



**Bhardwaj & 3 others (Suing as officials of Bhardwaj Welfare Trustees) v Tracos Limited
(Land Case E046 of 2024) [2024] KEELC 7311 (KLR) (29 October 2024) (Ruling)**

Neutral citation: [2024] KEELC 7311 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
LAND CASE E046 OF 2024
LN MBUGUA, J
OCTOBER 29, 2024**

BETWEEN

**RAVI BHUSHAN BHARDWAJ 1ST PLAINTIFF
VIJAY BHUSHAN BHARDWAJ 2ND PLAINTIFF
SUHRIT RAVI BHARDWAJ 3RD PLAINTIFF
SHUCHI RAVI HANDI BHARDWA 4TH PLAINTIFF
SUING AS OFFICIALS OF BHARDWAJ WELFARE TRUSTEES**

AND

TRACOS LIMITED DEFENDANT

RULING

1. Before me is the Plaintiff's Notice of Motion application dated 17.5.2024 seeking orders that one Sarah Moraa Obare be cited for the contempt of court orders issued on 29.4.2024 and that she be punished accordingly. The application is premised on grounds set out on the face of the application and on the supporting affidavit of one Reuben Ndirangu Gathogo who identifies himself as the property manager. He contends that despite service, the defendants have continued to disobey the court orders of 29.4.2024 by completely demolishing the boundary wall and rapidly attempting to enclose on plaintiffs property.
2. The defendants opposes the application vide the Replying Affidavit of Sarah Obare dated 20.6.2024 where they deny the allegations heaped against them, adding that their investigations reveal that there is a wall being constructed by Shipyard Limited, of which the land is being claimed by Kenya Railways.



3. I have considered all the arguments raised herein. I find that on 9.4.2024, this court allowed the application by the plaintiff dated 9.2.2024 to the effect that;

- i. Pending the hearing and determination of the main suit, this Honourable court stops by way of an injunction further demolition of the Plaintiff's boundary/perimeter wall enclosing the Plaintiffs/Applicants property, trespassing onto, making use of and staying in or in any manner whatsoever or however from interfering with or dealing with the property Nairobi L.R. No. 209/12016 by the defendant/respondent herein by themselves, servants, agents and anyone acting on behalf of the defendant/respondent.
- ii. That the OCS Embakasi Police Station and OCS Mlolongo Police Station to enforce the Orders issued by this court.
- ii. That the orders shall remain in force for a period of one year.
- ii. That the plaintiff to serve the defendant with summons to enter appearance within 30 days."

4. The issue for determination is whether the defendant has violated the aforementioned orders to warrant issuance of the orders sought in the current contempt application.

5. It has been stated time and again that court orders are not issued in vain and should be respected. See - Court of Appeal case of Fred Matiangi the Cabinet Secretary, Ministry of Interior and Co-ordination of National Government v Miguna Miguna & 4 Others [2018] eKLR. To this end, the provisions of Section 5 of the Judicature Act provides for the punishment of contempt of court in the following terms:

"The High Court and the Court of Appeal shall have the same power to punish for contempt of court as is for the time being possessed by the High Court of justice in England, and that power shall extend to upholding the authority and dignity of the subordinate courts".

6. But on the same breath, courts have on several occasions pronounced that contempt proceedings are quasi criminal in nature due to the committal to civil jail element. As such, for courts to hold persons in contempt, it ought to be crystal clear that court orders were disobeyed. Thus for a person to be cited for contempt, it must be evident that the court order was deliberately disobeyed.

7. In the Court of Appeal case of Micheal Sistu Mwaura Kamau v Director of Public Prosecutions & 4 Others [2018] eKLR it was stated that;

"...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... Secondly, ... 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..."

8. I have keenly perused the pleadings herein. At paragraph 6 and 8 of the plaint, the plaintiffs contend that the defendants had already demolished the boundary wall and they were working fast by 24.1.2024 in digging a foundation, and a perimeter wall was enclosing upon plaintiff's property. These issues are



reiterated in the initial application of 9.2.2024. It follows that by the time that application was allowed on 9.4.2024, the events relating to demolition of the wall and commencement of another boundary wall had taken place. In such circumstances, it was incumbent upon the plaintiffs to state precisely and clearly the acts of commission or omission undertaken after 9.4.2024 which would amount to disobedience of the court orders.

9. As it were, the plaintiffs merely stated that despite knowledge and existence of the said orders, the defendants persisted in disobedience of the same. Thus one cannot discern the scope of activities undertaken on the suit property before and after the issuance of the orders of 9.4.2024. This far, I find that the applicants have not proved their allegations to the required standard which is “higher than proof on a balance of probabilities”.
10. I must also point out that the respondent has proffered a defence that the activities on site are being carried out by another entity known as Kenya Shipyard Limited. At this interlocutory stage, this court cannot embark on interrogating the truthfulness of that allegation. It is only fair and just that the defence be given a chance to advance their claim in a full trial.
11. In the end, I find that the application dated 17.5.2024 does not meet the criteria set out in the aforementioned case of Micheal Sistu Mwaura Kamau v Director of Public Prosecutions & 4 Others [2018] eKLR. The said application is hereby dismissed. Cost there of shall abide the out come of the suit.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 29th DAY OF OCTOBER, 2024 THROUGH MICROSOFT TEAMS.

LUCY N. MBUGUA

JUDGE

In the presence of:-

M/s Said for plaintiff

M/s Munene holding brief for Mr. Koch for defendant

Court assistant: Vena

