



Ngaine (Suing as the legal representative of the Estate of John Mbeti Muriithi - Deceased) v Kamau & 5 others (Environment & Land Case E339 & E284 of 2022 (Consolidated)) [2024] KEELC 13601 (KLR) (5 December 2024) (Ruling)

Neutral citation: [2024] KEELC 13601 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE E339 & E284 OF 2022 (CONSOLIDATED)
LN MBUGUA, J
DECEMBER 5, 2024**

BETWEEN

STELLA MARIS KAREGI NGAINE (SUING AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF JOHN MBETI MURIITHI - DECEASED) PLAINTIFF

AND

**JENIFFER WANGARI KAMAU 1ST DEFENDANT
LUKE KIPCHUMBA METTO 2ND DEFENDANT
ERIC AGBEKO 3RD DEFENDANT
THE LAND REGISTRAR, NAIROBI 4TH DEFENDANT
THE CHIEF LAND REGISTRAR, NAIROBI 5TH DEFENDANT
THE HON ATTORNEY GENERAL 6TH DEFENDANT**

RULING

1. Before me is the plaintiff's application dated 15.1.2024 seeking orders of injunction restraining the 1st defendant from further trespassing, constructing, demolishing, entering or in any other way interfering with parcel Nairobi/Block 110/234, that the said 1st defendant be cited for contempt for willful disobedience of the orders of 9.2.2023 and that she be committed to civil jail. Further, that an order be issued for her eviction, demolition of the structures on the suit land, that the OCS Nairobi central be directed to enforce the orders and that the 1st defendant be ordered to pay damages for malicious damage to the plaintiffs property.
2. The application is premised on the grounds on the face of the application and the supporting affidavit of the plaintiff. She contends that on 9.2.2023, the court issued orders of maintenance of status quo,



but on 9.1.2024, the 1st defendant poured construction materials on the site, chased away the plaintiff's guards replacing them with her goons, demolished the structures and the gate and commenced construction on the suit property.

3. The plaintiff contends that she reported the matter to the Kasarani police station, but no action was taken as the police held the opinion that the suit land belonged to the 2nd defendant.
4. There is also a supporting affidavit of one Oltingidi Ole Kereto, a guard employed by the plaintiff. He has given an account of how construction materials were brought to the site in January 2024, of which goons invaded the property on 12.1.2024 and attacked them.
5. The 1st defendant has opposed the application vide her replying affidavit dated 24.1.2024 where she denies the allegations levelled against her, contending that even the photographs availed by the applicant are not clear and were taken randomly. She urges the court to dismiss the application with costs.
6. I have considered all the arguments raised herein. It is on record that on 9.2.2023, this court delivered a ruling in respect of applications for injunction by the claimants in the two suits E339 of 2022 (application dated 13.10.2022) and in E284 of 2022 (application dated 7.9.2022) in which the court gave orders of maintenance of status quo. The court cannot revisit the issue of injunction, having pronounced itself in the aforementioned ruling.
7. The question therefore falling for determination is whether the aforementioned orders of maintenance of status quo have been violated. In order to determine the aforementioned question, the court did direct the Deputy Registrar of this court to visit the site and file a report of which, the said report was duly filed which indicates that a construction was underway and had reached 1st floor stage. The photographs taken at the site confirmed this state of affairs. In the ruling of 9.2.2023 at paragraph 20, the court had observed that "nothing much appears to have been done on the land". But now a year later, a building is on the 1st floor stage. And the 1st defendant wants this court to believe that she has not violated court orders!
8. The provisions of Section 5 of the Judicature Act provides for the punishment of contempt of court in the following terms:

“(1). 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.”
9. In the case of Samuel M. N. Mweru & Others v National Land Commission & 2 Others [2020] eKLR, the court stated that;

“...The test for when disobedience of a civil order constitutes contempt has come to be stated as whether the breach was committed ‘deliberately and mala fide.’
10. The applicant has given graphic details of how the 1st defendant has violated the order of maintenance of status quo by chasing away her guards, bringing her own people who attacked the guards and commenced construction. It is pertinent to note that even the site visit sanction by the court faced imminent danger as an attack by alleged armed gangsters just happened.
11. I find that this is not only a case of willful disobedience of court orders, but it is a brazen attack on the overall administration of justice which should not be left unpunished.



12. In the end, I partially find that the application dated 15.1.2024 is merited and I proceed to give the following orders;
1. The 1st defendant in E339 OF 2022 is hereby found guilty of contempt of court orders of 9.2.2023. A notice to show cause as to why the 1st defendant, Jennifer Wangari Kamau should not be punished for contempt is hereby issued.
 2. No further activities including construction are to be undertaken on the suit property, and the OCS of the nearest police station is to ensure compliance with the said order.
 3. The 1st defendant, Jennifer Wangari Kamau is hereby condemned to pay the costs of the application.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 5th DAY OF DECEMBER 2024 THROUGH MICROSOFT TEAMS.

LUCY N. MBUGUA

JUDGE

In the presence of:

Musesya and Mutegi for Plaintiffs in 339/2022

Mugo for 1st Defendant in 339/2022

Omuyama holding brief for Wachira for 2nd and 3rd Defendants in 339/2022

Court Assistant: Vena

