application by way of a Notice of Motion dated 23rd February 2024 in which the Defendant sought a stay of the said orders that were given on 8th February 2024 pending the hearing and determination of the appeal that the Defendant intended to file in the Court of Appeal against the same. The application was supported by the affidavit of the Defendant in which he deponed that he was dissatisfied with the ruling of the court and had lodged an appeal against the same in the Court of Appeal. The Defendant averred that he had an arguable appeal with high chances of success. The Defendant averred that he stood to suffer substantial loss unless the stay sought was granted and that the application was brought without unreasonable delay. The application was opposed by the Plaintiff.
10. In a ruling delivered on 2nd May 2024, the court allowed the Defendant's application conditionally. The court stated as follows in part:

I am persuaded that the Defendant's application was brought without unreasonable delay. I am also satisfied that the Defendant is likely to suffer substantial loss if the stay sought is not granted. It is not disputed that the Defendant is in occupation of the suit property. It is also not disputed that in the ruling in respect of which a stay has been sought, the Defendant was for all intents and purposes ordered to vacate the suit property. The effect of that order is that unless the stay sought is granted, the Defendant risks being evicted from the suit property while his appeal to the Court of Appeal is pending. On the issue of security, the Defendant stated that he is willing to abide by any order on security that the court may make as a condition for granting the stay sought...The upshot of the foregoing is that the Defendant's Notice of Motion application dated 23rd February 2024 has merit. The application is allowed in terms of prayer 3 thereof. The Defendant shall deposit in an interest-earning bank account in the joint names of the advocates on record for the parties a sum of Kshs. 2,500,000/- as security within 14 days from the date hereof in default of which the stay granted herein shall stand discharged without any further reference to the court. The costs of the application shall be in the cause."

11. What is now before the court is the Plaintiff's Notice of Motion application dated 18th July 2024 filed on the same date. In the application, the Plaintiff has sought; an order that the Defendant be directed to hand over to the Plaintiff vacant possession of the suit property, leave to forcibly evict the Defendant from the suit property, an order for the Officer Commanding Station(OCS) Nyahera Police Station or any other officer in charge or acting under him to supervise the forceful eviction of the Defendant from



the suit property, and an order for the arrest and committal of the Defendant to jail for disobedience of the orders made by the court on 8th February 2024.

12. The application that was supported by the affidavit of the Plaintiff was brought on several grounds. The Plaintiff averred that the order issued on 8th February 2024 restraining the Defendant from residing in, managing and/or interfering with the suit property was served upon the Defendant and that the Defendant ignored the same. The Plaintiff averred that in breach of the said order, the Defendant had refused to vacate the suit property and had continued to reside therein and to manage the same. The Plaintiff averred that the Defendant failed to meet the conditions for the stay that was granted to him on 2nd May 2024 and as such the stay lapsed. The Plaintiff averred that the Defendant has committed contempt of court.
13. On 25th July 2024, the court granted the Defendant 14 days to respond to the application and directed that the application be heard by way of written submissions. The court gave timelines within which each party was to file its submissions. The Defendant neither responded to the application nor filed submissions. The Plaintiff filed submissions dated 8th August 2024.
14. I have considered the Plaintiff's application and the affidavit filed in support thereof. I have also considered the submissions by the advocates for the Plaintiff. The law on contempt of court is now fairly settled. In *Hardkinson v. Hardkinson* [1952] ALL ER 567, the court stated that:

"It was the plain and unqualified obligation of every person against or in respect of whom an order was made by a court of competent jurisdiction to obey it unless and until it was discharged and disobedience of such order would as a general rule result in the person disobeying being in contempt and punishable by committal or attachment and in an application to the court by him not being entertained until he had purged his contempt."
15. In *Econet Wireless Kenya Ltd v. Minister for Information & Communication of Kenya & Another* [2005] 1 KLR 828, the court cited the case of *Gulabchand and Popatlal Shah & Another*, Civil Application No. 39 of 1990 in which the Court of Appeal stated that:

"...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..."
16. In *Central Bank of Kenya & Another v Ratilal Automobiles Limited & Others* Civil Application No. Nai. 247 of 2006, the court stated that:

"Judicial power in Kenya vests in the Courts and other tribunals established under *the Constitution* and that it is a fundamental tenet of the rule of law that court orders must be obeyed and it is not open to any person or persons to choose whether or not to comply with or to ignore such orders as directed to him or them by a Court of law."
17. In *Awadh v. Marumbu (No 2)* No. 53 of 2004 [2004] KLR 458, the court stated that:

"It must be remembered that court orders must be obeyed at all times in order to maintain the rule of law and good order. This of course means that the authority and dignity of our courts must be upheld at all times and this differentiates civilised societies from those applying the law of the jungle at times referred to as banana republics. It is the duty of the



Court not to condone deliberate disobedience of its orders nor waiver from its responsibility to deal decisively and firmly with the approved contemnors.”

18. In *Micheal Sistu Mwaura Kamau v. Director of Public Prosecutions & 4 others* [2018] eKLR the Court of Appeal explained the law on contempt of court as follows:

“It is trite that to commit a person for contempt of court, the court must be satisfied that he has willfully and deliberately disobeyed a court order that he was aware of. That is made absolutely clear by section 4 of the *Contempt of Court Act* and the ruling of the Supreme Court in *Republic v. Ahmad Abolfathi Mohammed & Another* (supra). Secondly, as this Court emphasized in *Jihan Freighters Ltd v. Hardware & General Stores Ltd* and in *A.B. & Another v. R. B.* [2016] eKLR, 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. (See *Mutitika v. Baharini Farm* (supra) and *Republic v. Ahmad Abolfathi Mohammed & Another* (supra).”

19. It is on the foregoing principles that the Plaintiff’s application is to be considered. As I have stated earlier in the ruling, the Defendant did not oppose the application through grounds of opposition or replying affidavit. This means that all the factual averments in the affidavit in support of the contempt application are not rebutted by the Defendant. The fact that the court issued an order on 8th February 2024 restraining the Defendant from residing on or managing the suit property is not denied. The fact that the said order was extracted and served upon the Defendant is not denied. The fact that the said order has not been stayed is not denied. The fact that the Defendant has disobeyed the order by continuing to reside on and to manage the suit property in breach of the said court order has also not been denied. It is my finding from the foregoing that the Defendant, Maurice Omondi Ondiek is in contempt of the orders granted herein on 8th February 2024. The contemnor, Maurice Omondi Ondiek shall appear before this court on a date to be fixed to address the court in mitigation before the court passes a sentence against him. The court shall issue further orders for the enforcement of the orders made on 8th February 2024 after sentencing the contemnor. The contemnor is at liberty to purge his contempt before the date set for his sentencing. The Plaintiff shall have the costs of the application.

DELIVERED AND DATED AT KISUMU ON THIS 31ST DAY OCTOBER OF 2024

S. OKONG’O

JUDGE

Ruling delivered virtually through Microsoft Teams Video Conferencing Platform in the presence of:

Mr. Aboge for the Plaintiff

Ms. Ochieng for the Defendant

Ms. J. Omondi-Court Assistant

