



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT KITALE

ELC NO. 57 OF 2018

BJ.....PLAINTIFF/APPLICANT

VERSUS

LKB.....DEFENDANT/RESPONDENT

RULING

(On grant of a permanent injunction and punishment for contempt of court)

Background

1. By a Plaint dated **4/6/2018** and filed on **6/6/2018**, the plaintiff sought a declaration that the properties purchased by the defendant herein whether registered in his name or not is matrimonial property, an order of injunction restraining the defendant from selling family properties without her consent and costs together with interest on costs. The parties were wife and husband.

2. Accompanying and filed on the same date as the Plaint was a Notice of Motion. In it, the Applicant sought orders of injunction restraining the defendant/respondent from disposing off by way of sale, transfer, exchange or in any way interfering with the matrimonial properties, whether land, animals or motor vehicles pending the hearing and determination of the application as well as the main suit. On **25/7/2018**, the Court issued orders requiring the parties to maintain the *status quo* in respect to the suit properties pending the hearing and determination of that application.

3. The parties agreed to settle the matter. They recorded a consent on **28/3/2019**. The consent order was adopted as judgment of the court. Therefore, the matter was marked as settled and order to that effect issued on **10/5/2021**.

4. The consent was that the properties being:

1. Eleven (11) acres out of LR No. xxxx/xx at Kachibora

2. Plot No. 5 at Mutwot Farm out of LR No. xxxx/x measuring 25 ft by 100ft

3. ¼ of an acre out of LR. No. Kiplombe/Kiplombe xx (Sergoit River Farm/xx at Eldoret.

4. Tractor Registration No. Kxx xxx old No. Kxxx xxxx -New Number.

5. Lorry Registration No. Kxx xxx x.

All the above properties be registered in the joint name of the parties herein.

6. Two (2) acres out of LR No. xxxx/xx at Kachibora be sold to assist in constructing and finishing the plot in Eldoret.

7. That each party to pay its own costs.

5. Obligatorily, the parties were to abide by the consent order and execute it accordingly. In my view, the Defendant being registered as

owner of most of the properties was to initiate the process of having the consent order duly executed. However, it would seem that he neglected, refused, denied and or declined to have it executed. The Plaintiff was agitated and thus filed the instant application.

The Application

6. The Application was another Notice of Motion dated **12/11/2021** and filed on **15/11/2021**. It was brought under Certificate of urgency. The Applicant invoked the provisions of Sections **1A, 1B, 3A** and **63** of the **Civil Procedure Act** and **Section 8** and **10** of the **Judicature Act, Articles 50** and **159** of the **Constitution** of Kenya **2010**, and **“all enabling provisions of the law.”**

7. The Applicant sought the following specific orders:

1. ...spent

2. ...spent

3. An order do issue restraining the Defendant from further dealing, disposing off, selling and/or interfering with land parcel No.xxx/xx at Kachibora measuring 11 acres, plot No. xxxx/x located at Kachibora Trading center being Mutwot farm plot No 5 measuring 25ft by100 feet, plot measuring ¼ of an acre at Eldoret being part of plot No. Kiplombe /Kiplombe/xx (Sergoit River Farm/xx), Tractor registration No. Kxx xxxx (currently registered as Kxxx xxxx) and Lorry Registration No. Kxx xxxx pending the hearing and determination of this application.

4. An order do issue restraining the Defendant from further dealing, disposing off, selling and/or interfering with land parcel No.xxxx/xx at Kachibora measuring 11 acres, plot No. xxxx/x located at Kachibora Trading center being Mutwot farm plot No 5 measuring 25ft by100 feet, plot measuring ¼ of an acre at Eldoret being part of plot No. Kiplombe /Kiplombe/xx (Sergoit River Farm/xx), Tractor registration No. Kxx xxxx (currently registered as Kxxx xxxx) and Lorry Registration No. Kxx xxxx pending the joint registration of the properties in the names of the parties herein.

5. The Defendant is sentenced to 6 months imprisonment or such longer period as the court will direct for disobedience of the court orders issued on 28/3/2018.

6. The cost of this application be provided for.

8. The Application was premised on the grounds stated at the foot of it and the affidavit sworn by the Applicant on **12/11/2021** filed on **15/11/2021**. The Applicant also swore a further Affidavit on **21/1/2022** and filed it on **26/1/2022**.

9. The Application was opposed through a replying affidavit sworn by the respondent on **6/12/2021** filed on **9/12/2021** and a further one sworn on **14/2/2022** and filed on **15/2/2021**.

10. The Application was premised on thirteen (13) grounds which were more or less reiterated in the supporting affidavit. The crux of the Application was that the respondent defied to execute, actualize and or effect the consent judgment entered into on **28/3/2019**. It was the applicant's contention that the properties had not been registered in their joint names as agreed in the consent judgment. Further, that the Respondent had contravened the order by selling off some of the properties. The properties she alleged the respondent had sold included **3 acres** being part of land registration **Number xxxx/xx** at **Kachibora** and the lorry registration Number **xxx xxxx**. She alleged that these were done without her consent and contrary to the consent recorded in court. To the Affidavit, she annexed a copy of the consent order and marked it as **BJ 1**. She deponed that it was now **three (3)** years since the order was made but the Respondent had made no efforts to actualize or execute it but and instead had engaged in a selling spree to her detriment and that of the children. She asked the Court was to issue a permanent order restraining the Respondent from meddling with the family properties until they were registered in their joint names.

11. Upon being served with the Replying Affidavit, the Applicant filed a further affidavit in which she denied allegations that the Respondent was married to other wives. She insisted she was the only wife. She annexed to the affidavit a Marriage Certificate dated **15/12/2009** to prove as much. She stated further that their marriage was monogamous and not polygamous and it was still subsisting. At paragraph **10** of the further affidavit she stated that she and the Respondent were blessed with four children. She annexed copies of their birth certificates marked them as **xx-x (x)-(x)**.

12. In response to the respondent's allegations that he sold the land as well as the tractor to pay school fees for the children, the Applicant denied it. She stated that the fees was paid through income earned from rental houses, the sale of milk and maize proceeds from their farm. She deponed further that the Respondent had refused to pay school fees for her children by the time she commenced the proceedings against him.

13. She admitted that they both agreed through the consent order have two (2) acres out of **11** acres of **LR No. xxxx/xx** Kachibora sold to enable them complete of the construction of the plot in Eldoret. The construction was yet to be completed. However, the defendant went ahead and sold **2.5** acres to one Joseph Egelan instead of **2** acres as per consent order and that contrary to the terms of the consent. Again, the defendant sold more land in the year **2020** and **2021** including the **1.5** acres referred to by the defendant herein in his replying affidavit.

14. The applicant was also clear that she was still living in their matrimonial home. According to her, she had come to Court with clean hands and not with any intention of settling scores between her and the respondent as he alleged. She urged the court to find the actions of the respondent amounted to contempt of the court judgment made on **28/3/2021** - the consent judgment - and punish him for defying the order. She urged the court to allow the application as prayed.

The Response

15. The respondent filed a replying affidavit in opposition to the Application. He termed the application as malicious, hopeless, misconceived, vague, inept, bad in law, moot, full of lies and an abuse of the process of the court. His contention was that he had had two wives and **seven (7)** children all of whom were school going and depended on him to pay their fees to the exclusion of assistance from the applicant. He stated that he dropped from his former profession of athletics due to the frustration of the Applicant. Currently at the time of the Application, he only depended on farming to meet the needs of the family. He stated further that he faced hard economic times. He accused the Applicant of smashing his motor vehicle and annexed to his Affidavit photographs marked as **LKB-1 (a) - (e)** to prove as much. He deponed that wrangles never end in a polygamous relationship and that he only entered into the consent in a bid to settle those in his home that ended up in court in the form of land disputes.

16. He repeated the contents of the consent order. He stated that at the time the consent was recorded it was not disclosed to the Court that some of the properties were not in any of their names. In particular, he stated that he bought **LR NO. xxxx/xx at Kachibora** measuring **11** acres, the Plot at Kachibora Trading Center measuring **50ft by 100ft** as well as the Sergoit River farm bought from the sons of a deceased person/ owner was still in his name and that succession had not been done to enable him obtain the respective titles in his name. He clanged on that reason for failing to transfer the titles in their joint names as per the consent order and the reason for not fixing specific timelines in the consent.

17. He deponed further that he only had agreements to the said properties. To him, therefore, it could not be said that he had breached the consent order. He accused the applicant of misleading the court. He denied having sold any of the properties that the applicant informed the Court that he sold. He denied ever being in possession of a tractor registration No. **Kxx xxxx** but acknowledged owning a tractor Registration No. **Kxx xxxx** which is registered in his name. He annexed a copy of the search on it and marked it as **LKB-3**. He confirmed that the same had not been registered in their joint names. He blamed it on challenges involved in the current process of registration (in the country).

18. He claimed that he consulted the Applicant on the recent sale of a piece of land measuring **1.5 acres** on **23/4/2021**. As well as tractor registration No. **Kxx xxxx**. He annexed a copy of the sale agreement and marked it as **LKB-4 (a) and (b)**. He deponed that the proceeds he received from the sale were used to construct the plot in Eldoret. To his affidavit, he annexed copies of photographs of the construction to prove as much. He marked them as **LKB-6 (a) and (b)**.

19. He accused the applicant for instituting the suit to settle their personal scores beyond the jurisdiction of the court. According to him, the applicant was up to disrupt his life. He stated that the Applicant had filed divorce proceedings and she had moved out of their matrimonial home. He also accused her of unfaithfulness and that whenever he asked about it she would run to court to evade the same.

20. He denied being in contempt of the court order.

21. In his further affidavit the respondent stated that he had four issues with the applicant and was in another relationship with another woman. From that relationship he had two other children. He annexed copies of their birth certificates and marked them as **LKB-1 (a) and (b)**. Further, that he had another child. He annexed and marked as **LKB -2** the child's birth certificate. He acknowledged having cows as well as rental houses which generate reasonable income to sustain the family.

Oral Evidence

22. On **20/1/2022** when this matter came up for mention to confirm compliance in respect of the Application, learned counsel for the Applicant informed the court that despite there being orders of *status quo* in place, the Respondent had disposed of a trailer. This prompted the court to order the parties to appear in court to explain the position. They did and testified orally on the issue. The Applicant's testimony was that she together with her husband bought the tractor **Kxx xxxx** and thereafter they purchased the trailer thereto. They owned and possessed the two items until recently when the tractor was taken away from their home and the trailer which used to be blue in colour was now painted grey. She stated on oath that the respondent sold the trailer to a neighbor, one **Samson Naibei**.

23. Upon cross-examination, she stated that they bought both the tractor and trailer separately. She could not, however, know the registration number of the trailer. She also stated that the tractor had not been sold but was taken away from their compound. She insisted that it was on sale. She insisted that the trailer had been sold. She stated that she heard of that from one Laban who informed her that it was sold for **Kshs. 180,000/=**. However, she did not have an agreement to prove it. She also testified that she heard from a neighbor, one Kibet, that the tractor was on sale but had not yet been sold. She insisted that she could complain only of the properties contained in the consent of which the tractor was one. She insisted that she resided with her husband in one house – the matrimonial home.

24. The Respondent testified as well. His testimony was that he owned tractor registration **No. Kxx xxxx Massey Fergusson 275**. It was purchased on **17/11/2005**, during the subsistence of their marriage. He denied having sold it. He stated that it was in his second wife's compound. He insisted that the applicant knew his second wife well. He married her in **2016** after the Applicant filed for divorce in **2014**. He denied having purchased a trailer. According to him the trailer the Applicant referred to belonged to a neighbor, one Samson Naibei. He said that the trailer was not part of the consent because it was not theirs.

25. On cross-examination he confirmed that he owned the tractor but not the trailer. Further, that he used to borrow to use the trailer from Samson Naibei since **2006**. He stated that Samson would also return it to his place if he wanted to use it. He confirmed having married the applicant in church but said that he married another wife later. He also confirmed that they have not divorced with the applicant. The Application was disposed of by way of written submissions.

Issues, Analysis and Determination

26. I have carefully considered the Application, the lengthy rival affidavits both in support and opposition to the Application, the annexures

as well as the submissions, together with the authorities cited and the law relied on by the parties. This court is of the considered view that the issues that arise for determination:

- a) *Whether the applicant has made a prima facie case for issuance of an injunction;*
- b) *Whether the respondent is in contempt of the court;*
- c) *What appropriate orders to issue and who to bear the costs of the application.*

27. I start by analyzing the issues, one after the other as follows:-

a) *Whether the Applicant has made a prima facie case for issuance of an injunction*

28. An injunction is an equitable remedy the Court can grant. Times without number, courts have held that in determining whether or not to grant such an order, the Court must exercise discretion judiciously and without caprice. That being so, it is said and is true that Equity aids the vigilant and not the indolent. Also, that he who comes to it must come with clean hands, and that Equity follows the law.

29. About the discretion of the court a plethora of cases have emphasized how it is intertwined with Equity. The case of *Kahoho v Secretary General, EACJ Application No. 5 of 2012* and that of *Daniel Kipkemoi Siele v Kapsasian Primary School & 2 Others [2016] eKLR* emphasized on the exercise of discretion as follows:

“... the grant or not of an order of injunction is upon the discretion of the court. However, like all other discretions, the same must be exercised judiciously.”

30. For an Applicant to succeed in obtaining orders of injunction, s/he must satisfy the conditions established in the case of *Giella -vs- Cassman Brown [1973] EA 358*. They are that:

- (i) **The applicant has established a prima facie case**
- (ii) **The applicant would suffer irreparable loss that may not be compensated by damages and**
- (iii) **If the Court is in doubt, it may rule on a balance of convenience.**

(i) *Whether the applicant has established a prima facie case with high chances of success*

31. For the purposes of the instant application, it is worth noting that this is a unique application. It is filed post judgment. As stated elsewhere in this judgment, the matter was settled by a consent order which was adopted as the judgment of the court. It does not however preclude this Court from granting orders as sought if in the opinion of the Court, and based on the material placed before it, a party is actively engaged in actions that may defeat the substance of the decree.

32. Be that as it may, he who alleges a fact must prove it unless the law removes the burden from him/her and places it on another. The Applicant claimed that the Respondent neglected and or defied the Court order issued to them in the form of a consent order which was adopted as the judgment of the court on **28/3/2019**. Both parties do not challenge the existence of the order. In any event the consent is part of the Court record herein.

33. The Applicant's cry was that the Respondent not only failed to comply with the consent but acted contrary to it. She was particular that the respondent declined to transfer the properties to their joint names as agreed. Instead he proceeded to dispose of some of the properties without her consent. To evince that, she annexed to her affidavit in support of the Application copies of sale agreements. I have perused the agreements keenly. I note that in the agreements, the Applicant is not indicated as one of the sellers. She is not a witness either.

34. Although the respondent pleaded that he sold the properties with the knowledge of the Applicant, I do not believe him because the Applicant was not a participant in one way or other and there was no written communication from her to the effect that the Applicant had express consent to sell the properties. If it would be true that the Applicant was made aware and her consent sought, the least the Applicant should have done, in the good that he claims to have had, was to enjoin her as a witness in the least or seller where she was not a registered as owner but which matter was not settled that she would have a say in the dealings on the property. I find the respondent untruthful.

35. Regarding the obligation to effect transfers of the properties into the joint names of the parties, the Applicant claimed that the respondent denied to have the properties transferred in their joint names. In response, the respondent argued that he was not in a position to effect the transfer of the properties especially the land parcels captured in the consent. He gave the reason for non-compliance of the consent order in that regard that the respective properties not registered in his name were still under the names of deceased persons and Succession proceedings had not yet been done. He did not furnish this Court with any evidence to prove as much. This Court finds that by the time he entered into the consent in issue, the Respondent was aware that the parcels of land were still in the names of deceased but did not inform the court of that fact. I find that the respondent is not truthful but is only evasive and in blatant disobedience of the court order. I hold this view given the observations I make below about the parcels of land or other properties registered in his name.

36. In regard to the Respondent's failure to transfer the tractor, registration number **Kxx xxxx** into the joint names of the parties herein, the Applicant alleged that the Respondent refused to transfer it as agreed. The respondent acknowledged that the tractor was registered in his name. He blamed the process of registration as being technical for his failure to transfer it in their joint names. He did not produce evidence

of attempts made to do so but failed. The Applicant wishes the Court to believe that since **28/03/2019** no property in form of Registration of vehicles or other registrable chattels has ever been made in Kenya. That is absurd! I do not agree with the Respondent's assertions. He has not proved the allegation of difficulty faced in his attempt to transfer it. His allegations are in the least a slap in the face of the strides this nation has made towards proper registration systems and even automation of registration processes of properties. I reject his untruths. This is a party who wishes to retain the properties in his sole name so that he can be disposing them at will without the consent of the Applicant, and in contravention of the Court order under reference.

37. While the Applicant did not prove that the trailer complained of was owned by the two parties as matrimonial property, it is also clear that it was not part of the Court consent. Thus, the issue of its sale is neither here nor there. However, regarding all other properties, as I have found above, part of them were disposed of by the Respondent during the pendency of a binding judgment of this Court, and without evidence of express consent of the other party. This court is of the considered view that the respondent failed to obey the court order. Again, it defeats logic that property which is jointly to be registered in the names of the two parties herein is moved from the ordinary place where it should be (the compound where the Applicant resides – the matrimonial home) to another woman's compound (the second wife). The tractor should have been left in the usual place it should be until it is jointly registered, and even then, it should be in a place where the other party can access it freely. The Respondent's actions of outright disobedience not only frustrated the applicant but also defeated justice for her and her children. Thus, I sum it upon that the actions of disposing of some of the properties and moving some from the rightful places safe keeping are inconsistent with conduct that would be said to fall short of establishing a *prima facie* case for the grant of an order of injunction. I find that the applicant has established a *prima facie* case against the respondent.

38. The Respondent raised issues about the Applicants' conduct especially of smashing his motor vehicle, commencing divorce proceedings. He also claimed that he had another wife and other children to provide for. I find all these not relevant to the issue before the Court now. They are but side shows which do not address the issue whether he disobeyed the Court order. He did not show how the issues he raised made him unable to comply with the judgment of the Court. He cannot shield himself from failing to execute the consent by the allegations. The respondent's excuses are neither here nor there.

ii) Whether the applicant would suffer irreparable loss that may not be compensated by damages

39. The Court has explained before what amounts to irreparable loss in regard to the grant of an injunction. On the point, my brother Munyao J., in ***Pius Kipchirchir Kogo v Frank Kimeli Tenai [2018] eKLR*** stated as follows:-

“Irreparable injury means that the injury must be one that cannot be adequately compensated for in damages and that the existence of a prima facie case is not itself sufficient. The applicant should further show that irreparable injury will occur to him if the injunction is not granted and there is no other remedy open to him by which he will protect himself from the consequences of the apprehended injury.”

40. It is not in dispute that the respondent acted contrary to the consent order dated **28/3/2019**. The Applicant stated that she will suffer prejudice and substantial loss if restraining orders were not issued against the respondent from selling the properties further. In my considered view, the continued sale of the properties without the consent of the applicant would lead to great loss occasioned on the applicant as the properties may be transferred to third parties and recovery from them especially if they buy them as innocent purchasers would be difficult. Compensation from the respondent may not suffice in all the cases of such transfers of ownership. It is my humble considered view that the respondent must be restrained permanently from furthering his actions which contravene the consent order dated **28/3/2019**. The restraint should be until the all the properties referred to in the consent judgment, except that which has been sold out as at the time the orders of this Court are issued, are registered jointly in terms of the consent. The faster the parties move to do so the better.

41. In addition to the above, the balance of convenience tilts in favour of the Applicant. The reason is that some of the properties are currently registered in the name of applicant while those unregistered are held out as properties of the parties herein under instruments of purchase which are in the name of the Respondent. It is he who can dispose them off at will, but contrary to the judgment of the Court.

b) Whether the Respondent is in Contempt of Court

42. The Applicant asked prayed that this court to find the respondent in contempt of the court order issued on **28/3/2019**. The Respondent denied being in contempt of the order. The common denominator is that there exists a court judgment following a consent recorded on the material date. This court has already found that the respondent failed to obey it. That was contemptuous of the Court.

43. In ***Black's Law Dictionary, 11th Edition, Thompson Reuters, 2019, Bryan A. Garner*** defines contempt as disregard of, or disobedience to, the rules or orders of a legislative or judicial body, or an interruption of its proceedings by disorderly behavior or insolent language, in its presence or so near thereto as to disturb the proceedings or impair the respect due to such a body.

44. It goes then that any party, whether served with a court order or not, is bound to obey it provided that he has knowledge of the existence of the order. A court of law does not issue orders in vain; they must be obeyed, respected and or fulfilled.

45. About obedience of orders of the Court, in the case of ***Kenya Human Rights Commission v Attorney General & Another [2018] eKLR*** the court emphasized as follows:

“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.

In *Nthabiseng Pheko v Ekurhuleni Metropolitan Municipality & another CCT 19/11(75/2015)*. Nkabinde, j 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 courts 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.”

In the case of *Canadian Metal Co. Ltd v Canadian Broadcasting Corp(N0.2) [1975] 48 D.LR(30)*, the court stated that;

“To allow court orders to be disobeyed would be to tread the road toward anarchy. If orders of the court can be treated with disrespect, the whole administration of justice is brought into scorn... if the remedies that the courts grant to correct... wrong can be ignored, then there will be nothing left for each person but to take the law into his own hands. Loss of respect for the courts will quickly result into the destruction of our society.”

*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”

*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. (*Louis Ezekiel Hart v Chief George 1 Ezekiel Hart (-SC 52/2983 2nd February 1990)*). And in *Hon. Martin Nyaga Wambora and Another v Justus Kariuki Mate & Another [2014] eKLR*, the Court stated the duty to obey the law by all individuals and institutions is cardinal in the maintenance of rule law and administration of justice.*

It is therefore clear that the importance of the judiciary in the maintenance of constitutional democracy cannot be overemphasized. In order to achieve this constitutional mandate, the judiciary requires the power to enforce its decisions and punish those who disobey, disrespect or violate its processes otherwise courts will have no other means of ensuring that the public benefit from the judgments they hand down and the orders and or directions made on their behalf. When stripped of this power courts will be unable to guarantee compliance with their processes and will certainly become ineffective in the discharge of their duties and performance of their functions with the ultimate result that the public, as trustees of the rule of law, will be the major victim.”

46. I am guided by the wisdom in the above holding. It is my humble and considered view that it cannot be gainsaid that the role of courts is to maintain law and order and social cohesion through issuance of orders and directions within the law and facts are applied to it by parties when they appear before them. For that to happen, the orders should be obeyed and if not, then firm and clear steps should be taken to ensure compliance. This occurs in the prism of punishment of those who disobey. Disobedience goes against the upholding of the dignity of the Court and furtherance of the rule of law. The 2010 Constitution respects this point.

47. In regard to this Court, punishment for contempt of court is provided for under Section 29 of the Environment and Land Court Act which establishes it. The provision reads 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.”

48. This court having found the respondent to be in contempt of the court order, will not hesitate to punish him accordingly. I find the Respondent guilty of the offence of contempt of Court and convict him accordingly.

d) What orders to issue and who to bear the costs of the application

49. The Applicant proved the Application to the required standard to warrant issuance of the orders sought against the Respondent. Thus, her Application dated 12/11/2021 succeeds. Therefore, this Court grants the following orders:

i) An order be and is hereby issued restraining the Defendant permanently from further dealing, disposing off, selling and/or interfering with land parcel No.xxx/xx at Kachibora measuring 11 acres, plot No. xxxx/x located at Kachibora

Trading center being Mutwot farm plot No 5 measuring 25ft by100 feet, plot measuring ¼ of an acre at Eldoret being part of plot No.Kiplombe/Kiplombe/xx (Sergoit River Farm/xx), Tractor registration No. Kxx xxxx (currently registered as Kxxx xxxx) and Lorry Registration No. Kxx xxxx pending the registration of the properties in the joint names of the applicant and the respondent.

ii) An order be and is hereby suspending the mitigation by and sentencing of the Respondent/Contemnor for reason of the dispute herein relating to family property, pending compliance of the further orders below, after which the Respondent will be discharged.

iii) A further order be and is hereby issued directing the Respondent to cause to be registered, in terms of the consent of 28/03/2019, within two months of this order the properties listed in the consent.

iv) In the interest of justice, it is hereby ordered that there be

a) an order directing the Land Registrar, Trans-Nzoia County, Land Registry to register forthwith an inhibition in respect to LR. No.xxxx/xx and plot No. xxxx/x situate at Kachibora Trading Center, until further orders of this Court.

b) An order be and is hereby issued directing the Land

Uasin-Gishu Land Registry to register forthwith an inhibition in LR. No. Kiplombe /Kiplombe/xx (Sergoit River Farm/xx), until further orders of this Court.

v) The Parties to attend Court on 07/06/2022 for confirmation of compliance and further orders.

vi) This being a family matter, each party shall bear their own costs.

Orders accordingly.

DATED, SIGNED AND DELIVERED AT KITALE VIA ELECTRONIC MAIL ON THIS 23RD DAY OF MARCH, 2022.

DR. IUR FRED NYAGAKA

JUDGE, ELC, KITALE.