



Nyali Beach Cycads Limited v Guchu & 3 others (Environment & Land Case E002 of 2020) [2024] KEELC 6961 (KLR) (17 October 2024) (Ruling)

Neutral citation: [2024] KEELC 6961 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS
ENVIRONMENT & LAND CASE E002 OF 2020
CA OCHIENG, J
OCTOBER 17, 2024**

BETWEEN

NYALI BEACH CYCADS LIMITED PLAINTIFF

AND

FRANCIS KAMAU GUCHU 1ST DEFENDANT

MWAURA KINYANJUI 2ND DEFENDANT

KAMAU WAWERU 3RD DEFENDANT

LUKAS MUTUA 4TH DEFENDANT

RULING

1. What is before Court for determination is the 3rd Defendant's Notice of Motion Application dated the 29th September, 2023 brought pursuant to Article 40 of *the Constitution*, Section 5 of the *Judicature Act* and Section 63 of the *Civil Procedure Act*. The 3rd Defendant seeks the following Orders:-
 - a. Spent.
 - b. That Notice to Show Cause does issue to the Plaintiff/Respondent to appear before the Honourable Court and show cause why they should not be committed to jail or penalized for contempt of the court orders issued on 24th September, 2021.
 - c. That Plaintiff/Respondent be committed to jail for two years or fined the sum of Kshs. 2,000,000 on such terms as the Honourable Court may determine, for contempt of court for having deliberately disobeyed orders of this court issued on 24th September, 2021.
 - d. That in alternative to prayer 2 and 3, the Plaintiff/ Respondent does pay the 3rd Defendant/ Applicant damages for the loss caused from the illegal demolition his crops and land structure on the land known as LR No. 3565.



- e. That costs of this Application be borne by the Plaintiff/Respondent.
2. The Application is premised on the grounds on the face of it and the Supporting Affidavit of FRANCIS KAMAU GUCHU where he highlights the orders the court issued on 24th September, 2021. He contends that all parties were aware of the said Ruling as it was issued in the presence of their Advocates. He explains that the Nairobi Civil Appeal No. E 180 of 2021 Mwaura Kinyanjui V Nyali Beach Cycads Ltd is still pending at the Court of Appeal and as such the stay orders are still in force. He avers that on 28th September, 2023, the Plaintiff unlawfully begun destroying his crops on the suit land being LR No. 3565 in a bid to evicting him, despite the orders of stay pending Appeal. He reiterates that the Plaintiff's conduct undermines the authority and dignity of the Court. Further, that the Court is vested with jurisdiction to punish those who breaks, it orders.
 3. The Plaintiff opposed the instant Application by filing a Replying Affidavit sworn by NDERITU WACHIRA, its Director where he deposes that the said Application is misconceived and an outright abuse of the court process. He contends that the Applicants are not keen to proceed with this matter and have been delaying it. Further, that they have even failed in attending various routine mentions nor have they complied with pretrial requirements so as to fix this matter for hearing. He claims upon learning that this matter is fixed for hearing, the Defendants have devised ways of delaying it. He explains that vide a Ruling delivered on 19th March, 2021, the Court issued an Order compelling the Defendants, their servants, agents and/or whomsoever to remove all structures erected on the suit land herein and all those parties claiming title under them to vacate the property within thirty (30) days of the date of the said Ruling. Further, the Officer Commanding Kikomba Police Post was to enforce the said Court Orders.
 4. He states that the 2nd Defendant vide an Application dated the 13th April 2021 moved the Court seeking inter alia an Order staying execution of the Court's Ruling delivered on 19th March, 2021 and consequent Orders issued on 22nd March, 2021 pending the hearing and determination of the 2nd Defendant's Appeal filed in the Court of Appeal. Further, the Court vide its Ruling delivered on 24th September, 2021 granted stay of execution of the Ruling pending determination of the 2nd Defendant's Appeal being Nairobi Civil Appeal No. E180 of 2021. He insists that the Order for stay of execution was granted on condition that the Court of Appeal validates the Notice of Appeal filed by the 2nd Defendant.
 5. He confirms that on 14th October, 2021, his Advocates on record wrote to the Officer Commanding Kikomba Police Post clarifying that it is only the 2nd Defendant who had obtained orders stopping eviction. Further, that the Order issued by this Court on 24th September, 2021 was issued in personam and only stayed execution as against the 2nd Defendant. He argues that the Applicants' have always had separate legal representation and cannot seek to rely on an Order resulting from proceedings they did not institute and were not part of. He reiterates that the Court already made a finding that there exists special circumstances in his case and the court cannot aid the Defendants to continue with their acts of occupying the suit land. Further, that the 2nd Defendant should confirm if the Notice of Appeal was validated by the Court of Appeal. He denies disobeying the Orders issued and insists the Applicant has not met the threshold for grant of the Orders sought.
 6. The Application was canvassed by way of written submissions.

Analysis and Determination

7. Upon consideration of the instant Notice of Motion Application including the respective Affidavits and rivalling submissions, the only issue for determination is whether the Plaintiff should be cited



for contempt for contravening the orders issued on 24th September, 2021 and if the 3rd Defendant is entitled to the other orders as sought.

8. For the avoidance of doubt, I wish to highlight the Orders dated the 24th September, 2021:-

- “(a) An order of stay be and is hereby issued staying the execution of this Court’s Ruling delivered, dated and signed on 19th March, 2021 and the consequent orders issued on 22nd March, 2021 pending the hearing and determination of the Appellants Appeal in Nairobi Civil Appeal No. E 180 of 2021; Mwaura Kinyanjui vs Nyali Beach Cycads Ltd) in the Court of Appeal.
- (b) The order of stay of execution granted on condition that the Court of Appeal validates the Notice of Appeal filed by the 2nd Defendant.
- (c) Each party to bear his/its own costs.”

9. Black’s Law Dictionary (Ninth Edition) describes contempt of court as follows:-

“Conduct that defies the authority or dignity of a court. Because such conduct interferes with the administration of justice, it is punishable usually by fine or imprisonment.”

10. In Halsbury’s laws of England at para 463 Vol 9(1) (Re-issue) 3, it was stated as follows:-

“.....and a person not a party against whom any judgement or order may be enforced is liable to the same process for enforcing obedience to it as if he were a party.”

11. On punishment for contempt of court, Section 29 of the *Environment and Land Court Act* stipulates that:-

“Any person who refuses, fails or neglects to obey an order or direction of the Court given under this Act, commits an offence, and shall, on conviction, be liable to a fine not exceeding twenty million shillings or to imprisonment for a term not exceeding two years, or to both .”

12. In the case of North Tetu Farmers Co. Ltd v. Joseph Nderitu Wanjohi (2016) eKLR Justice Mativo (as he then was) stated that:-

“writing on proving the elements of civil contempt, learned authors of the book Contempt in Modern New Zealand have authoritatively stated as follows:- ‘there are essentially four elements that must be proved to make the case for civil contempt. The applicant must prove to the required standard (in civil contempt cases which is higher than civil cases - (a) the terms of the order (or injunction or undertaking) were clear and unambiguous and were binding on the defendant; (b) the defendant had knowledge of or proper notice of the terms of the order; (c) the defendant has acted in breach of the terms of the order; and (d) the defendant’s conduct was deliberate.”

13. In the current scenario, the 3rd Defendant seeks to have the Plaintiff cited for contempt of court orders issued on 24th September, 2021. On a keen reading of the impugned Orders which I have highlighted above, I note they were conditional and pegged on the validation of the 2nd Defendant’s Notice of Appeal by the Court of Appeal. Further, I note there were already existing orders issued by this Court on 19th March, 2021 which were not set aside as against the 1st, 3rd and 4th Defendants by the impugned Order issued on 24th September, 2021. It is my considered view that the 3rd Defendant seeks to rely on



the Orders issued in favour of the 2nd Defendant, yet it never sought a stay of execution of the Orders issued earlier, against him.

14. Based on the facts before Court while associating myself with the decisions cited above, I opine that there seems to be an ambiguity as it is not clear nor indicated if the Orders issued on 24th September, 2021 on stay of execution applied to all the Defendants. Further, the 3rd Defendant has not confirmed if the Notice of Appeal was validated by the Court of Appeal for the Order of Stay of Execution to apply. Since it is not indicated if the Orders issued on 19th March, 2021 were set aside by the 3rd Defendant, I do not find that the Plaintiff acted in breach of the terms of the Orders of 24th September, 2021.
15. It is against the foregoing that I find the 3rd Defendant/Applicant's Notice of Motion application dated the 29th September, 2023 unmerited and will disallow it.
16. Costs will be in the cause.

DATED, SIGNED AND DELIVERED VIRTUALLY AT MACHAKOS THIS 17TH DAY OF OCTOBER, 2024

CHRISTINE OCHIENG

JUDGE

In the presence of:

Isahi for Plaintiff/Respondent

Ms. Sibika for Defendant/Applicant

Court Assistant – Simon

