



**Bhogal v Bhogal (Environment & Land Case E014 of 2023)  
[2024] KEELC 14117 (KLR) (18 December 2024) (Ruling)**

Neutral citation: [2024] KEELC 14117 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAKURU  
ENVIRONMENT & LAND CASE E014 OF 2023  
A OMBWAYO, J  
DECEMBER 18, 2024**

**BETWEEN**

**PARAMJIT SINGH BHOGAL ..... APPLICANT**

**AND**

**HARBINDER SINGH BHOGAL ..... RESPONDENT**

**RULING**

**Brief Facts**

1. This ruling is in respect of two applications. The first application by the Plaintiff is dated 18th September, 2024 seeking the following orders:
  1. Spent.
  2. That this Honourable court at the first instance be pleased to summon HARBINDER SINGHBHOGAL to show cause why he should not be cited for contempt and committed to civil jail for disobeying this Honourable court's unequivocal orders issued on 11th April, 2024.
  3. That this Honourable court be pleased to order the Respondent to restore the subject matter to its status quo ante pre-11th April, 2024 adhere to the terms of the court order issued on 11th April, 2024.
  4. That this Honourable court be pleased to order that the Respondent namely HARBINDER SINGHBHOGAL be committed to civil jail for a period of up to six months for disobedience of this honourable court orders.
  5. That the Officer-in-Charge of Nakuru Central Police Station to enforce the orders herein where necessary.
  6. That the costs herein be provided.



2. The Application was based on grounds set out and supported by the Affidavit of Paramjit Singh Bhogal the Plaintiff herein sworn on 19th September, 2024.
3. It was stated that the Defendant/Respondent despite being aware of the ruling by Lady J. Omollo, he ignored and/or refused to comply with the said orders and has actively expanded, cultivated and constructed the suit property. That if the Respondent continues to flout the court order, the Plaintiff/Applicant will suffer irreparable harm. He stated that the said ruling was delivered on notice and that the Defendant's advocates were not present. He further stated that his advocates extracted the said orders and served it upon the Defendant in person as well as his counsel on record. He added that despite being aware of the said orders, the Defendant continues to interfere with the suit land thus acting in contempt of the orders.
4. That the Respondent is aggravating the dispute by creating new fronts in the matter with a view of causing new issues intended to exact more harm to the Plaintiff. He added that they are unable to freely use access the suit property.
5. It was further stated that the Plaintiff's agent was forcefully and illegally detained for unknown reasons. He stated that the Defendant is deliberately acting in contempt of the court orders and therefore he urged the court to purge him for contempt.

### **Response**

6. The Defendant filed a Replying Affidavit sworn on 2nd October, 2024 where he averred that the application was devoid of factual truth. He averred that he is the son to the late Narwer Singh Bohogal and the appointed sole executor of his estate. He averred that his late father purchased the suit property together with the Plaintiff and they own the same as tenants in common. He further averred that his late father had bequeathed him his 50% share in the suit property and that he has since petitioned the court for grant of letters of administration which petition is still pending in court. He also averred that he is aware of the court orders of 11th April, 2024 and that the Plaintiff's attempt is to mislead the court. He added that he was also aware of the court's order dated 9th May, 2024 which allowed each party access to the suit property. He averred that the Plaintiff based the instant application on the routine inspection by a KPLC officer who fell the trees in the suit property due to overgrowth. He further averred that the Plaintiff disregarded the fact that the trees were fell by KPLC at their own discretion. He also averred that the Plaintiff's agent was arrested due to his failure to introduce himself to the soldier manning the suit property.
7. The Defendant filed an application dated 3rd October, 2024 seeking the following orders:
  - a) Spent.
  - b) That an order do issue directing that the property known as Land Reference Number 12944 be apportioned equally between the Plaintiff and the Defendant and each party to remain on its portion pending the hearing and determination of the main suit.
  - c) That costs be in the cause.
8. The Application was based on grounds set out and supported by the Affidavit of Harbinder Singh Bhogal the Defendant herein sworn on 3rd October, 2024.
9. It was stated that the suit property is jointly registered in his late father's name and the Plaintiff who own as tenants in common. He stated that he was left to take care of his late father's share of the suit property and he has a court order to that effect. He further stated that he has since made improvements on the suit property and the Plaintiff has never made any monetary contributions towards development



of the suit land. He added that the only way to preserve the suit property is to have the entire suit apportioned equally. That the same would allow each party get its rightful share. He went on to state that it would be in the interest of justice that the preservative orders are allowed so as to preserve the substratum of the suit property. He stated that the Plaintiff shall not be prejudiced if the said orders are issued.

## **Response**

10. The Plaintiff filed a Replying Affidavit sworn on 14th November, 2024 where he averred that it is not disputed that the suit property is jointly owned by Narwar Singh Bhogal (deceased) and himself as tenants in common. He averred that the will as left by the deceased is contested and that the Defendant is yet to be confirmed as an administrator. He further averred that the Defendant was not aware of how much was paid by both parties towards acquisition of the suit land. He also averred that he has been freely accessing the suit property until when his co-owner, Narwar Singh Bhogal passed on and the Defendant started restriction. He added that the high court simply issued the Defendant authority to defend the deceased in the pending suits but not to interfere with the suit property without a proper grant on record. He averred that despite having been issued with status quo orders and orders allowing him access to the suit property, the Defendant's actions forced him to file for contempt. He went on to aver that any developments on the suit property were done out of the Defendant's free will as he was never consulted. He averred that the suit property ought to be sold as the opportune time and the proceeds divided equally between himself and the rightful executor of his co-owner's estate. He added that there were no developments done by the Defendant and his late father prior to his death but that the same were made by the Plaintiff himself and the deceased. He urged the court to dismiss the Defendant's application with costs.

## **Submissions**

11. None of the parties filed submissions to the applications.

## **Analysis and Determination**

12. This court has considered both applications and is of the view that the main issue for determination is whether the applications are merited. With regard to the first application dated 18th September, 2024, it is not in dispute that this court on 11th April, 2024 issued a temporary injunction restraining the Defendant from interfering with the suit property pending the hearing and determination of the main suit. It is also not in dispute that on 9th May, 2024 by consent, the Plaintiff was granted access to the suit property. It is this court's view that the issue of contempt in this circumstance does not apply by virtue of the two orders that allowed both the Plaintiff and Defendant equal access to the suit property. In view of the above, the application lacks merit and is therefore dismissed.
  - a) Going to the second application dated 3rd October, 2024, it is not in dispute that both parties are claiming their portion to the suit property as rightfully directed by this court. It is also clear that the main suit is still pending hearing and determination. It is therefore the courts view that considering the circumstance of the case, that parties agree on an independent surveyor to apportion the suit property as alleged by both parties. It is also my view that the same would allow each party occupy their portion pending hearing and determination of the main suit. It is my considered view that apportionment of the suit property would prevent any further wrangles between the Plaintiff and Defendant therefore giving room for the case to be heard on merit. The upshot is that the application dated 3rd October, 2024 is allowed thus, THAT an order do issue directing that the property known as Land Reference Number 12944 be apportioned equally between the Plaintiff and the Defendant and each party to remain on its



portion pending the hearing and determination of the main suit . Each party shall bear its own costs to the applications. It is so ordered.

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

**THE JUDICIARY OF KENYA.**

**NAKURU ENVIRONMENT AND LAND COURT**

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