



**Republic v National Land Commission; Arero (Contemnor); Wainaina & 2 others (Exparte)  
 (Suing as the Legal Representative of the Estate of William Ngugi) (Miscellaneous  
 Civil Application E050 of 2022) [2025] KEELC 3460 (KLR) (29 April 2025) (Ruling)**

Neutral citation: [2025] KEELC 3460 (KLR)

**REPUBLIC OF KENYA  
 IN THE ENVIRONMENT AND LAND COURT AT THIKA  
 MISCELLANEOUS CIVIL APPLICATION E050 OF 2022**

**JA MOGENI, J**

**APRIL 29, 2025**

**IN THE MATTER OF AN APPLICATION FOR LEAVE TO APPLY FOR THE  
 JUDICIAL REVIEW ORDERS OF MANDAMUS BY DOMINIC MBUGUA  
 WAINAINA & JULIUS KIIRU MWAURA & VERONICA MBUTU NJUNGE FOR  
 ENFORCEMENT OF COURT DECREE IN THIKA ELC CASE NO. 94 OF 2018**

**AND**

**IN THE MATTER ARTICLES 20, 22, 23, 47, 48, 50, 67, 165, 250  
 (12), 253 & 260 OF THE CONSTITUTION OF KENYA 2010**

**AND**

**IN THE MATTER OF SECTION 21 OF THE GOVERNMENT PROCEEDINGS ACT**

**AND**

**IN THE MATTER OF SECTION 20(3) & (4) OF THE NATIONAL LAND COMMISSION ACT**

**AND**

**IN THE MATTER OF SECTIONS 3, 4, 5, 6, 7 & 8 OF THE FAIR ADMINISTRATIVE  
 ACTION NO. 4 OF 2015 AND ALL OTHER ENABLING PROVISIONS OF THE LAW**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**AND**

**NATIONAL LAND COMMISSION ..... RESPONDENT**

**AND**

**KABALE TACHE ARERO ..... CONTEMNOR**

**AND**



**DOMINIC MBUGUA WAINAINA ..... EXPARTE**  
**JULIUS KIIRU MWAURA ..... EXPARTE**  
**VERONICA MBUTU NJUNGE ..... EXPARTE**  
**SUING AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF WILLIAM**  
**NGUGI**

## **RULING**

1. The Application before Court is a Motion dated 16 January 2024. The Applicant seeks the following orders:
  - a. Spent
  - b. That the Honorable Court be pleased to issue Summons to Kabale Tache Arero CEO/ Secretary-National Land Commission to attend Court and show cause why she should not be punished for deliberate disobedience of the Court Order issued on 27<sup>th</sup> September 2023
  - c. That Honorable Court be pleased to find the CEO/Secretary National Land Commission, one Ms. Kabale Tache Arero in contempt of Court Order issued on 27<sup>th</sup> September 2023 and proceed to commit her to civil jail for period of six (6) months or fine or both.
  - d. That the Honorable Court be pleased to issue any other appropriate relief it may deem fit
  - e. That the costs of this Application be borne by the Respondents
2. The said Application is supported by the grounds set on the face of it as well as on the sworn affidavits of Dominic Mbugua Wainaina the 1<sup>st</sup> Ex Parte Applicant. The matter was disposed off by way of written submissions.
3. It was the Exparte Applicant's case that an order of Mandamus was issued on 27/09/2023 compelling the CEO/Secretary of the 2<sup>nd</sup> Respondent, Ms Kabale Tache Arero to pay the Applicants a sum of Kesh 38,914,300.80 being the decretal sum in Thika ELC Case No. 94 of 2018, Dominic Mbugua Wainaina & Others vs National Land Commission.
4. That despite being aware and being served the 2<sup>nd</sup> Respondent has refused, neglected and/or deliberately failed to comply with the Court Order issued on 27/09/2023. That the deliberate disobedience the Court Order undermines the dignity and authority of this Court.
5. That the 2<sup>nd</sup> Respondent has always been aware of the Court Order issued on 27/09/2023 and that she has a legal obligation to settle all Court Judgments and decree passed against the Respondent.
6. The Application was opposed vide a Replying Affidavit sworn by Brian Ikol, the Deputy Director Legal Affairs on 15/02/2024. He averred that the compulsory acquisition of the Ex Parte Applicant's land was done by KERRA who however handed over the function to the County Government of Kiambu who were responsible for the function that vide a letter dated 30/09/2016, the function of construction of the link road was transferred to County Executive Secretary for infrastructure in Kiambu.
7. It was contended that the Application was flawed since the Judgment that was delivered by Justice Lucy Gacheru acknowledged that the County Government of Kiambu as being a pertinent party for resolution of the issues before Court. However, the ex parte Applicant has refused to engage the



- County Government of Kiambu while being aware that they are responsible for the demolition and construction of the road on the suit properties.
8. That the Respondent herein has filed an Application for Review of Judgment seeking to have the Judgment on which the ex-parte Applicant's claim hinges on reviewed. Yet the Ex Parte Applicant has brought this Application to Court well aware of this fact.
  9. The Respondent also stated that it can only pay averred that it is a Constitutional Commission established by Article 67 and 248 of *the Constitution*. Accordingly, it is subject to Article 249(3) of *the Constitution* which provides that Parliament shall allocate funds and therefore funds needed to pay costs would be subject to Parliament's approval. It was contended that the Commission can only pay the costs owed once the sum is included in its budget as approved.
  10. The Respondent has denied having been involved in the compulsory acquisition of the ex parte Applicant's land and state that the ex parte Applicant has never placed any evidence to show that the County Government of Kiambu either instructed the Commission to acquire the suit land, or forwarded the necessary compensatory sums for the acquisition to enable the Respondent pay as provided for under Section 107 (1) and Section 111(1A) of the *Land Act*. The two Sections mandate the body compulsorily acquiring land to deposit compensation sums with the Respondent for onward transmission to the affected persons.
  11. The Application was said to be lacking in merit. The Court was asked to dismiss it with costs.
  12. In response to the Respondent's Replying Affidavit the Ex Parte Applicant Dominic Mbugua Wainaina on behalf of the 2<sup>nd</sup> and 3<sup>rd</sup> Ex Parte Applicants filed a Further Affidavit sworn on 4/05/2024 reiterating the contents of the Supporting Affidavit. He further deposed that this Court delivered its Ruling on the Application for review filed by the Respondent on 29/04/2024 dismissing the Respondent's Application as evidenced by annexure 'DWM1'.
  13. The ex parte Applicant deposed that the Respondent has been in contempt of the Judgment delivered on 15/06/2020 and has refused to comply with terms of the Judgment and order of Mandamus. He also contended that the Respondent has never preferred an appeal on the merits of the Judgment.
  14. That the Respondent is engaged in the act of deliberate disobedience which is an act that is an affront to the rule of law and it undermines the dignity and authority of this Court. It is the ex parte Applicant's prayer that the Application dated 5/02/20224 be allowed.
  15. The Application was canvassed by way of written submissions. The Applicant's submissions were filed on 3/10/2018. The Applicant emphasized the need to be granted the order of stay. It pointed out that the intended challenge has good chances of success and that if execution is allowed to go on, its livestock market activities that take place at the site will be disrupted leading to inevitable loss of revenue. The ability of the Respondent to compensate the Applicant if the title is eventually cancelled was also doubted. This Court was said to have the powers to grant the orders sought.
  16. After a careful consideration of the materials before this Court, I find the issue for determination as: Whether the Respondent is guilty of disobeying the orders of the Court emanating from the Judgment made by Justice Lucy Gacheru on 15/06/2020 thus rendering them in contempt of Court and therefore they should be punished accordingly.
  17. According to Black's Law Dictionary 10<sup>th</sup> Edition, Contempt of Court is defined as;

“Contempt (also termed as contempt of Court, judicial contempt) is a disregard of, disobedience to, the rules, or orders of a legislative or judicial body, or an interruption of its



proceedings by disorderly behaviour or insolent language, in its presence or so near thereto as to disturb the proceedings or to impair the respect due to such a body."

18. The obligation of every person to obey Court orders was summed up in the case of *Hadkinson v Hadkinson* (1952) 2 ALL ER 56 as follows;

"It was the plain and unqualified obligation of every person against or in respect of whom an order was made by a Court of competent jurisdiction to obey it unless and until it was discharged and disobedience of such an order would as a general rule result in the person disobeying it being in contempt and punishable by committal or attachment and in an Application to the Court by him not being entertained until he had purged his contempt."

19. Essentially, as already stated above the objective of the law on contempt is to protect the dignity of the Court and uphold the rule of law. A person who is served with a Court Order is supposed to move the Court in a respectful manner to explain why they are unable to comply or to seek stay or setting aside of such orders. There is no other option available to a person who is served with a Court Order. You comply unless there is an order either staying or setting aside those orders. This is the nature of the authority of a Court Order. And the Court must guard this authority and dignity jealously. If the Court does not punish contempt it would be abdicating on its duty to maintain the rule of law and compromising the dispensation of justice. This is and has always been the case as reflected in the many decisions on the subject from various jurisdictions.

20. In the case of *Johnson Vs Grant*, 1923 SC 789 at 790 Lord President Clyde stated that:

"...The law does not exist to protect the personal dignity of the judiciary nor the private rights of parties or litigants. It is not the dignity of the Court which is offended. It is the fundamental supremacy of the law which is challenged."

21. In the instant case the Respondent and Contemnors were aware of the Court Judgment which they sought to have reviewed vide their Application for review. The Court however dismissed the Application. Given the dismissal of the Application it meant that the order issued by the Court had to be obeyed.

22. I have noted the arguments of the Legal Director of the Respondent that they have not been given money by the County Government of Kiambu to facilitate payment. Further that they were not the ones who undertook the compulsory acquisition. The Judgment by Justice Lucy Gacheru on 15/06/2020 and the Certificate of Order of 16/05/2022 were both issued in favour of the Applicant as against the Respondent. This necessitated the issuance of the Mandamus Order of 27/09/2023 which is the subject of the contempt Application.

23. Section 5 of the *Judicature Act* provides that: -

"(1) The High Court and the Court of Appeal shall have the same power 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.

(2) An order of the High Court made by way of punishment for contempt of Court shall be appealable as if it were a conviction and sentence made in the exercise of the ordinary original Criminal jurisdiction of the High Court."



24. The import of the above provision is that the High Court and the Court of Appeal have the same power to punish for contempt of Court as was possessed by the High Court of Justice of England and that power extended to upholding the authority and dignity of Subordinate Courts. Therefore, the law that governed contempt of Court proceedings is the English Law applicable in England at the time the Application was filed. The Court has a duty to ascertain what the applicable law of contempt in the High Court of Justice in England was. I shall make reference to rules 81.4.-81.9 of 2012, Rules as obtains in England in respect to the enforcement of Judgements, Orders and Decrees, service of the Judgments and or where service could be dispensed with.
25. There are a number of decisions on why contempt of Court is necessary for the proper functioning and exercise of the authority of the Court as enacted under Article 159 of *the Constitution*. Under Article 159 (1) of *the Constitution*, judicial authority is derived from the people of Kenya and vests in and shall be exercised by the Courts and Tribunals established by or under *the Constitution*.
26. In the case of Martin Nyaga Wambora & 4 Others vs. Speaker of the Senate & Others (2014 eKLR it was rightly observed that:
- “... the disobedience of a Court order is a grave issue as it undermines the rule of law. Article 10 of *the Constitution* identified the rule of law as one of the guiding principles of governance. Article 3 of *the Constitution* is very clear that every person has an obligation to respect and defend *the Constitution*. So that any person who disobeys a Court order violates *the Constitution*.”
27. On the importance of obeying Court orders, it was held in the case of Shimmers Plaza Limited Vs. National Bank of Kenya Limited [2015] eKLR thus:-
- “The Courts should not fold their hands in helplessness and watch as their orders are disobeyed with impunity left, right and centre. This would amount to abdication of our sacrosanct duty bestowed on us by *the Constitution*. The dignity, and authority of the Court must be protected, and that is why those who flagrantly disobey them must be punished, lest they lead us to a state of anarchy. We think we have said enough to send this important message across.”
28. Further in the case of Kenya Human Rights Commission v Attorney General & Another [2018]eKLR the Court observed;
- “Contempt is the willful disobedience or disregard of Court orders, Judgments, decrees or directions. It is therefore the offence of being disobedient or discourteous towards Courts and their officers in the form of behavior that opposes or defies the authority, justice and dignity of the Court. Contempt manifests itself in the willful and intentional disregard of or disrespect for the authority of the Courts, a behavior that is regarded illegal because it does not obey or respect the authority of the Courts and their processes and tends to lower the dignity of the Courts.
- The Constitution* Article 4(2) declares Kenya a democratic state founded on national values and principles of governance which include the rule of law and democracy. Disobedience and disregard of the authority of the Courts violates national values and *the Constitution*. In that regard, Courts punish for contempt in order to maintain their dignity, authority, the rule of law, democracy and administration of justice as foundational values in our Constitution.



Article 159 of *the Constitution* recognizes the judicial authority of Courts and tribunals established under *the Constitution*. Courts and tribunals exercise this authority on behalf of the people. The decisions Courts make are for and on behalf of the people and for that reason, they must not only be respected and obeyed but must also be complied with in order to enhance public confidence in the judiciary which is vital for the preservation of our Constitutional democracy. The judiciary acts only in accordance with *the Constitution* and the law (Article 160) and exercises its judicial authority through its Judgments, decrees, orders and/or directions to check government power, keep it within its Constitutional stretch hold the legislature and executive to account thereby secure the rule of law, administration of justice and protection of human rights. For that reason, the authority of the Courts and dignity of their processes are maintained when their Court orders are obeyed and respected thus Courts become effective in the discharge of their Constitutional mandate”.

29. Punishing for contempt of Court goes towards safeguarding the dignity and the authority of the Court. This was the holding in the case of Nthabiseng Pheko vs. Ekurhuleni Metropolitan Municipality & Another CCT 19/11(75/2015) when the Court observed that;

“The rule of law, a foundational value of *the Constitution*, requires that the dignity and authority of the Courts be upheld. This is crucial, as the capacity of Courts to carry out their functions depends upon it. As *the Constitution* commands, orders and decisions issued by a Court bind all persons to whom and organs of state to which they apply, and no person or organ of state may interfere in any matter, with the functioning of the Courts. It follows from this that disobedience towards Court orders or decisions risks rendering our Courts impotent and judicial authority a mere mockery. The effectiveness of Court orders or decisions is substantially determined by the assurance that they will be enforced.”

30. Therefore as already stated, Courts therefore punish for contempt to insulate its processes for purposes of compliance so that the rule of law and administration of justice are not undermined. Without this power or where it is limited or diminished, the Court is left helpless and its decisions would mean nothing. This ultimately erodes public confidence in the Courts; endangers the rule of law, administration of justice and more importantly, development of society. That is why the Court stated in *Carey v Laiken* [2015] SCC17 that;

“Contempt of Court rests on the power of the Court to uphold its dignity and process. The rule of law is directly dependent on the ability of the Courts to enforce their process and maintain their dignity and respect.”

31. It is therefore a fundamental rule of law that Court Orders be obeyed and where an individual is enjoined by an order of the Court to do or to refrain from doing a particular act; he has a duty to carry out that order. The Court has a duty to commit that individual for contempt of its orders where he deliberately fails to carry out such orders. And as held in the case of *Martin Nyaga Wambora and Another vs. Justus Kariuki Mate & Another* [2014] eKLR, the duty to obey the law by all individuals and institutions is cardinal in the maintenance of rule law and administration of justice.

32. The necessary factors to consider in a matter relating to contempt of Court are;

- a. Whether there was an order made by the Court which was clear and unambiguous.
- b. Whether the party alleged to be in contempt of Court was aware of the Court order.



- c. Whether the party alleged to have acted in contempt indeed acted in a manner contra to the order issued by the Court.
33. I shall now examine the Application vis a vis the law. The Judgement of the Court delivered on the 15/06/2020, inter-alia, declared that the Plaintiffs are entitled to just and fair compensation for their parcels of land compulsorily acquired by the Defendants, compensation to the Plaintiffs in the sum of Kesh 26,048,525 and particularized in paragraph 16 of the Plaint and interest on the compensatory sums.
34. These Judgments and orders have not been shown to be clouded in ambiguity by the Respondent and/or the Contemnor. Therefore the Court holds that those orders are clear and free from ambiguity.
35. At the same time, the Court must satisfy itself that the person alleged to be in contempt committed the act complained of with full knowledge or notice of the existence of the order of the Court forbidding it. This threshold is quite high as it involves possible deprivation of a person's liberty. In the case of *Ex parte Langley 1879*, 13 the Court observed; -
- “... the question in each case, and depending upon the particular circumstance of the case, must be, was there or was there not such a notice given to the person who is charged with contempt of Court that you can infer from the facts that he had notice in fact of the order which has been made” And, in a matter of this kind, bearing in mind that the liberty of the subject is to be affected, I think that those who assert that there was such a notice ought to prove it beyond reasonable doubt.”
36. The question that the Court must ask itself is whether the Chief Executive Officer (CEO) of the Respondent has knowledge of the Judgement/Orders in this suit? Now the Respondent and Contemnor through their Counsel do not deny having knowledge of the Judgment/orders and the Mandamus Order. If anything the Respondent had filed for a review of the Judgment, which Application was dismissed.
37. This Court would like to point the Respondent and Contemnor in the direction of the Court of Appeal's decision in *Woburn Estate Limited vs Margaret Bashforth [supra]* which cited the decision in *Refrigeration and Kitchen Utensils Ltd vs Gulabchand Popatlal Shah & Another*, Nairobi Civil Application No.39 of 1990, where it was observed that:-
- “A party who knows of an order, whether null or valid, regular or irregular, cannot be permitted to disobey it... It would be most dangerous to hold that the suitors, or their solicitors, could themselves judge whether an order was null or valid-whether it was regular or irregular. That they should come to the Court and not take upon themselves to determine such a question...he should apply to the Court that it might be discharged. As long as it exists it must not be disobeyed.”
38. Given the evidence presented before Court through the pleadings and the submissions, it is apparent that the Respondent and Contemnor's disobedience of the orders of the Court is intentional and is calculated at denying the Ex Parte Applicants from the compensation that was decreed by this Honorable Court and in furtherance of failure to process the payment the Respondent and the Contemnor are in express violation of the orders of this Court.
39. Indeed the two related ingredients of wilful disobedience and knowledge of the order have been satisfied, and the Respondent and Contemnor have indeed been found to be in contempt of the orders of the Court given on 27/09/2023.



40. The Court of Appeal in Fred Matiangi the Cabinet Secretary, Ministry of Interior and Co-ordination of National Government vs Miguna Miguna & 4 Others [2018] eKLR held that when Courts issue orders, they do so not as suggestions to please the persons at whom they are directed.
41. As I have already stated above, that this Court, as must all Courts, will always firmly and decisively deal with any party who decides to disobey Court orders and will do so not only to preserve its own authority and dignity but to ensure and demonstrate that the constitutional edicts of equality under the law, and the upholding of the rule of law are not mere platitudes but present realities.
42. Given the foregoing, this Court is persuaded that the Motion dated 16/01/2024 allows the Application by the Ex Parte Applicants against the Respondent and Contemnor, and finds them to be in contempt.
43. In the result, the Court is persuaded that the Motion dated 16/01/2024 is merited. It is allowed by way of a finding that the Respondent and Contemnor is in contempt of the order of Gicheru, J of 15/06/2020 and a notice is hereby issued for the Respondent and Contemnor to appear in person on 26/06/2025 when an appropriate sentence and/or sanctions shall be meted out to her.

Orders Accordingly.

**DATED, SIGNED AND DELIVERED AT THIKA THROUGH MICROSOFT TEAMS ON THIS 29<sup>TH</sup> DAY OF APRIL, 2025.**

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**MOGENI J**

**JUDGE**

Judgement read in virtual Court in the presence of:

Mr. Njuguna holding brief for Mr. Kimathi for the Ex Parte Applicants

Ms. Masinde for the Respondent

Melita - Court Assistant.

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**MOGENI J**

**JUDGE**

