



Murutu v Maina, Mwangi (As the Administrator of the Estate of Francis Mwangi Ndungu) v Murutu & 4 others (Counter-Claim) (Environment & Land Case 48 of 2020) [2024] KEELC 13350 (KLR) (18 November 2024) (Ruling)

Neutral citation: [2024] KEELC 13350 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 48 OF 2020
JA MOGENI, J
NOVEMBER 18, 2024**

BETWEEN

JOSEPH WAMALWA MURUTU PLAINTIFF

AND

ROBERT MAINA DEFENDANT

RULING

1. The applicant filed an application dated 15/08/2024 seeking the following prayers:

- 1. Spent
- 2. Spent
- 3. Spent
- 4. Spent
- 5. Spent

6. THAT the Honourable Court be pleased to find the 1st Defendant in the Counterclaim to be in contempt of court for disobedience of the orders of this Court issued on 28th May 2020

7. That the 1st Defendant in the Counter-Claim be summoned to appear before this court and/or Show Cause why he should not be punished for deliberate contempt of court orders issued on 28th May 2024 for status quo to be maintained.

8. That upon grant of Prayers 6 & 7 above, the court be pleased to order that the 1st Defendant in the Counter-claim be committed to civil jail for a period of 6 months for contempt of court or that they be penalized in such other way that the court may deem fit.



9. That cost of this application be provided for
2. Application was based on grounds that this court issued orders of status quo restraining the Respondents from interfering with the suit property suit property LR No. 27217 and the new number issued being LR 11344/2403 Deed Plan No. 408623 and that the said orders were made in the presence of the Respondents and also extracted and served upon the Respondents together with the penal notice. That despite the Respondents having knowledge of the order, they have continued to undertake earth works, i.e. flattening and excavation works with tractors and heavy machinery on the suit property thus bringing the sanctity and dignity of the court to question.
3. That the actions of 1st defendant (in the counter-claim) will change the status quo order that was in force on 28th May 2024 when the said orders were issued since the 1st Defendant in the Counter-claim and his conspirators intend to put up developments on the suit property in order to complicate his inevitable eviction once the suit is determined in favour of the Plaintiff in the counter-claim.
4. The Application was supported by the Affidavit of Robert Maina Mwangi the Plaintiff in the Counter-Claim and the administrator of the estate of Francis Mwangi Ndungu. He averred that in the matter at hand, the plaintiff's case and the 1st defendant's counter claim have already been heard and closed Further that on 12/08/2020 and 25/10/2021 in the presence of the 1st defendant (in the counter claim) Justice Okongo issued orders that restrained the registration of any other or further dealings with the suit property which are in force and are registered against the title as evidenced by annexure marked as RMM-1. Where the Official Search is included.
5. It is the contention of the plaintiff that the 1st defendant (in the counter-claim) has blatantly disobeyed the order and that they are now undertaking earth works i.e flattening and excavation works with tractors and heavy machinery on the suit property. Thus showing impunity and bringing the sanctity and dignity of the court to disrepute as shown as per annexure RMM-2. This annexure has the photographs that show the suit property and the on-goings.
6. That the interference by the 1st defendant will change the Status Quo orders existing as at 28/05/2024 and that the 1st defendant wants to put up developments so as to complicate his inevitable eviction once the suit is heard and determined in favour of the plaintiff in the Counter-Claim.
7. The Plaintiff in the main suit and the 1st defendant (in the counter claim) filed a Replying Affidavit sworn on 7/10/2024 and averred that the court lacks jurisdiction to hear the application since the defendant in the main suit and plaintiff in the counter claim failed to disclose that there exists a grant that had appointed him alongside a co-administrator, Jane Wanjiru Mwangi and therefore the defendant needs to have the co-administrator to issue an authority in writing allowing the defendant to act on their behalf as evidenced from the copy of the filed Consent to Confirmation of grant marked JWM-1.
8. That therefore the plaintiff has no locus in his administrator ship capacity to address issues of the suit property as it does not constitute part of the estate of his late father as shown by annexure JWM-2 which shows the composition of the estate.
9. Further there has been trespass on the suit property by three unknown persons who also demolished structures and this led to the plaintiff making a report at Mowlem Police station where he obtained an OB number. Following which the plaintiff filed a suit MCELC No. E353 of 2024 and obtained a court order to halt the illegal trespass activities by the three persons.
10. Further that there has been no disobedience of court orders dated 12/08/2020 and 25/10/2021 and that the plaintiff's claim in counter-claim has no basis and should be dismissed.



11. In response, the defendant in the main suit filed a supplementary affidavit and averred that the plaintiff is not a bona fide owner of the suit property as alleged in the Replying Affidavit since the title was obtained by fraud.
12. That the said Co-administrator the plaintiff has referred to Jane Wanjiru Mwangi is deceased and the Certificate of Confirmation of Grant dated 30/11/2011 attests to this. Following which it was rectified on 2/05/2018 as shown by annexure JWM2 appended to the Replying Affidavit.
13. That the plaintiff's allegations that it is third parties undertaking construction is not true since instead of filing the claim or trespass in the Magistrate's Court by instituting a separate suit, the plaintiff should have filed an application in the current suit. Further the suit in the Magistrate's Court has not enjoined the defendant herein yet he has an interest in the suit property.
14. That the ongoing construction is an attempt by the plaintiff to alienate the suit property to the detriment of the 1st defendant contrary to this Court's Order.
15. The matter came up for hearing on 15/08/2021 where the court directed the Applicant to file and serve submissions within 7 days and the Respondents to respond within 14 days.

Issues for Determination

16. The only issue for determination is whether the court finds that the plaintiff was in contempt of a lawful court order.
17. It is the Applicant's case that this court issued orders of status quo on 28/05/2024 restraining the Respondents from interfering with the suit property. After the said orders were made, the 1st Defendant proceeded to start excavation work on the property for construction. The Applicant is apprehensive that the resultant construction is meant to alienate the plaintiff in the counter claim from the suit property once the matter is heard and finalized. The 1st Defendant's action (in the counter-claim) will render the suit nugatory. The 1st Defendant in the counter claim in his submissions dated 25/10/2024 alleged that there were three individuals who trespassed on the suit property and started construction.
18. The allegation of trespass by three individuals was not proved by the plaintiff as required under Section 107 of the *Evidence Act* where he who alleges proves. The plaintiff contended that the 1st defendant has failed to prove that the ongoing construction is being undertaken by the plaintiff.
19. On his part the defendant submitted vide his submissions dated 14/10/2024 that that the plaintiff has admitted that there is ongoing construction which is in breach of the order issued by the court on 28/05/2024. Further that whereas the plaintiff is in possession he seems to suggest vide the suit he filed, CMELC No. 353 of 2024 that strangers entered the suit property which is walled and gated and stated construction as per annexure JWM-3 and then constructed.
20. The defendant avers that the plaintiff has failed to prove the assertion of intruders and therefore not met the standard of proof provided under Section 107 of the *Evidence Act*. In his submission the defendant reiterated the elements to be proved in contempt cases stating that he had shown that the plaintiff in contempt of a lawful court order. It was his averment at paragraph 7 of the Replying Affidavit the plaintiff admitted knowledge of the terms of the court order issued on 28/05/2024.
21. The Black's Law Dictionary 9th Edition, defines contempt as:

The act or state of despising; the conduct of being despised. Conduct that defies the authority or dignity of a court or legislature. Because such conduct interferes with the administration of justice.



22. Section 5(1) of the *Judicature Act* which provides that:
- “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 subordinate courts.”
23. Section 29 of the Environment and Land Court is clear to the effect 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
24. In the case of *Exparte Langely 1879*, 13 Ch D/10 (CA) Thesiger L.J stated at P. 119 as follows: -
- “...the question in each case, and depending upon the particular circumstances of each case, must be, was there or was there not such a notice given to the person who is charged with contempt of Court that you can infer from the facts that he had notice infact of the order which has been made” And, in a matter of this kind, bearing in mind that the liberty of the subject is to be affected, I think that those who assert that there was such a notice ought to prove it beyond reasonable doubt.”
25. In the case of *North Tetu Farmers Co. Ltd v. Joseph Nderitu Wanjohi (2016)* eKLR Justice Mativo stated as follows: ' 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.”
26. It is clear that on 20/05/2024, the court issued orders of status quo restraining the Respondents from interfering with the suit property and there is no denial that they were aware of the said orders. I am convinced that the plaintiff/respondent was aware of the said orders as he has referred to them in his Replying Affidavit at paragraph 7.
27. In the case of *Hadkinson vs Hadkinson (1952)* 2 ALL ER 567,575 where quoted in *Mawani vs Mawani* it was stated that:
- “I am of the opinion that the fact that a party to a cause has disobeyed an order of the court is not itself a bar to being heard, but if his disobedience is such that so long as it continues, it impedes the course of justice in the cause, by making it more difficult for the court to ascertain the truth or to enforce the orders which it may make, then the court may in its discretion refuse to hear him until the impediment is removed or good reason is shown why it should not be removed.”
28. Also in the case of *Mutitika vs Baharini Ltd (1985)* KLR and *Econet Wireless Kenya Limited s Minister of Information Communication of Kenya & Another (2005)* eKLR the High Court held that it is a fundamental principle of the Rule of Law that court orders must be obeyed. The importance of this principle has been stated in many decisions in our courts and in particular the court of appeal.



29. I do find the Plaintiff to be in breach of the said orders and hereby order as follows:

30. Disposal Orders

1. That the 1st Defendant in the Counter-claim is found to be in contempt of court for disobedience of the orders of this Court issued on 28/05/2020.
2. That 1st Defendant is committed to civil jail for a period of 30 days or in the alternative the 1st Defendant to pay a fine of Kenya Shillings Fifty Thousand (Kshs. 100,0000).
3. That failure to pay the fine within 30 days the warrants of arrest to be issued against the 1st Defendant in the Counter Claim.
4. The costs of this Application will abide the cause
5. Since matter is part-heard mention shall be on 13/02/2025 to take a date for further directions.

It is ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 18TH DAY OF NOVEMBER 2024.

MOGENI

JUDGE

In the virtual presence of:

Mr. Khaduli for the Plaintiff/Respondent

Mr. Moses Njoro for the Defendant/Applicant

Ms. Caroline Sagina- Court Assistant

