



**Mangi v Director of Land Adjudication and Settlement & another;
Green & another (Interested Parties) (Environment & Land Case
25 of 2018) [2023] KEELC 69 (KLR) (16 January 2023) (Ruling)**

Neutral citation: [2023] KEELC 69 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ENVIRONMENT & LAND CASE 25 OF 2018
MAO ODENY, J
JANUARY 16, 2023**

BETWEEN

JOE KAZUNGU YAA MANGI PLAINTIFF

AND

**DIRECTOR OF LAND ADJUDICATION AND SETTLEMENT 1ST
DEFENDANT**

THE LAND REGISTRAR KILIFI 2ND DEFENDANT

AND

DAVID RODNEY GREEN INTERESTED PARTY

DEBORAH JANE GREEN INTERESTED PARTY

RULING

1. This ruling is in respect of a notice of motion dated March 25, 2022 by the Interested party/applicants seeking the following orders: -
 - a. Spent.
 - b. Spent.
 - c. That this honourable court be pleased to order Joe Kazungu Yaa Mangi, the plaintiff herein and the OCS Kilifi Police Station respectively be committed to civil jail for a term not exceeding 6 months for contempt or fined for disobedience of the orders issued on February 19, 2021 and November 11, 2021 by this Court (Hon Justice Mr J O Olola) and (Hon Lady Justice M A Odeny) respectively in this suit.



- d. That the said 1st plaintiff and OCS Kilifi Police Station to personally pay costs of this application.
2. Counsel agreed to canvas the application *vide* written submissions which were duly filed.

Interested Parties' Submissions

3. The application was premised on the grounds on the face of the application and the affidavit by David Rodney Green who deponed that on February 19, 2021, this court ordered that status quo be maintained pending the hearing and determination of an appeal filed in this matter.
4. The applicant further deponed that the *status quo* as at that time was that they enjoyed quiet possession of the property Kilifi/Mtondia/182 but the plaintiff has continued to unlawfully enter the suit property on diverse dates while the OCS Kilifi Police Station has continued to be unresponsive to complaints filed by the applicants despite having been ordered to enforce the aforementioned orders, *vide* a ruling dated October 26, 2021.
5. Counsel relied on the case of *Katsuri Limited v Kapurchand Depar Shah* [2016] eKLR on the definition of contempt and submitted that the terms of the orders issued by the court were clear, unambiguous and binding on the defendant.
6. It was counsel's submission that the orders were granted in the presence of the plaintiff's counsel as such the counsel explained to the plaintiff the meaning of *status quo* obtaining as at February 19, 2021 and as such the plaintiff is being dishonest by claiming that the *status quo* obtaining as at February 19, 2021 was that he was in possession of the subject property.
7. Counsel referred the court to the supporting affidavit to the interested parties/applicant's application dated June 5, 2020 sworn by Deborah Jane Green where she stated among others at paragraph 5 thereof that, the Interested parties/applicants.

“currently possess the suit property whereon we have been operating a farm, since we purchased the suit property in the year 1999.” While at para 7 Deborah Jane Green deponed that, “we have invested a lot of time, hard work and finances into the suit property in order for the same to flourish as a farm over 21 years”
8. Further that the orders of February 19, 2021 emanated from the interested parties/applicant's application dated June 5, 2020 which application sought stay of execution of the judgment and decree rendered by the court on May 6, 2020.
9. Mr Litoro submitted that the plaintiff being aggrieved by the orders given on February 19, 2021, filed an application for review dated February 24, 2021 for review of the said orders but failed to prosecute its application resulting on the same being dismissed for want of prosecution.
10. Counsel further submitted that since the plaintiff was trespassing on the suit property and cutting down trees planted by the interested parties/, the interested parties/plaintiff filed another application dated April 9, 2021 seeking police assistance in enforcing and implementing the orders of February 19, 2021 which was allowed.
11. Counsel relied on the case of *Republic v Kenya School of Law & 2 others Ex parte Juliet Wanjiru Njoroge & 5 others* [2015] eKLR and urged the court to find that the respondents are in contempt of court for willful disobedience of lawful court orders that had knowledge of. That the respondent and his counsel as illustrated in the affidavits sworn in support of the instant application and the foregoing



submissions herein disregarded the authority of court and instead decided on their own erroneous and misleading interpretation of the order.

Plaintiff/respondents' submissions

12. In response, the plaintiff swore and filed a replying affidavit dated April 26, 2022 whereby he deponed that the *status quo* as at the time the orders were issued was that the plaintiff, was in occupation and the registered owner of the suit property as per the finding of this court's judgment. The plaintiff added that he was a stranger to the allegations raised by the applicants and that the cows said to be on the suit property on diverse dates did not belong to him. The plaintiff termed the application incompetent, vexatious and abuse of the court process.
13. Counsel submitted that the application ought to be dismissed for breach of natural justice and Article 50 of the [Constitution](#), for failure to include a notice to show cause as a first prayer.

Analysis and Determination.

14. The issue for determination is whether the respondents are in contempt of court and whether such contempt has been proved to the required standard.

In any civil suit, the burden of proof of establishing any fact rests with the party raising the allegations. This is set out under section 107 of the [Evidence Act](#) wherein it provides:

- “(1) Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.
- (2) When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person.”

15. The [Black's Law Dictionary \(9th Edition\)](#) defines contempt of court as follows: -

“Conduct that defies the authority or dignity of a court. Because such conduct interferes with the administration of justice, it is punishable usually by fine or imprisonment.”

16. Order 40 rule 3(1) of the [Civil Procedure Rules](#) provides as follows: -

In cases of disobedience, or of breach of any such terms, the court granting an injunction may order the property of the person guilty of such disobedience or breach to be attached, and may also order such person to be detained in prison for a term not exceeding six months unless in the meantime the court directs his release.

17. Section 29 of the [Environment and Land Court Act](#) is clear 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.

18. In the case of [Samuel M N Mweru & Others v National Land Commission & 2 others](#) [2020] eKLR. In this decision, Mativo J (as he then was) held as follows:

“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.’ A deliberate disregard



is not enough, since the non-complier may genuinely, albeit mistakenly, believe he/she is entitled to act in the way claimed to constitute the contempt. In such a case good faith avoids the infraction. Even a refusal to comply that is objectively unreasonable may be *bona fide* (though unreasonableness could evidence lack of good faith).

These requirements – that is the refusal to obey should be both willful and *mala fides*, and that unreasonable non-compliance, provided it is *bona fide*, does not constitute contempt – accord with the broader definition of the crime, of which non-compliance with civil orders is a manifestation. They show that the offence is committed not by mere disregard of a court order, but by the deliberate and intentional violation of the court’s dignity, repute or authority that this evinces. Honest belief that non-compliance is justified or proper is incompatible with that intent.”

19. It is important to note that contempt of court proceedings are criminal in nature and, therefore, proof of a case against a contemnor is higher than that of balance of probability. There must be proof of willful disobedience and *mala fides* and it is trite that unreasonable non-compliance provided that it is *bona fide* does not amount to contempt. This should not be a blanket excuse for not obeying lawful court orders.
20. Court orders must be obeyed even if a party does not agree with it or finds difficulty in obeying it. A party cannot interpret a court order contrary to what the court granted to suit their own good.
21. In the present case, the existence of the orders granted on February 19, 2021 and October 26, 2021 is not disputed. What seems to be in dispute herein is the *status quo* as at the time of making the order of February 19, 2021. It is in the circumstances important to define what *status quo* means and what it meant for purposes of this matter.
22. The normal English interpretation of *status quo* is the present situation, the way things stand as at the time the order is made, the existing state of things. It cannot therefore relate to the past or future occurrences or events. The ruling that gave rise to the orders dated February 19, 2021, the learned Judge clearly observed as follows: -
 - “9. Accordingly, and taking the totality of the circumstances into consideration, I think it is only fair that any further execution of the decree be stayed. From a perusal of the record herein, it was evident from a letter dated July 1, 2020 and filed herein on July 2, 2020 from the Chief Land Registration Officer, Kilifi County addressed to the Deputy Registrar of this court that the execution process had reached an advanced stage.
 10. In the circumstances, I hereby direct that the *status quo* obtaining as at the date of this ruling be maintained pending the hearing and determination of the appeal.”
23. The above order is clear and unambiguous. The status of the suit property as at the time of the ruling, was in relation to transfer and registration of the same in favour of the plaintiff. Indeed, a perusal of the judgment sought to be appealed, confirms that the plaintiff was and is the squatter on ground and that the applicants did not reside on the suit property.
24. The *status quo* order was granted after an application for stay of execution was granted pending the hearing and determination of the appeal. This was to preserve the substratum of the case and that is why the court granted an order dated October 26, 2021 for the OCS Kilifi to assist with the enforcement of the order.



25. The OCS having been served with the order and having knowledge of the order was under a duty to obey the court order. Similarly, the respondent was duty bound to obey the court order and not to make his own interpretation of the order as it was unambiguous.
26. In the case of *Kenya Tea Growers Association v Francis Atwoli and 5 Others* [2012] eKLR Lenaola J (as he then was) cited with approval the case of *Clarke and Others v Chadburn & Others* [1985] 1All ER (PC), 211 in which the court observed that: -
- “I need not cite authority for the proposition that it is of high importance that orders of the courts should be obeyed, willful disobedience to an order of the court is punishable as a contempt of court, and I feel no doubt that such disobedience may properly be described as being illegal.... even if the defendants thought that the injunction was improperly obtained or too wide in its terms, that provides no excuse for disobeying it. The remedy is to vary or discharge it.”
27. Similarly, in the case of *Spoke v Banbury Board of Health* Wood VC stated as follows: -
- “The simple and only view is that an order must be obeyed”. That those who wish to get rid of that order must do so by the proper course, an appeal. So long as it exists the order must be obeyed, and obeyed to the letter”.
28. The orders of February 19, 2021 and November 11, 2021 are still in force and have not been appealed against hence are valid orders and must be obeyed.
29. Having said that I find that the applicant has proved that there was willful disobedience of court orders hence the respondents (plaintiff and OCS Kilifi) are in contempt court and shall appear before this court on an agreed date within 14 days for sentencing/ and or sanctions against them.

DATED, SIGNED AND DELIVERED AT MALINDI THIS 16TH DAY OF JANUARY, 2023

M.A. ODENY

JUDGE

NB: In view of the Public Order No. 2 of 2021 and subsequent circular dated 28th March, 2021 from the Office of the Chief Justice on the declarations of measures restricting court operations due to the third wave of Covid-19 pandemic this Ruling has been delivered online to the last known email address thereby waiving Order 21 [1] of the Civil Procedure Rules.

