



**Mibei v Mibey & 5 others (Environment & Land Case 92 of 2016)  
[2023] KEELC 16662 (KLR) (23 March 2023) (Ruling)**

Neutral citation: [2023] KEELC 16662 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KERICHO  
ENVIRONMENT & LAND CASE 92 OF 2016**

**MC OUNDO, J  
MARCH 23, 2023**

**BETWEEN**

**RONALD KIPLANGAT MIBEI ..... PLAINTIFF**

**AND**

**PHILEMON KIPKEMOI MIBEY ..... 1<sup>ST</sup> DEFENDANT**

**LILGON KIPKORIR MIBEY ..... 2<sup>ND</sup> DEFENDANT**

**NATHAN KIPKOECH ..... 3<sup>RD</sup> DEFENDANT**

**SAIMON TERER ..... 4<sup>TH</sup> DEFENDANT**

**NICKSON CHERUIYOT ..... 5<sup>TH</sup> DEFENDANT**

**AND**

**OCS LONGISA POLICE STATION ..... RESPONDENT**

**RULING**

1. Pursuant to a Judgment that was delivered on 17<sup>th</sup> February 2022 in which it had been declared that the Plaintiff was the rightful proprietor of the suit parcel of land No. Kericho/Chemamer/777 whereby the Defendants had been permanently enjoined from trespassing, tilling, cultivating, planting any crops, utilizing, using in any manner, wasting, transferring possession, selling, dealing and/or interfering with the registration of land parcel No. Kericho/Chemamer/777, there has now been filed two Applications for determination.
2. The first Application dated the 9<sup>th</sup> May 2022 is filed by the Defendants herein and brought under the provisions of Order 12 Rule 7, 42 Rule 6 of the Civil Procedure Rules and Sections 1A, 1B and 3A of the Civil Procedure Act and Article 159 of the Constitution wherein the Defendants seeks for the stay



of execution of the Judgment and decree delivered on the 17<sup>th</sup> February 2022, pending the hearing and determination of the Appeal lodged before the Court of Appeal.

3. The said Application is supported by both the grounds thereto and a Supporting Affidavit sworn on 9<sup>th</sup> May 2022 by Lilgon Kipkorir Mibey the 2<sup>nd</sup> Defendant/Applicant herein, with the consent of all the other Defendant/Applicants to the effect that they were aggrieved by the Judgment and Decree of the court and had thus filed an Appeal to that effect.
4. That eviction orders had been procured without disclosing to the court that they no longer used or utilized the suit land. That further, the application for eviction had been served upon their previous Counsel who did not notify them and therefore they were condemned unheard.
5. In opposition of the Application, the Plaintiff via his Replying Affidavit sworn on 20<sup>th</sup> June 2022 averred that the application had not been served upon him, but he happened to chance on it while perusing the court file, that secondly, the said application was meant to deny him the fruits of his Judgment and was therefore was an afterthought and made in bad faith.
6. The second Application is dated the 6<sup>th</sup> October 2022 and filed by the Plaintiff pursuant to the provisions of Section 5 of the *Judicature Act* and all the enabling provisions of the law wherein he seeks to cite the Defendants and the 6<sup>th</sup> Respondent for contempt of the court orders of the Judgment delivered on the 17<sup>th</sup> February 2022 and orders dated the 5<sup>th</sup> May 2022 where the court had permanently enjoined the 1<sup>st</sup> to 5<sup>th</sup> Defendants from trespassing, tilling, cultivating, planting any crops, utilizing, using in any manner, wasting, transferring possession, selling, dealing and/or interfering with the registration of land parcel No. Kericho/Chemaner/777.
7. The Application is supported by both the grounds thereto and Supporting Affidavits of Wekesa William Lusweti the Plaintiff's Counsel and the Plaintiff Roland Kiplangat Mibei both sworn on 6<sup>th</sup> October 2022.
8. The said application was opposed by the 2<sup>nd</sup> Defendant's Replying Affidavit dated the 10<sup>th</sup> November 2022 which was filed on his behalf and on behalf of the Defendants herein, on the premise that they had lodged an Appeal against the decision of the court, that secondly the eviction orders that had been sought against them had been done so without material disclosure that the 1<sup>st</sup> and 2<sup>nd</sup> Defendants were no longer in occupation of the suit premises, that the 3<sup>rd</sup>, 4<sup>th</sup>, and 5<sup>th</sup> Defendants had never been in occupation of the suit premises but had all along lived in Uasin Gishu County, Busein Village in Chambori within Bomet county and Lulukwet Village Mauche Division of Nakuru County respectively. That they had neither built any structures or cut down trees on the suit land.
9. That it had been their mother one Zeddy Chepkurui Chemsimet who had remained in possession of the suit land claiming matrimonial interest (annexure RKM 6 &7 in the Plaintiffs supporting affidavit) since the same had previously been registered to the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 5<sup>th</sup> Defendants' father who had caused the transfer and register to the Plaintiff. That the said Zeddy Chepkurui Chemsimet was not party to the suit. That they had not been captured in the photographs annexed to the Plaintiffs application in support of his assertion of the alleged breach of the court orders.
10. That the Applicant had not served upon the 5<sup>th</sup> Respondent the impugned court orders and further that the court had on the 11<sup>th</sup> May, 2022 issued an order that status quo be maintained pending the hearing and determination of their application dated 9<sup>th</sup> May, 2022 and therefore there had been no need for him to saddle the court with the present application, albeit alleging contempt; before the court had pronounced itself on their application.



11. That they were law-abiding citizens who had duly submitted themselves to the jurisdiction of the court and had always strived to comply with its orders and directions. That the application was not brought in good faith but had been the Plaintiff's malicious scheme to abuse the court process to settle personal scores with them. They sought for the same to be dismissed.
12. Directions were taken for both applications to be disposed of by way of written submissions. For ease of reference, since there are two applications by the parties, I shall refer to them as they appear in their pleadings.

### **Defendants' submissions.**

13. In support of their application dated 9<sup>th</sup> May 2022, the Defendant framed their issue for determination as follows;
  - i. Whether the eviction orders granted on 5<sup>th</sup> May, 2022 ought to be set aside and/or varied
14. In response thereto, the Defendants submitted that being dissatisfied with the Judgment and decree of the court, they had instructed their Advocates to prepare and file an Appeal against it, which was subsequently done and a Notice of Appeal lodged on the 9<sup>th</sup> March, 2022 as per the annexure marked, "LKM" to their Supporting Affidavit.
15. That while this was in progress, the Plaintiff procured eviction orders against them without disclosing to the court that the 1<sup>st</sup> and 2<sup>nd</sup> Defendants no longer lived and/or utilized the property known as L.R No. Kericho/Chemaner/777 as they currently lived and worked in Nairobi since January, 2021 as per annexure marked, "LKM" 2 attached to their supporting affidavit which was a bundle of copies of receipts evidencing payment of rent for respective houses in Nairobi.
16. That further, the 3<sup>rd</sup> and 4<sup>th</sup> Defendants had all along lived in Uasin Gishu and Busien Village Chambori Sub-Location Chemaner Location, Bomet respectively and never on the suit land. That the 5<sup>th</sup> Defendant had all along lived in Lulukwet Village Mauche Division of Nakuru County.
17. That the application for eviction dated 16<sup>th</sup> March 2022 had been served upon their previous Counsel practicing in the name and style of M/S Bii V.K & Company Advocates who never notified them so that they could respond accordingly and attempts to reach out to the said Advocate were in vain as he failed to return their calls and/or give them any further update on the matter. This in turn had prompted them to instruct their current advocate to lodge an Appeal on their behalf. The Defendants thus implored the court to set aside the impugned orders and accordingly afford them a chance to be heard.
18. In support of their submissions, they relied on the holding in *Belinda Muras & 6 Others vs Amos Wainaina* [1978] eKLR cited with approval in *Master Power Systems Limited vs. Civicon Engineering Africa & Another* [2019] eKLR to submit that the sins of Counsel should not be visited on them and therefore they should not be condemned without an opportunity to be heard, as envisaged by Article 50(1) of *the Constitution*.
19. That they had all moved out of the suit property save their mother Zeddy Chepkurui Chemsimet who had remained in possession of the same on a claim that she had matrimonial interest in it because the land had previously been registered to the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 5<sup>th</sup> Defendants' father who had caused the transfer and registration to the Plaintiff herein who happened to be their step brother.
20. That their mother ought to have been made a party to the suit because she had lived and farmed on the same for the last four decades, as evidenced by the bundle of scanned photographs depicting her



houses. That this fact had been casually admitted by the Plaintiff who had asserted that the Defendants had built a house for their mother therein.

21. That in view of the fact that they were no longer in occupation of the suit parcel of land, the eviction orders issued against them ought to be set aside as court orders should not be issued in vain. That the orders of eviction issued against them were not tenable. As was held by this court in *Dave Kipkorir Langat vs. District Physical Planning Officer & 4 Others* [2021] eKLR. The Defendants thus urged the court to allow their application dated 9<sup>th</sup> May, 2021, as prayed.

**Plaintiff's 'skeleton' submission.**

22. In opposition to the application dated 9<sup>th</sup> May 2022, the Plaintiff herein filed his submissions based on the issues for determination as follows;
  - i. Whether eviction orders should be set aside and stayed.
  - ii. Whether the Applicants had satisfied the condition for stay of execution.
  - iii. Whether the Applicants served the Notice of Appeal to the Plaintiff/Respondent.
23. On the first issue for determination, the Plaintiff submitted that on or about the 15<sup>th</sup> March 2022 he had gone to the suit property to view and secure it wherein he had been shocked to find construction of a residential building being carried out. That owing to the fact that he had Judgment in his favour and a decree thereof and that no orders for stay were in force, he moved to court in an application dated 16<sup>th</sup> March 2022, duly served upon the Applicants' Counsel, seeking eviction orders which were granted on 5<sup>th</sup> May 2022. There was no response to the application.
24. That it was trite law that a case belongs to a litigant and he/she has a duty to follow up on the progress of a matter before Court. That this was a court of equity and it ought to be guided by the Maximus "Equity aids the vigilant and not the indolent"
25. That the Plaintiff was a successful litigant who should be allowed to enjoy the fruits of his Judgment through eviction orders considering that he had demonstrated how the Defendants had trespassed into the suit land and had cut down trees, before proceeding to build a residential house for their mother as well as to plant crops on the said land.
26. That on the 12<sup>th</sup> May 2022 the court had directed for status quo to be maintained which gave effect to the Judgment and decree. The Defendants had continued to disregard the eviction orders and Judgment of the court, whilst they had not filed any application challenging the Judgment of the court which was still in force and had not been set aside and/or overturned and therefore they could not now turn around and come to court with unclean hands.
27. That setting aside eviction orders was discretionary in nature and equitable and equity called to those seeking its aid to come before it with clean hands and also do equity as was held in the case in *John Njue Nyaga vs. Nicholas Nijiru Nyaga & Another* (2013) eKLR.
28. On the second issue for determination, Plaintiff submitted that the Defendants had not satisfied the conditions for stay of execution so as to have the court exercise its discretion in their favour reliance was placed on the decision in the case of *Vishram Raviji Halai vs. Thornton & Turin* Civil Application No. Nai. 15 of 1990 1990 KLR 365 where the court had stressed on the satisfaction of the conditions under Order 42 rule 6 of the Civil Procedure Rules which gave the court jurisdiction to stay execution pending an Appeal. That there ought to have been established, a sufficient cause, satisfaction of substantial loss and the furnishing of security and the application ought to have been brought



without unreasonable delay. That not only had the Defendants failed to show that their Appeal had high chances of success, but they had failed to satisfy all the three conditions herein above stated and therefore their application must fail. Reliance was placed on the decision in the case of Samvir Trustee Limited vs. Guardian Bank Limited Nairobi Milimani HCCC 795 of 1997.

29. That he continues to lose greatly as he cannot enjoy ownership and possession of his own property which he cannot develop. That the Defendants' mother Zeddy Chepkirui Chesimet was a divorced wife and had never lived on the suit property but only went to live there after the death of the Defendant's father who had given evidence in this Court as to the voluntary transfer of the suit property in question.
30. That the court should consider the twin overriding principles of proportionality and equality of arms which are aimed at placing the parties before the Court on equal footing and see where the scales of justice lie. That the Court, in exercising its discretion, should therefore always opt for the lower rather than the higher risk of injustice as was held in Jason Ngumba Kagu & 2 Others vs. Intra Africa Assurance Co. Limited [2014] eKLR. That the general rule was that the Court ought not to deny a successful litigant the fruits of his Judgment save in exceptional circumstances where to decline to do so may well amount to stifling the right of the unsuccessful party to challenge the decision in the higher Court. Reliance was placed on the decision in Machira T/A Machira & Co. Advocates vs. East African Standard (No.2) [2002] KLR 63.
31. That since the Defendants having failed to demonstrate to the Court that they had satisfied the conditions necessary for issuance of orders for stay of execution of the Judgment, their application should be dismissed.
32. On the third issue for determination as to whether Defendants/Applicants served the Notice of Appeal upon the Plaintiff/Respondent, the Plaintiff's submission, in reference to paragraph 5 of their supporting affidavit, was that although the Defendants had alleged that their Advocate on record had lodged a Notice of Appeal, such Notice was never served upon the Plaintiff/Respondent despite the same having been filed in court. That this was contrary to Rule 77(1) of the Court of Appeal Rules which provided that an intended Appellant shall before or within seven days after lodging Notice of Appeal, serve copies thereof on all persons directly affected by the Appeal.
33. The Plaintiff sought for the application to be dismissed with costs.

#### **Determination.**

34. I have considered the Applicants' Application dated 9<sup>th</sup> May 2022 for stay of execution of this court's judgement dated the 17<sup>th</sup> February 2022 and all consequential orders pending the hearing and determination of their intended Appeal. I have also considered the authorities, as well as the reasons given for and against the said application.
35. The Defendants/Applicants' submission is that being aggrieved by the Judgment and Decree of the court, they had filed an Appeal. That the eviction orders that the Plaintiff had procured had been done without disclosing to the court that the 3<sup>rd</sup> and 4<sup>th</sup> Defendants had never lived on the suit land but were residents of Uasin Gishu and Busien Village Chambori Sub-Location Chemaner Location, Bomet respectively. That the 5<sup>th</sup> Defendant had all along lived in Lulukwet Village Mauche Division of Nakuru County.
36. That in view of the fact that they were no longer in occupation of the suit parcel of land, the eviction orders issued against them ought to be set aside as they were not tenable and court orders should not



be in issued in vain. They also submitted that their Appeal had overwhelming chances of success and would be rendered nugatory were the orders for stay of execution not granted.

37. The Plaintiff on the other hand contended that the Defendants had not satisfied the conditions under Order 42 Rule 6 of the Civil Procedure Rules which gave the court jurisdiction to stay execution pending an Appeal. That there ought to have been established a sufficient cause, satisfaction that there would be substantial loss and the furnishing of security as well as the fact that the application had been brought without unreasonable delay. That not only had the Defendants failed to show that their Appeal had high chances of success, but they had failed to satisfy all the three conditions herein above stated and therefore their application ought to fail.
38. That the Plaintiff continued to lose greatly as he could not enjoy ownership and possession of his own property because he could not develop it. That further, the Defendants had not come to court with clean hands as they had continued to disregard the eviction orders and Judgment of the court, despite the fact that the said Judgment had not been set aside and/or overturned. That the court should thus not exercise its discretion in the Applicants' favour.
39. The law concerning stay of execution pending Appeal is found in Order 42 Rule 6 of the Civil Procedure Rules which stipulates as follows:

No Appeal or second Appeal shall operate as a stay of execution or proceedings under a decree or order Appealed from except in so far as the court Appealed from may order but, the court Appealed from may for sufficient cause order stay of execution of such decree or order, and whether the application for such stay shall have been granted or refused by the court Appealed from, the court to which such Appeal is preferred shall be at liberty, on application being made, to consider such application and to make such order thereon as may to it seem just, and any person aggrieved by an order of stay made by the court from whose decision the Appeal is preferred may apply to the appellate court to have such order set aside.

(2) No order for stay of execution shall be made under subrule (1) unless—

- (a) the court is satisfied that substantial loss may result to the Applicant unless the order is made and that the application has been made without unreasonable delay; and
- (b) such security as the court orders for the due performance of such decree or order as may ultimately be binding on him has been given by the Applicant.

40. There are three conditions for granting of stay order pending Appeal under Order 42 Rule 6 (2) of the Civil Procedure Rules to which :
  - i. The Court is satisfied that substantial loss may result to the Applicant unless stay of execution is ordered;
  - ii. The application is brought without undue delay and
  - iii. Such security as the Court orders for the due performance of such decree or order as may ultimately be binding on him has been given by the Applicants.
41. I find issues for determination arising therein namely:
  - i. Whether the Defendants/Applicants have satisfactorily discharged the conditions warranting the grant of stay of execution of decree pending Appeal.



ii. What orders this Court should make

42. I have considered the submission of both the Defendants/Applicants and the Plaintiff/Respondent. For the Applicants to succeed in the present application the onus was on them to satisfy the conditions as set down under order 42 Rule 6 of the Civil Procedure Rules. Indeed the purpose of stay of execution is to preserve the substratum of the case. In the case of Consolidated Marine. vs. Nampijja & Another, Civil App.No.93 of 1989 (Nairobi), the Court held that:-

“The purpose of the application for stay of execution pending Appeal is to preserve the subject matter in dispute so that the right of the Appellant who is exercising his undoubted right of Appeal are safeguarded and the Appeal if successful is not rendered nugatory”.

43. The Defendants/Applicants’ contention is that they were no longer in occupation of the suit land and therefore the orders of eviction could not apply. I have considered the Defendants/Applicants’ submissions vis a vis the Plaintiff/Respondent’s submission and find that there has been no iota of compliance with the provisions of Order 42 Rule 6 (2) of the Civil Procedure Rules.

44. The Defendants/Applicants have not proved and or submitted that were the orders of stay of execution not issued, they would suffer substantial loss which loss was expressed by the Court of Appeal in the case of Mukuma v Abuoga (1988) KLR 645 as follows ;

“Substantial loss is what has to be prevented by preserving the status quo because such loss would render the Appeal nugatory.”

45. On the second condition, I find that pursuant to the delivery of the Judgment on the 17<sup>th</sup> February 2022, the Defendants/Applicants filed their application for stay of execution on the 9<sup>th</sup> May 2022 which was three months later which in my view was without undue delay and there is nothing to add on this limb.

46. On the third condition, I find that the Defendant/Applicants have not mentioned their willingness to avail security for due performance of the decree. In the case of Arun C Sharma v Ashana Raikundalia t/a Raikundalia & Co Advocates & 2 Others [2014] eKLR Justice F. Gikonyo had held that;

‘The purpose of the security needed under Order 42 is to guarantee the due performance of such decree or order as may ultimately be binding on the Applicant. It is not to punish the Judgment debtor...Civil process is quite different because in civil process the Judgment is like a debt hence the Applicants become and are Judgment debtors in relation to the Respondent. That is why any security given under Order 42 rule 6 of the Civil Procedure Rules acts as security for due performance of such decree or order as may ultimately be binding on the Applicants. I presume the security must be one which can serve that purpose.’

47. It was stated by Kuloba, J in Machira T/A Machira & Co Advocates vs. East African Standard (No 2) [2002] KLR 63 that:

“to be obsessed with the protection of an appellant or intending appellant in total disregard or fitting mention of the so far successful opposite party is to flirt with one party as crocodile tears are shed for the other, contrary to sound principle for the exercise of a judicial discretion. The ordinary principle is that a successful party is entitled to the fruits of his Judgment or of any decision of the Court giving him success at any stage. That is trite knowledge and is one of the fundamental procedural values which is acknowledged and



normally must be put into effect by the way applications for stay of further proceedings or execution, pending Appeal are handled. In the application of that ordinary principle, the Court must have its sight firmly fixed on upholding the overriding objective of the rules of procedure for handling civil cases in Courts, which is to do justice in accordance with the law and to prevent abuse of the process of the Court”.

48. I thus find that the Application dated the 9<sup>th</sup> May 2022 lacks merit and is hereby dismissed with costs to the Plaintiff/Respondent.
49. The second application is dated the 6<sup>th</sup> October 2022 and filed by the Plaintiff pursuant to the provisions of Section 5 of the *Judicature Act* and all the enabling provisions of the law wherein he seeks to cite the Defendants and the 6<sup>th</sup> Respondent for contempt of the court orders of the Judgment delivered on the 17<sup>th</sup> February 2022 and orders dated the 5<sup>th</sup> May 2022 where the court had permanently enjoined the 1<sup>st</sup> to 5<sup>th</sup> Defendants from trespassing, tilling, cultivating, planting any crops, utilizing, using in any manner, wasting, transferring possession, selling, dealing and/or interfering with the registration of land parcel No. Kericho/Chemamer/777.
50. His submission was that on or about the 15<sup>th</sup> March 2022 after judgment had been passed, he had gone the suit property to view and secure it wherein he had found construction going on of a residential house. His evidence was the Defendants/Respondents herein were building a house for their mother.
51. The Defendants/Respondents on the other hand have denied being in contempt of the court orders citing that they had long moved out of the suit land and that their mother one Zeddy Chepkurui Chemsimet was the one who had remained in occupation of the same claiming that she had matrimonial interest because the land had previously been registered to the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 5<sup>th</sup> Defendants’ father who had caused its transfer and registration to the Plaintiff herein who happened to be their step brother.
52. That their mother ought to have been made a party to the suit because she had lived and farmed on the suit land for the last four decades.
53. I have considered submissions by both Counsel for the Applicant/Plaintiff and the Respondents/Defendants. The Black’s Law Dictionary (Ninth Edition) defines contempt of Court as:-

“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.”
54. The law guiding the present Application is Order 40 Rule 3(1) of the Civil Procedure Rules which stipulates 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.”
55. It is an established principle of law as was held in the case of Kristen Carla Burchell vs Barry Grant Burchell, Eastern Cape Division Case No. 364 of 2005 in order to succeed in civil contempt proceedings, the Applicant has to prove (i) the terms of the order, (ii) Knowledge of these terms by the Respondent, (iii). Failure by the Respondent to comply with the terms of the order.
56. From the sworn affidavit, annexures, submissions by the Plaintiff/Applicant’s Counsel, the applicable law and the decided cases, the following issues stand out for determination:-



- i. Whether the Respondents/Defendants herein were served with or was made aware of the order of the Judgment delivered on the 17<sup>th</sup> February 2022.
  - ii. Whether there was any valid Court order issued by this Court in its Judgment delivered on the 17<sup>th</sup> February 2022.
  - iii. Whether the Respondents/Defendants are guilty of contempt of Court order issued in its Judgment of 17<sup>th</sup> February 2022.
57. On the first issue as to whether the Respondents/Defendants herein were served with or was made aware of the order of the court's Judgment of 17<sup>th</sup> February 2022, in the case of Kenya Tourist Development Corporation vs Kenya National Capital Corporation & Another, Nairobi High Court Civil Case No. 6776 of 1992, it was held that the knowledge of an order supersedes personal service.
58. In the instant case, the proceedings are clear that on 17<sup>th</sup> February 2022 Counsel for the 1<sup>st</sup> 2<sup>nd</sup> and 4<sup>th</sup> Defendants was present in court when the Judgment was delivered in the following terms;
- ‘Ultimately then I enter Judgment for the Plaintiff and grant him a permanent injunction in terms of prayer (a)’
59. The terms of prayer (a) referred to herein above were orders sought by the Plaintiff in his Plaint which were as follows;
- ‘A permanent injunction stopping the Defendant from trespassing, tilling, cultivating, planting any crops, utilizing, using in any manner, wasting, transferring possession, selling, dealing and/or interfering with the registration of land parcel No. Kericho/Chemaner/777.’
60. The Court of Appeal in the Shimmers Plaza Limited v National Bank of Kenya Limited [2015] eKLR had posed the question whether knowledge of a Court order or Judgment by an Advocate of the alleged contemnor would be sufficient for purpose of contempt proceedings and answered the question in the affirmative stating:-
- “We hold the view that it does. This is more so in a case as this one where the advocate was in Court representing the alleged contemnor and the orders were made in his presence. There is an assumption which is not unfounded, and which in our view is irrefutable to the effect that when an advocate appears in Court on instructions of a party, then it behooves him to report back to the client all that transpired in Court that has a bearing on the clients’ case...”
61. Indeed from the Court's record, the same is clear that the order of the Court had been delivered and/or issued in the presence of Counsel for the Defendants/Respondents. This Court thus finds that the Defendants/Respondents had knowledge of the Court's orders and therefore personal service was unnecessary
62. On the second issue for determination as to whether there were any valid orders issued by this Court. I find that the Court had directed the Defendants/Respondents to keep off the suit land (for lack of a better word) The Defendants/Respondents in their response have not disputed that indeed there had been a valid order issued by the Court and I therefore find that indeed the said orders of the 17<sup>th</sup> February 2022 was a valid order.
63. On the last issue as to whether the Defendants /Respondent had brazenly disobeyed the orders of the Court, I have considered the submission by Plaintiff's Counsel as well as looked at the annexures



herein annexed to the Plaintiff's Application. It is not in dispute that the pictures annexed marked as 'RKM5' show crops having been planted, photo marked as "RKM6" are an activity of construction going on in the suit land, and annexure "RKM7" are photographs showing the 1<sup>st</sup> Defendant and their Mother supervising the construction. (it cannot be said that there had been mistaken identity by the Plaintiff who was their relative) The said activity was not been disputed by the Defendants/ Respondents whose defence was that they had long moved out of the suit land except their mother Zeddy Chepkurui Chemsimet who had remained in occupation of the same claiming matrimonial interest. That their mother was not a party to the suit.

64. I have gone back to the proceedings and more so to the evidence given by the said Zeddy Chepkurui Chemsimet who testified as DW 3 and stated as follows:

"It is only the 1<sup>st</sup> and 2<sup>nd</sup> Defendants who are using the disputed land.....

I come from Chemarer. I live on the land that the government gave me. My husband chased me away in 1986. Chemarer is my place of origin but I live elsewhere as I was chased away.....

I am aware of a divorce case between me and my husband in 1991.....

The Defendants do not live on the disputed and as their houses were demolished. They only farm the land....."

65. This testimony displaces the Defendants/Respondents submissions as herein above stated.
66. The Scottish case of Stewart Robertson vs. Her Majesty's Advocate, 2007 HCAC 63, Lord Justice Clerk stated that:

"contempt of Court is constituted by conduct that denotes willful defiance of or disrespect towards the Court or that willfully challenges or affronts the authority of the Court or the supremacy of the law, whether in civil or criminal proceedings"

67. Further, Romer L.J in Hadkinson vs. Hadkinson(1952) ALL ER 567 stated that:

"It is the plain and unqualified obligation of every person, against, or in respect of, whom 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"

68. From the foregoing, it is trite that contempt of Court proceedings and Applications are subtle and criminal in nature and would impose criminal sanctions if a conviction followed.
69. It has been held by the Courts that unless and until a Court order is discharged, it ought to be obeyed. Indeed the Court of Appeal in Central Bank of Kenya & Another vs. Ritalil Automobiles Limited & Others, Civil Application No. Nairobi 247 of 2006 held that it was a fundamental tenet of the rule of law that Court orders must be obeyed and it is not open to any person or persons to choose whether or not to comply with or to ignore such orders as directed to him or them by a Court of law.
70. In the case of Awadh vs. Marumbu (No. 2) No. 53 of 2001 (2004) KLR 458, the Court held that it is the duty of the Court not to condone deliberate disobedience of its orders nor waiver from its responsibility to deal decisively and firmly with the approved contemnors.
71. This said and done, I find that the 1<sup>st</sup> Defendant/Respondent herein willfully and intentionally defied orders of the Court despite knowledge of the same. His action of constructing and/or supervising his



mother's construction of a building within the suit property ran afoul of the terms of the Court orders issued in its Judgment of 17<sup>th</sup> February 2022 which had enjoined all the Defendants/Respondents from dealing in any way in the suit land. I thus find that the 1<sup>st</sup> Defendant/Respondent herein are in blatant contempt of Court orders and will proceed to punish him for contempt. The Defendants/Respondents attempt to hide behind their mother so as to escape punishment has been unearthed and rejected.

72. I make no findings as against the 6<sup>th</sup> Respondent who is herein directed to comply with the court's order issued on the 5<sup>th</sup> June 2022.

73. The Plaintiff/Applicant's Application dated the 6<sup>th</sup> October 2022 is herein allowed with costs.

**DATED AND DELIVERED VIA MICROSOFT TEAMS AT KERICHO THIS 23<sup>RD</sup> DAY OF MARCH 2023**

**M.C. OUNDO**

**ENVIRONMENT & LAND – JUDGE**

