



REPUBLIC OF KENYA



**Njenga v Munyua & another (Environment & Land Case 129 of 2012)
[2023] KEELC 16286 (KLR) (27 February 2023) (Ruling)**

Neutral citation: [2023] KEELC 16286 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 129 OF 2012
JA MOGENI, J
FEBRUARY 27, 2023**

BETWEEN

SIMON NGUGI NJENGA PLAINTIFF

AND

TABITHA WANJIKU MUNYUA 1ST DEFENDANT

CAROLIN NJANGO MUNYUA 2ND DEFENDANT

RULING

1. This ruling concerns a notice of motion dated 11/10/2022 brought to court by the plaintiff pursuant to order 22 rule 6 and order 51 of the *Civil Procedure Rules*, section 3A of the *Civil Procedure Act*, article 159 of the *Constitution of Kenya*, 2010 and any other enabling provisions of the law. The plaintiff/applicant is seeking the following orders:
 1. Spent
 2. That the defendants herein be ordered to show cause why they decline to obey the courts orders, ruling / judgment delivered on 22/03/2022 by hon. Justice Mogeni and the same be held for contempt by declining to transfer land number L Kabete/L. Kabete/ 2492 to the Applicant herein.
 3. That this honourable court be pleased to direct the deputy registrar of this honourable court to sign the instrument of the transfer of the plot number L Kabete/L. Kabete/ 2492 on behalf of the defendants herein if the defendants continue resisting to transfer in favour of the applicant as the court ordered.
 4. That costs of this application be provided for.



2. The application is premised on the grounds stated on the face of the application, the supporting affidavit of Simon Ngugi Njenga the applicant herein sworn on 11/10/2022.
3. The application is not opposed despite service of the same upon the respondents and the respondent's counsel, acknowledging receipt of the application in virtual court on 7/12/2022.
4. On 7/12/2022, the court gave directions on filing of written submissions and a ruling reserved.
5. By the time of writing this Ruling, it is only the plaintiff/applicant who had filed their written submissions dated 15/01/2023, which I have considered.

The plaintiff/Applicant's contention

6. The long and short of it is that the plaintiff and the 1st defendant entered in contract of sale of land number LR Kabete/L Kabete/ 2492 in April 2008 and the plaintiff paid all the amounts due being Kshs. 300,000.00 to the defendant. Further, that upon payment, the 1st defendant declined to transfer the suit property to the plaintiff together with the original title to the suit property even after the parties attended the land board at Kikuyu and obtained consent. Before the plot was transferred to the plaintiff, the 2nd defendant lodged caution on the said land claiming that they had no other plot but the said plot had been excised from the entire land number Kabete/L Kabete/ 957. When the defendants declined to transfer the said land to the plaintiff, the plaintiff applied to this honorable court to direct the defendants to transfer the land to him and also to seek the defendants to withdraw the caution lodged on the said land by the 2nd defendant.
7. It is the plaintiff's contention that after the litigation herein, the judgment was delivered on 22/03/2022 by Honourable Justice Mogeni J who directed the defendants to transfer the said land number Kabete / L Kabete/ 2492 to the plaintiff within sixty (60) days of the judgment therein and also directed the 2nd defendant to withdraw the caution she lodged against the said land within the said period.
8. The defendants have declined, refused, disobeyed to comply with this honourable courts order of 22/03/2022 and the applicant seeks for execution herein and the defendants show cause why they are not liable for contempt.
9. The plaintiff prays that the deputy registrar be directed by order of this honourable court to sign the instrument of the transfer on behalf of the 1st defendant here in for the transfer of Kabete/ L Kabete/ 2492 to the plaintiff herein Simon Ngugi Njenga.
10. The plaintiff/applicant avers that he feels that the defendants' action is contrary to the law and this honourable court should not only see justice being done but seen to be done for the interest of the natural justice.
11. Lastly, the plaintiff contends that he continues to suffer the irreparable loss and damages unless the order prayed in this Honourable Court herein above is granted.

Issues for Determination

12. The application under consideration was filed on 11/10/2022. The Applicant seeks three substantive orders, namely; that the defendants herein be ordered to show cause why they decline to obey the courts orders, ruling / judgment delivered on 22/03/2022 by this Court and the same be held for contempt by declining to transfer the suit property to the applicant herein, secondly, that the Court be pleased to direct the deputy registrar of this honourable court to sign the instrument of the transfer of the suit



property on behalf of the defendants herein if the defendants continue resisting to transfer in favour of the Applicant as the court ordered and lastly, a prayer for costs.

13. Having found as herein above, I find that the following issue stands out for determination is whether defendants are guilty of contempt of judgment issued on 22/03/2022.

Analysis and Determination

Whether defendants are guilty of contempt of judgment issued on 22/03/2022.

14. I have considered the application and the plaintiff's submissions in support of his application.
15. The power of the court to punish for contempt as prescribed by section 5 (1) of the *Judicature Act*, which states: -
 - “(1) (1) The High Court and the Court of Appeal shall have the same powers 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 subordinate courts.”
16. Although the section herein refers to the High Court, this court having been established as a court, with the status of the High Court, has the same powers as the high court to punish for contempt of court. The term “High Court” must therefore be read to cover, not only the high court but also this court which is established under article 162 of the *Constitution*.
17. This court is further granted powers under section 29 of *Environment and Land Court Act*, to punish anybody who refuses, fails or neglects to obey an order or direction given by the court. The mode of punishment is a fine of up to Kshs 20,000,000/= or imprisonment for a term of 2 years. Clearly, there is no paucity of powers of this court to punish for contempt of court.
18. Contempt has been defined as conduct that defies authority and dignity of the court.
19. *Black's Law Dictionary* (Ninth 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”
20. As it were contempt of Court is conduct that defies or disrespects the authority of the Court. Such conduct is frowned upon by the Courts as the same tends to impair the fair and efficient administration of justice.
21. Courts in this county have, and continue to hold, that the reason courts are allowed to punish for contempt is to uphold the rule of law and protect the fundamental supremacy of the law. It has been stated that a court order is not a suggestion or an opinion but a directive which must be complied with to the fullest extent, otherwise chaos and anarchy will set in and all and sundry defy court orders.
22. The rationale for contempt orders is set out in the case of *Teachers Service Commission v Kenya National Union of Teachers & 2 others* (2013) eKLR where Ndolo J observed as follows:
 - “38. The reason why courts will punish for contempt of court is to safeguard the rule of law which is fundamental in the administration of justice. It has nothing to do with the integrity of the judiciary or the court or even the personal ego of the presiding judge. Neither is it about placating the



applicant who moves the court by taking out contempt proceedings. It is about preserving and safeguarding the rule of law”

23. Speaking on the same issue, in *T N Gadavarman Thiru Mulpad v Ashok Khot & another* (2006) 5 SCC, the Supreme Court of India underscored the significance of obeying Court orders in the following manner:

“Disobedience of this Court’s orders strikes at the very root of the rule of law on which the judicial system rests. The rule of the 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, the dignity and authority of the Courts have to be respected and protected at all costs. Otherwise, the very cornerstone 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.”

24. The standard of proof in contempt of court matters is now well settled in this country. In the case of *Mutitika v Baharini Farm Ltd* (1985) KLR 229, the Court of Appeal stated as follows:-

“In our view, the standard of proof in contempt proceedings, must be higher than proof on a balance of probabilities, almost but not exactly, beyond reasonable doubts. The standard of proof beyond reasonable doubt ought to be left where it belongs, to wit, in criminal cases. It is not safe to extend it to an offence that can be said to be quasi criminal in nature.”

25. Clearly contempt of court is quasi criminal in nature. The standard of proof required is slightly higher than that in civil cases, and lower than in criminal cases.

26. For an application seeking to cite and punish a litigant for contempt to succeed, the applicant must demonstrate wilful disobedience of the subject order. The order itself must be clear enough as to leave no doubt as what is to be done or refrained from. The Court of Appeal reiterated these requirements in *Micheal Sistu Mwaura Kamau v Director of Public Prosecutions & 4 others* [2018] eKLR thus:

“... It is trite that to commit a person for contempt of court, the court must be satisfied that he has willfully and deliberately disobeyed a court order that he was aware of. That is made absolutely clear by section 4 of the *Contempt of Court Act* and the ruling of the Supreme Court in *Republic v Ahmad Abolfathi Mohammed & another* ... Secondly, as this Court emphasized in *Jiban Freighters Ltd v Hardware & General Stores Ltd* and in *A.B. & another v R B* [2016] eKLR, to sustain committal for contempt of court, the order of the court that is alleged to have been deliberately disobeyed must be clear and precise so as to leave no doubt as to what a party was supposed to do or to refrain from doing. Lastly, the standard of proof in committal proceedings is higher than proof on a balance of probabilities, though not as high as proof beyond reasonable doubt. ...”

27. The suit went for full hearing. All the parties involved in the proceedings were heard, together with their witnesses. Judgment was delivered on 22/03/2022 by this Court in Nairobi in favour of the plaintiff herein and against the defendants. The obligations imposed by the judgment are clear enough. The Honourable Court rendered its considered judgment in the presence of the Mr. Gacheru, the defendants’ counsel. The defendants became fully aware of the contents of the Judgment on the date of delivery of the judgment.



28. A perusal of the court record shows that the defendants went on to file a notice of appeal on 30/03/2022. A copy of the judgment of the court is on record and in the court file. There is no debate that a valid order of the Court was issued and does exist. The judgment is clear and unambiguous, that an order was issued compelling the 1st defendant to sign transfer form for land no. LR Kabete/Kabete/2492 to Simon Ngugi Njanga, the plaintiff within the next 60 days and further an Order was issued compelling the 2nd defendant to remove the caution lodged by her on Plot No. LR Kabete/L.Kabete/2492 to facilitate transfer. Clearly the order of the court was against both the defendants/respondents.
29. On whether the order was served upon the respondents, or whether they were aware of the same, the general principle is that no person can be punished for disobeying a court order unless he was served personally. However, there has been a fundamental shift in our jurisprudence on matters of personal service of the order. We wish to echo the sentiment expressed by hon Justice Lenaola in the case of *Basil Criticos v Attorney General & 8 others* (2012) eKLR that:-
- “The law has changed and it as it stands today, knowledge supersedes personal service – where a party clearly acts and shows that he had knowledge of a court order, the strict requirement that personal service must be proved is rendered unnecessary.”
30. In respect of the 1st and 2nd defendants, mother and daughter respectively, I opine that they were both aware of the contents of the judgment as their counsel was present in Court. On the date of delivery, their counsel was present in court when the judgment was delivered. It is because of that knowledge that the defendants instructed their advocate to file Notice of Appeal, which was done on the 30/03/2022.
31. When Mr. Gacheru, the defendants’ advocate appeared in court on 7/12/2022, in answer to the plaintiff’s counsel’s contention that he had served this present application upon the defendants as at 25/11/2022, he confirmed being served with the application for contempt but requested for 14 days to respond.
32. Applying the definition of contempt as an act/conduct that defies the authority and dignity of court, it is clear from the affidavit of the applicant and the submissions herein, that the respondents are in clear contempt of court. The decree/order of the court is clear and unambiguous. The 1st defendant was compelled to sign transfer form for land no. LR Kabete/Kabete/2492 to Simon Ngugi Njanga, the plaintiff within the next 60 days and further the 2nd defendant was compelled to remove the caution lodged by her on Plot No. LR Kabete/L.Kabete/2492 to facilitate transfer.
33. There is no denial that the defendants have failed to comply with the orders of this court and transfer the suit property to the plaintiff. There is no denial that the 2nd defendant has removed the caution lodged by her on the suit property. The said orders required compliance by both defendants. It was not a suggestion or an opinion. These are acts by the respondents which denotes willful defiance of or disrespect towards the courts. Just because the defendants/respondents intend to appeal does not mean they should not obey the order of the court.
34. As stated by Romer L.J in *Hadkinson v Hadkinson* (1952) ALL ER 567:
- “It is the plain and unqualified obligation of every person against, or in respect of who an order is made by a court of competent jurisdiction to obey it unless and until that 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 an order believes it to be irregular or even void.”



35. The order in question has not been discharged by this Honourable Court or by the Court of Appeal. There is no order for stay of execution by the Court of Appeal. It matters not the respondents intend to appeal. The intention to appeal does not vitiate the order. The Court of Appeal judges in the case of *Shimmers Plaza Ltd v M Natioanl Bank of Kenya*, Civil Appeal No. 33 of 2012 (2015) eKLR while finding the respondents in contempt observed,

“No man is above the law and no man is below it; nor do we ask any man’s permission to obey it. Obedience to the law is demanded as a right not as a favour.”

36. From the totality of the facts and circumstances of this case, I find that both the alleged contemnors were aware of this court’s judgment delivered on 22/03/2022. However, I am guided by the statement of the Court in the case of *Katsuri Limited v Kapurchad Deparchar* [2016] eKLR when it held that:

“The power to commit for contempt is one to be exercised with great care. An order committing a person to prison for contempt is to be adopted as a last resort.”

37. Even if the alleged contemnors are convicted, this does not allow the applicant to enjoy the fruits of his judgment.

Disposal Orders

38. For the above reasons, I allow the plaintiff’s application dated 11/10/2022 as follows:

- a. An order be and is hereby issued directing the deputy registrar of this honourable court to sign the instrument of the transfer of the plot number L Kabete/l.Kabete/ 2492 on behalf of the defendants herein if the defendants continue resisting to transfer in favour of the applicant as the court ordered.
- b. Costs of this application be borne by the defendants.
- c. File closed.

It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 27TH DAY OF FEBRUARY 2023.

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MOGENI J

JUDGE

Ruling read in virtual court in the presence of:

Simon Ngugi Njega plaintiff in person

Mr Gacheru for the defendants

Ms. Caroline Sagina: Court Assistant

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MOGENI J

JUDGE

