



**Mwaura & 5 others v Teleposta Pension Scheme Registered Trustees (Environment & Land Case 226 of 2012) [2024] KEELC 14127 (KLR) (19 December 2024) (Ruling)**

Neutral citation: [2024] KEELC 14127 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAKURU  
ENVIRONMENT & LAND CASE 226 OF 2012  
A OMBWAYO, J  
DECEMBER 19, 2024**

**BETWEEN**

**AYUB NJUGUNA MWAURA ..... 1<sup>ST</sup> APPLICANT**

**PETER KAMURUA MWANGI & 4 OTHERS & 4 OTHERS & 4 OTHERS & 4 OTHERS & 4 OTHERS & 4 OTHERS & 4 OTHERS & 4 OTHERS & 4 OTHERS & 4 OTHERS ..... 2<sup>ND</sup> APPLICANT**

**AND**

**TELEPOSTA PENSION SCHEME REGISTERED TRUSTEES ..... RESPONDENT**

**RULING**

**Brief Facts**

1. The Applicant filed the present application dated 1st October, 2024 seeking the following orders:
  1. Spent.
  2. That the managing trustee of the respondent do appear before this honourable court and show cause why he should not be cited for contempt of court for breach of the consent orders issued on the 27th June, 2023.
  3. That this honourable court be pleased to cite the managing trustee of the respondent for contempt of consent order entered on 27th June, 2023.
  4. That the costs of this application be provided for.
2. The Application was based on grounds set out and supported by the Affidavit of William Mburu the Plaintiff herein sworn on 1st October, 2024.
3. It was stated that vide an application dated 2nd March, 2020 they sought stay of execution of the decree in Nakuru ELC No. 225 of 2012 consolidated with 226 of 2012, ELC 153 of 2014 and ELC 75 of 2015



4. That the application was heard on 27th June, 2023 where counsel for both parties entered into a consent where the Applicant was ordered to file an appeal within 60 days of the order and deposit security of costs of Kshs.15 million. It was further stated that the Applicant complied with the terms and the Respondent with full knowledge of the same moved to the suit land and commenced subdivision and fencing of the same. He stated that the said acts by the Respondent are in breach of the court orders and a disrepute of the court's authority. He urged the court to allow the application as prayed.

### **Response**

5. The Respondent filed a Replying Affidavit sworn by one Peter Kipyegon Rotich on 6th November, 2024 where he averred that he was the Respondent's administrator and Trust Secretary.
6. He averred that the Respondent had no position of a Managing Trustee. He further averred that the Applicant has not tendered the consent order issued on 27th June, 2023 as evidence. He denied any eviction of the Applicants from the suit land and added that the Applicant failed to demonstrate that the Respondent had not complied with the conditional orders. He averred that the Respondent only fenced the portion of Gilgil Township Block 4/83 pursuant to the orders by NEMA and Nakuru County Health Department. He averred that the application was an abuse of the court process and should be dismissed with costs.

### **Submissions**

7. Counsel for the Respondent filed his submissions dated 20th November, 2024 where he submits that the Respondent did not interfere with the larger parcel of the suit property being the oxidation pond. He further submits that there was no evidence of eviction of the Applicants. He submits that they only fenced the area of Gilgil Township Block 4/83 as an order which they effected so as to protect the public including the Applicants from harm arising from illegal dumping of waste. It was counsel's submission that there was no evidence of contempt since the Applicant did not tender the order showing any form of violation by the Respondent. He added that no order was served upon the contemnor. In conclusion, he urged the court to dismiss the application with costs.

### **Analysis and Determination**

8. This court has considered the application, Replying Affidavit and the submissions and is of the view that the main issue for determination is whether the Respondent is in contempt of court.
9. Section 29 of the *Environment and Land Court* provides 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”

10. In the case of *North Tetu Farmers Co. Ltd v. Joseph Nderitu Wanjobi* (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.”

11. In the instant case, the Applicant contends that the Respondent is in breach of the consent orders dated 27th June, 2023. This court has keenly perused the court record and it is a fact that the said order is not provided. I am of the view that with the unavailability of the alleged consent order, this court does not have the basis from which it can base its finding of contempt. The upshot is that the application dated 1st October, 2024 is hereby struck out with costs. It is so ordered.

**SIGNED BY: HON. JUSTICE ANTONY O. OMBWAYO**

**THE JUDICIARY OF KENYA.**

**NAKURU ENVIRONMENT AND LAND COURT**

**ENVIRONMENT AND LAND COURT**

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