



REPUBLIC OF KENYA



**KENYA LAW**  
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**Oketch & 2 others v Charles; Odhiambo (Interested Party) (Environment & Land Case 22 of 2017) [2023] KEELC 93 (KLR) (19 January 2023) (Ruling)**

Neutral citation: [2023] KEELC 93 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KISUMU  
ENVIRONMENT & LAND CASE 22 OF 2017  
A OMBWAYO, J  
JANUARY 19, 2023**

**BETWEEN**

**LILIAN ANYANGO OKETCH ..... 1<sup>ST</sup> APPLICANT**

**DORINE AKOTH OKETCH ..... 2<sup>ND</sup> APPLICANT**

**SAMSON OKOTH ABWOGO ..... 3<sup>RD</sup> APPLICANT**

**AND**

**JOHN GODI ABIRA CHARLES ..... RESPONDENT**

**AND**

**JARED HAGGAI ODHIAMBO ..... INTERESTED PARTY**

**RULING**

1. Lilian Anyango Oketch, Dorine Akoth Oketch, Samson Okoth Abwogo have come to this court against John Godi Abira Charles and Jared Haggai Odhiambo praying that this court be pleased to find that John Godi Abira Charles, the respondent is in contempt of the orders of this court made on April 30, 2018. Upon finding that the Respondent John Godi Abira Charles is in contempt of the orders of this as stated in Prayer 2 aforesated, this court be pleased to direct that the said John Godi Abira Charles be arrested and that he be sentenced to serve such prison sentence for such a period of time as the court may in its discretion direct for being in contempt of the orders made on April 30, 2018.
2. Upon finding that the respondent John Godi Abira Charles is in contempt of the order of this court as stated in Prayer 2 aforesated, this court be pleased to impose such fine or damages as it may in its discretion set to be paid by the respondent. John Godi Abira Charles for being in contempt of the orders of this court made on April 30, 2018 and in default the personal properties of the respondent be attached and sold to recover such fine and damages.



3. Upon finding that the respondent, John Godi Abira Charles is in contempt of the orders of this court made on April 30, 2018, this court be pleased to direct the Respondent and the Interested Party to purge the contempt by transferring land parcel No Kisumu/Kadero Got Nyabondo /2051 to the 3<sup>rd</sup> applicant, Samson Okoth Abwogo as ordered by the court on April 30, 2018 within such time as this court may direct and on such terms as the court may be pleased to set.
4. In default of compliance with the orders sought in Prayer 5, this court be pleased to direct the County Land Registrar, Kisumu to cancel the entries made in the register of Land Parcel No. Kisumu/Kadero Got Nyabondo/2051 on November 1, 2019 and to Register the said parcel of land the name of Samson Okoth Abwogo in terms of the orders made on April 30, 2018 and January 18, 2021.
5. This application be ordered served upon the interested party herein, Jared Haggai Odhiambo and that the order of service on the interested party be made at the ex parte hearing of this application. Costs of this application be provided for.
6. The application is based on grounds that on the 30<sup>th</sup> day of April 2018, a consent judgment was entered in this matter requiring that the land parcel Number Kisumu/Kadero/Got Nyabondo/2051 be registered in the name of Samson Okoth Abwogo, the 3<sup>rd</sup> Applicant herein.
7. The consent order was extracted, transfer forms prepared and forwarded to the Respondent for execution but the Respondent declined to sign the transfer forms despite being given a chance to do so.
8. The applicants sought and obtained an order dated January 18, 2021 requiring the Deputy Registrar, Environment and Land Court to sign the transfer forms and all requisite documents in respect of land parcel number Kisumu/Kadero Got Nyabondo /2051 to have the parcel of land be registered in the names of the 3<sup>rd</sup> Applicant herein, Samson Okoth Obwogo in accordance with the consent judgment.
9. The respondent in unclear circumstances has gone ahead and transferred the parcel of his brother Jared Haggai Odhiambo in utter disregard to the consent judgment and in a scheme calculated to defeat the letter, substance and effect of the order made on April 30, 2018.
10. The actions and omissions of the respondent are in contempt of the consent judgment. It is important that this application be allowed as to uphold the dignity and authority of this court.
11. In the supporting affidavit Samson Okoth Abwogo states that on the 30<sup>th</sup> day of April 2018, a consent judgment was entered requiring the land parcel Number Kisumu/Kadero/Got Nyabondo/2051 be transferred to me by the Respondent, John Godi Abira Charles.
12. The consent order was extracted, transfer forms prepared and forwarded to the Respondent for execution but the Respondent declined to sign the transfer forms despite being given a chance to do so.
13. That the applicants applied for an order requiring the Deputy Registrar, Environment and Land Court to sign the transfer forms and all requisite documents in respect of land parcel number Kisumu/Kadero Got Nyabondo/2051 to have the parcel of land be registered to the applicant accordance with the consent judgment. The application was served upon the Respondent and was heard and allowed on January 18, 2021.
14. That the applicant extracted the order made on January 18, 2021, and caused the Deputy Registrar to sign for registration in implementation of the order of the court of April 30, 2018.
15. That when they presented the transfer for registration, they were informed by the office of the Land Registrar, Kisumu that they will not implement the orders because the land was in the name of person other than the respondent.



16. The applicant applied for an extract of the register to verify the information and it is on receipt of the extract that he discovered the Respondent had, after the orders of April 30, 2018 were made, transferred the subject property to his brother, Jared Haggai Odhiambo, the interested Party.
17. That the respondent and the interested party are well aware of the claim to the suit property and they colluded so as to defeat the court orders made on April 30, 2018 and to undermine the dignity and authority of this court and ensure that does not get to benefit from the orders in question.
18. That the constitutional and statutory principles decreeing the central role of respect for the courts in the administration of justice are not mere platitudes but are important component in the administration of justice.
19. That it is important that this court grants the orders sought in this application in the public interest and in order to safeguard the authority and dignity of the court and ensure the smooth administration of justice and facilitate the just, fair and proportionate determination of this suit.
20. I have considered the application and the submissions on record and do find that:-
  - a. On the 30<sup>th</sup> day of April, 2018, a consent judgment was entered in this matter requiring that the land parcel N umber Kisumu/Kadero/Got Nyabondo/2051 be registered in the name of Samson Okoth Abwogo, the 3<sup>rd</sup> Applicant herein.
  - b. The consent order was extracted, transfer forms prepared and forwarded to the Respondent for execution but the respondent declined to sign the transfer forms despite being given a change to do so.
  - c. The applicants sought and obtained an order dated January 18, 2021 requiring the Deputy Registrar, Environment and Land Court to sign the transfer forms and all requisite documents in respect of land parcel number Kisumu/Kadero Got Nyabondo/2051 to have the parcel of land be registered in the names of the 3<sup>rd</sup> Applicant herein. Samson Okoth Abwogo in accordance with the consent judgment.
  - d. The respondent in unclear circumstances has gone ahead and transferred the parcel to his brother Jared Haggai Odhiambo in utter disregard to the consent judgment and in a scheme calculated to defeat the letter, substance and effect of the order made on April 30, 2018.
  - e. The actions and omissions of the respondent are in contempt of the consent judgment.
21. The applicant has proved as required in law that the respondent in contempt of the court order issued on April 30, 2018. The terms of the order were clear and unambiguous that he transfer the parcel of land to the applicants. The order was proper and binding on the respondent but he defied the same. The respondent has proper knowledge of the order but he did not the contrary. His conduct was deliberate.
22. The law on contempt is clearly defined in section 29 of the [\*Environment and Land Court Act, 2011\*](#) thus:
  29. Offences  
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.



23. The Court of Appeal in the case of *Econet wireless K Ltd v Minister of information and communication of Kenya & another* [2005] KLR 828, Ibrahim, J (as he then was), underscored the importance of obeying court orders, stating:

It is essential for the maintenance of the rule of law and order that the authority and the dignity of our courts are upheld at all times. The Court will not condone deliberate disobedience of its orders and will not shy away from its responsibility to deal firmly with proved contemnors. It is the plain and unqualified obligation of every person against whom an order is made by court of competent jurisdiction, to obey it unless and until the order is discharged. The uncompromising nature of this obligation is shown by the fact that it extends even to cases where the person affected by the order believes it to be irregular or void. (Emphasis)

24. In *TN Gadavarman Thiru Mulpad v Ashok Khot And Anor* [2006] 5 SCC, the Supreme Court of India also emphasized on the dangers of disobeying Court orders, thus:

Disobedience of this Court's order strikes at the very root of the rule of law on which the judicial system rests. The rule of law is the foundation of a democratic society. Judiciary is the guardian of the rule of law. Hence, it is not only the third pillar but also the central pillar of the democratic State. If the judiciary is to perform its duties and functions effectively and remain true to the spirit with which they are sacredly entrusted to it, the dignity and authority of the Courts have to be respected and protected at all costs. Otherwise, the very corner stone of our constitutional scheme will give way and with it will disappear the rule of law and the civilized life in the society. That is why it is imperative and invariable that Court's orders are to be followed and complied with.

25. Dealing with the question of contempt in *Econet Wireless Kenya Ltd v Minister for Information & Communication of Kenya & another* [2005] KLR 828, Ibrahim, J (as he then was), underscored the importance of obeying court orders, stating:

It is essential for the maintenance of the rule of law and order that the authority and the dignity of our courts are upheld at all times. The Court will not condone deliberate disobedience of its orders and will not shy away from its responsibility to deal firmly with proved contemnors. It is the plain and unqualified obligation of every person against whom an order is made by court of competent jurisdiction, to obey it unless and until the order is discharged. The uncompromising nature of this obligation is shown by the fact that it extends even to cases where the person affected by the order believes it to be irregular or void. (Emphasis)

26. In *TN Gadavarman Thiru Mulpad v Ashok Khot And Anor* [2006] 5 SCC, the Supreme Court of India also emphasized on the dangers of disobeying Court orders, thus:

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of law and the civilized life in the society. That is why it is imperative and invariable that Court's orders are to be followed and complied with.

27. This is a case of clear contempt of court. I do order that the respondent be jailed for a term of 6 months. In the alternative the respondent to pay a fine of Kshs 500,000/=. Moreover, the respondent to purge the contempt within a period of 3 months by transferring land parcel No Kisumu/Kadero Got Nyabondo /2051 to the 3<sup>rd</sup> applicant, Samson Okoth Abwogo as ordered by the court on April 30, 2018 within. Failure by the respondent to comply, I do direct the County Land Registrar, Kisumu to cancel the entries made in the register of Land Parcel No Kisumu/Kadero Got Nyabondo/2051 on November 1, 2019 and to register the said parcel of land the name of Samson Okoth Abwogo in terms of the orders made on April 30, 2018 and January 18, 2021. Costs of the application to the applicant. Orders accordingly.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT KISUMU THIS 19<sup>TH</sup> DAY OF JANUARY, 2023.**

**A O OMBWAYO**  
**JUDGE**

