



**Center for Litigation on Environment and Governance (CLEG) v Tasiir (Environment and Land Miscellaneous Application E004 of 2024) [2024] KEELC 7107 (KLR) (30 October 2024) (Ruling)**

Neutral citation: [2024] KEELC 7107 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA  
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E004 OF 2024  
NA MATHEKA, J  
OCTOBER 30, 2024**

**BETWEEN**  
**CENTER FOR LITIGATION ON ENVIRONMENT AND GOVERNANCE  
(CLEG) ..... APPLICANT**  
**AND**  
**HAJI MBARAK TASIR ..... RESPONDENT**

**RULING**

1. The application is dated 22<sup>nd</sup> August 2024 and is brought pursuant to Sections 4(1) & 5 of the contempt of Court Act, No. 46 of 2016 laws of Kenya, Sections 1A, 1B, 3A 63 of the Civil Procedure Act Cap 21 Laws of Kenya seeking the following orders;
  1. That this Application be certified urgent, service be dispensed with and the same be heard ex-parte in the first instance.
  2. That this honourable court be pleased to find the Respondent Mr. Haji Mbarak Tasir in contempt of the orders of this honourable court as delivered on 12<sup>th</sup> June 2024 by the Hon. Justice Nelly Matheka.
  3. That this honourable court be pleased to issue order that the respondent Mr. Haji Mbarak Tasir be arrested and committed to prison for a term not exceeding Six (6) months.
  4. That in the alternative to prayer 3 above, this honourable court be pleased to impose a penalty of fine of a figure to be ascertained by the court against the said respondent Mr. Haji Mbarak Tasir.
  5. This honourable court be pleased to issue all necessary and consequential directions in respect of the contempt as may be necessary for the ends of justice to be met.



2. It is supported by the Affidavit of Ainea Ragen and the following grounds that on 12<sup>th</sup> June 2024 this honourable delivered a ruling and subsequent orders in an application ref. no. ELCEP PET E001 of 2024 filed by the applicant herein and dated 21<sup>st</sup> February 2024 brought under Rule 23 of the Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules 2013 and Article 22, 23, 165 and 258 of the Constitution of Kenya 2010, issuing prohibitory injunction prohibiting the respondent, Mr. Haji Mbarak Tasir, his agents, staff or tenants from developing or constructing on Plot no. 1417 Mwembelegeza scheme owned by the Respondent.
3. That on 12<sup>th</sup> June 2024 this honourable delivered a ruling and subsequent orders in an application ref. no. ELCEP PET EOOI OF 2024 filed by the applicant herein and dated 21<sup>st</sup> February 2024 brought under Rule 23 of the Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rule 2013 and Articles 22, 23, 165 and 258 of the Constitution of Kenya 2010, issuing mandatory injunction ordering tenants using the building on Plot No. 1417 owned by the respondent Mr. Haji Mbarak Tasir to vacate as per the notice issued by County Government of Mombasa dated 4<sup>th</sup> April 2024 pending hearing and determination of Petition No. ELCEP PET EOOI of 2024.
4. That on 19<sup>th</sup> June 2024, he served the same ruling and order upon the counsel for the respondent Mr. Jared Magolo. That further to service of the ruling and order of this court upon the counsel for the respondent, on 20<sup>th</sup> June 2024, the said order was physically served upon all tenants occupying ground floor of the subject building and that four (4) more copies of the order was pasted on the walls of the building for the unsuspecting public to be aware. That despite the orders being duly served upon the respondent, the respondent has blatantly refused to comply with order no. 2 which required all tenant using the building for businesses and or residing in the building on plot no. 141 Mwembelegeza scheme to vacate as per the notice issued by the County Government of Mombasa dated 4<sup>th</sup> April 2024.
5. The respondent stated that he is very conversant with the Courts Order contained in the ruling of the 12<sup>th</sup> June, 2024. That those in the building were also served. That he has not contravened or disobeyed the order in any way. That the Applicant is trying to blame him for perceived actions not committed by him.
6. This court has considered the application and the submissions therein. The applicant submitted that on 12<sup>th</sup> June 2024 this court delivered a ruling and subsequent orders in an application ref. no. ELCEP PET E001 OF 2024 filed by the applicant herein and dated 21<sup>st</sup> February 2024 brought under Rule 23 of the Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules 2013 and Article 22, 23, 165 and 258 of the Constitution of Kenya 2010, issuing mandatory injunction ordering tenants using the building on plot no. 1417 owned by the respondent Mr. Haji Mbarak Tasir to vacate as per the notice issued by County Government of Mombasa dated 4<sup>th</sup> April 2024 pending hearing and determination of Petition No. ELCEP PET E001 of 2024. That the Respondent has disobeyed those orders hence this application. I find that the issue of sub judice comes into play in this application. Section 6 of the Civil Procedure Act states as follows:

No court shall proceed with the trial of any suit or proceeding in which the matter in issue is also directly and substantially in issue in a previously instituted suit or proceeding between the same parties, or between parties under whom they or any of them claim, litigating under the same title, where such suit or proceeding is pending in the same or any other court having jurisdiction in Kenya to grant the relief claimed.



Explanation.—The pendency of a suit in a foreign court shall not preclude a court from trying a suit in which the same matters or any of them are in issue in such suit in such foreign court.”

7. In *Kenya Bankers Association vs Kenya Revenue Authority*, 2019 eKLR the court had this to say on the issue of sub judice;

“in addition, it is clear that the matters in issue in the suits or proceedings are directly and substantially the same. The parties in the suits or proceedings are the same. The ex parte applicant herein, is litigating on behalf of its 47 members, some of whom are parties in the existing suits. The suits are pending in the High Court which has jurisdiction to grant the relief claimed.

A cursory look at the prayers sought in this case show that they relate to the same subject matter. However, the principle of sub judice does not talk about the “prayers sought” but rather “the matter in issue” I find that the matters in issue in the suits are substantially the same. *In Re the matter of the Interim Independent Electoral Commission*, the Supreme Court cited with approval the Australian decision where it was held: -

“... we do not think that the word “matter” ...means a legal proceeding, but rather the subject matter for determination in a legal proceeding. In our opinion there can be no matter...unless there is some right, duty or liability to be established by the determination of the court...”

8. I have taken the liberty to peruse the said file Mombasa Environment and Land Court Petition No. E001 OF 2024 and these contempt proceedings ought to have been raised in that file and not a fresh file altogether. I find this application is sub judice and is struck off with no orders as to costs.

It is so ordered.

**DELIVERED, DATED AND SIGNED AT MOMBASA THIS 30<sup>TH</sup> DAY OF OCTOBER 2024.**

**N.A. MATHEKA**

**JUDGE**

