



REPUBLIC OF KENYA



**Aduwo v Kowuoche (Environment and Land Case E001 of 2023)  
[2025] KEELC 5315 (KLR) (17 March 2025) (Ruling)**

Neutral citation: [2025] KEELC 5315 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MIGORI  
ENVIRONMENT AND LAND CASE E001 OF 2023**

**MN KULLOW, J**

**MARCH 17, 2025**

**BETWEEN**

**LADISLAUS ADUWO ..... PLAINTIFF**

**AND**

**COSMAS JUMA KOWUOCHE ..... DEFENDANT**

**RULING**

1. By a Notice of Motion dated 6/11/2023 and under Order 51 Rule 7, Section 5 of the [Judicature Act](#) and Section 29 of the [Environment and Land Court Act](#), the Applicant sought for the following orders:
  - i. Spent
  - ii. An order to the Defendant to show cause why he should not be punished for willfully disobeying a Court Order issued on 18/7/2023 and reaffirmed on 21/9/2023.
  - iii. An Order citing the Defendant for contempt of court of the order issued on 18/7/2023.
  - iv. An order for the Defendant to pay a fine of Kshs.300,000/- for being in contempt and/or an order for attachment, sequestration and sale of personal effects.
2. The Application is based on the grounds that this court had issued an order stopping the Defendant/Respondent from carrying out exploration and mining activities in land parcel Suna East/Wawete/1/747 and that consequently, the parties in a bid to fast track the hearing of the suit had agreed to maintain the status quo. However, the Defendant in breach of the Order restraining him and the consent of the status quo disobeyed the said orders as he continued to carry out mining activities on the suit land and hence unless he is punished, he will persist in such willful disobedience.
3. The Application was further supported by the Affidavit of Dr. Ladislaus Aduwo in which he deponed that despite the restricting order being issued and status quo consent being entered in, presence of the



Respondent have here ignored the authority and dignity of the court by carrying our mining activities on the land.

4. The Applicant further avered that the Respondent's actions are an affront to the Rule of Law and are likely to bring disrepute to the Honourable Court. He stated the despite making reports to the Director of Mining and National Resources and NEMA Migori County and the Officer Commanding Oruba Police Station, all his attempts to stop the disobedience of the order have been futile.
5. The Application was opposed by the Defendant/Respondent by way of a Replying Affidavit sworn on 14/12/2023 and filed in court on the same date. The Respondent contends that he does not reside on the suit land and that his representatives have confirmed to him that Artisan Miners had invaded the property and were carrying out illegal activities therein. However, none of them is known to him or his representatives.

He further stated that though he had liaised with the area Chief to stop the said activities, but failed.

6. The Respondent further stated that he became aware that as at 22/10/2023 mining activities had been stopped on the suit land by Government Authorities and the said activities were carried out by strangers not known to him.
7. I have considered the Application, the grounds upon which it is based and the Supporting Affidavit hereto. I have also considered the submissions filed by the Applicant and the Replying Affidavit in opposition and the singular issue for determination before me is whether the Respondent is in contempt of Order issued by the court on 18/7/2023 and later reaffirmed on 21/9/2023.
8. What constitutes contempt of court and the power to punish for the same is now settled. Section 5 of the Judicature Act provides that:
  - i. The High Court and the Court of Appeal have the same power to punish for contempt and that power shall extend to uphold the authority and dignity of the Court.

The Supreme Court of Kenya in Republic vs Ahmed Abdulfadhi Mohamed and Another (2019) EKLK confirmed the above portion under the Judicature Act and states that;

“There is no doubt that an Act of contempt is and offense to Judicial Authority and courts have the liberty and empowerment to mete out such penalty for such conduct in appropriate case.”

However, despite the provision of the Judicature Act and the grant affirmation to uphold the dignity and authority of the court prior to punishing for contempt must satisfy itself that the person being cited for contempt was aware of the existence of the said Order and he had willfully neglected to obey the same. It is further required for the said Order to be precise and clear.

9. In the instant case, the Applicant contends that there was disobedience of the Order of the court issued on 18/7/2023 and later reaffirmed on 21/9/2023. The Respondent on the other hand does confirm that he was aware of the existence of the said Order but contends that the suit land was invaded by Mining Artisans not known to him or his representatives. To this end, has the Respondent willfully disobeyed the said order? The Applicant has not established any ... or relation between the Respondent and those who had invaded the land or whether those individuals themselves knew about the existence of the orders of the court issued on 18/7/2023.
10. From the foregoing therefore, it is my finding that the breach of the Order were done by persons not known to the Respondent. He cannot be held liable for acts or commissions made by individuals not shown to be under his control and/or directions.



11. The upshot of the above is that the Notice of Motion dated 6/11/2023 is not merited and the same is hereby dismissed.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 17<sup>TH</sup> DAY OF MARCH, 2025**

**MOHAMMED N. KULLOW**

**JUDGE**

In the presence of:

Vincent Court Assistant

No appearance For the Plaintiff

No appearance for the Defendant

