



**Wanjiku v Ng'ang'a (Environment & Land Case 57 of 2015)
[2024] KEELC 7472 (KLR) (31 October 2024) (Ruling)**

Neutral citation: [2024] KEELC 7472 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 57 OF 2015
AA OMOLLO, J
OCTOBER 31, 2024**

BETWEEN

MARY WANJIKU APPLICANT

AND

PAULINE MUKUHI NG'ANG'A RESPONDENT

RULING

1. This determination is in respect to the application dated 18th June, 2024 filed by the Plaintiff/Applicant. The Applicant prays for orders;
 1. Spent
 2. That the Officer Commanding the Police Station nearest to the suit property be ordered to ensure that the property is preserved and specifically, that the Respondent is barred from accessing the suit property and allow the Applicant to continue living on the suit property.
 3. That the contemnor, Pauline Mukuhi Ng'ang'a be found to be in contempt of court for the breach of the status quo orders issued on 22nd May, 2024.
 4. That upon a citation for the contempt the contemnor, Pauline Mukuhi Ng'ang'a be detained at Kamiti Maximum Prison in Nairobi or any other person or rehabilitation facility for a period of six (6) months of for such period and on terms as the court may determine.
 5. That there be an order of sequestration of the contemnor's properties wherever they may be in the Republic of Kenya and upon such order being made, such sequestration shall remain in force on such terms as the court will order until the contempt is purged.
 6. That costs be provided for.



2. The application was supported by the grounds listed on its face and on the affidavit of Mary Wanjiku sworn on the same date. The Applicant avers that the Respondent entering the suit property and attempting to evict the Applicant is wilfully and maliciously disobeying the status quo order issued on 22nd May, 2024. That the action of the Respondent putting up sign boards advertising the suit property for rent and giving notice of eviction to the Applicant. The Respondent has wilfully and intentionally disobeyed the status quo order issued on 22nd May, 2024. That 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 contemnors.
3. The plaintiff filed a replying affidavit dated 9th July, 2024 in opposition to the application. She averred that exparte orders issued on 22nd May, 2024 expired on 5th June, 2024 hence the reason she visited the suit premises for a handover process. She deposes that when visited the suit premises on 19th May, 2024 to hand over her letter dated 17th May, 2024 one of the tenants introduced herself as Cynthia Njeri Njoroge.
4. That the said tenant stated the premises had been let to her by the Applicant and one John Ndinika. It is her contention that the Applicant has been colluding with John Ndinika for the purpose of depriving her of her entitlement to the suit property. She asserts that the Applicant does not reside on the suit property and at the time of filing the application she was not in possession thereof.
5. The Plaintiff/Respondent deposes that the contempt application is mischievous and deceptive. She continued to state that on or about 10th June, 2024 she learnt from neighbours that the tenant of the main house on the suit premises vacated and that John Ndinika had begun repairs on the house in preparation for a new tenant. That is was at the point that she instructed Fortcom Realtors Limited to find out what the actual situation was.
6. That it was at the point that I instructed the Realtors to find new tenants because the Applicant together with John Ndinika were also doing the same, meaning that they were also aware or at the very least did not believe there were valid orders of the court in force and if there were valid orders, that the Applicant jointly with the said John Ndinika were the ones interfering with the orders of the court. That on the basis of the foregoing, the Applicant has not come to court with clean hands and is undeserving of the orders sought.
7. The application was argued by way of filing written submissions the Applicant gave a background narration reiterating the facts as set out in the application. She submitted that court orders must be respected and cited the case of *Econet Wireless Kenya Ltd vs Minister for Information and Communication Kenya Authority* (2005) eKLR.
8. On submitting that she have proved the disobedience, she highlighted the following as constituting the disobedience;
 - a. Occasionally visiting the property with the sole purpose of evicting the Defendant/Applicant using goons. This has been admitted by the Plaintiff/Defendant under paragraph 4 of their Replying Affidavit dated 9th July,2024 despite the conservatory orders being in place.
 - b. Upon arriving on the suit property on the fateful day, the Defendant/Applicant provided the Plaintiff with the court order dated 22nd May, 2024 but still proceeded to try and evict her anyway.
 - c. In a further disregard of the court's order, on the 20th June, 2024 the Respondent, instructed Fortcom Realtors Limited to issue a termination of tenancy letters to the Applicant seeking vacant possession of the suit property. This is affirmed by the Plaintiff/Respondent under para



27 of the Replying Affidavit. The Plaintiff is trying to mislead the court by stating that the instructions were to check the situation nonetheless, the conservatory orders issued prevent any interference of the suit property by any party.

- d. Additionally, on the same date, the Plaintiff/Respondent went ahead and put up sign boards advertising the Applicant's house for rent. This is despite being conservatory orders in place.
9. On whether the orders lapsed, the Defendant avers that Order 40 rule 6 anticipates the interlocutory orders can only lapse after a period of 12 months and cited the holding in case of Barclays Bank of Kenya Ltd vs Henry Ndungu & Another (2018) eKLR to support the argument. That the order in question was issued pending the hearing and determination of the application. She urged the application be allowed given the terms of the orders were clear.
10. I have considered the arguments rendered in support of and against the application. The burden to prove the contempt lies on the Defendant/Applicant. The impugned order said to have been disobeyed stated that;

“That pending the hearing and determination of the Application, a Conservatory Order do issue maintaining the status quo in respect of the suit property and to be observed by all parties whether by themselves, or through their agents, servants, and or employees.”
11. The order was clear that its life was pending hearing and determination of the application dated 13th July, 2024. As at 5th June, 2024, the said application had not been heard and determined hence it was not open for the plaintiff to decide that the orders had expired.
12. Is the plaintiff guilty of disobedience? The order required both the parties were to maintain the status quo. The status quo in this case is that the Respondent was not in physical possession of the suit property. As at the time of prosecution of the application dated 13th July, 2024 and the current motion (dated 18th June, 2024) the Respondent is still not in possession. The Applicant has deposed that the disobedience is constituted in the action of Respondent's attempt to evict her and also advertise the property for renting. The Respondent admitted doing these acts albeit that the orders had expired and the Applicant was also contravening the order.
13. However, the Applicant has not been evicted from the suit premises and it is my considered opinion that an attempt to evict did not change the status quo of the suit property for which the Respondent can be convicted of disobedience. I am not persuaded to find the plaintiff guilty of the contempt because the standard of proof required is higher than standard of probabilities permitted in civil cases. For instance, in the case of Mutitika vs Baharini Farm Ltd (1985)Eklr, the Court of Appeal stated thus;

“In our view the standard of proof in contempt proceedings must be higher than proof on the 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.

... In conclusion, the language of the order of stay was such that we cannot say that the respondent's conduct in moving in to plough, though it came close to doing so, amounted to a constructive eviction and therefore to a breach of the order. It was yet such conduct as warranted the step which Mr. Khaminwa took in filing the notice of motion.”
14. Guided by the above case and the reasons stated herein, the motion dated 18th June, 2024 is without merit and it is dismissed with no orders as to costs.



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

A. OMOLLO

JUDGE

