



**Owino v Siololo & 4 others (Environment & Land Case  
E007 of 2024) [2025] KEELC 3207 (KLR) (8 April 2025) (Ruling)**

Neutral citation: [2025] KEELC 3207 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAROK  
ENVIRONMENT & LAND CASE E007 OF 2024**

**LN GACHERU, J**

**APRIL 8, 2025**

**BETWEEN**

**RHODA KUUSA OWINO ..... PLAINTIFF**

**AND**

**PARMONTORO OLE SIOLOLO ..... 1<sup>ST</sup> DEFENDANT**

**KIPINGOT OLE SIOLOLO ..... 2<sup>ND</sup> DEFENDANT**

**LEMERIA OLE SIOLOLO ..... 3<sup>RD</sup> DEFENDANT**

**DISTRICT LAND REGISTRAR, NAROK ..... 4<sup>TH</sup> DEFENDANT**

**ATTORNEY GENERAL ..... 5<sup>TH</sup> DEFENDANT**

**RULING**

1. Before this court for determination is the Notice of Motion Application dated 21<sup>st</sup> November 2024, wherein the Plaintiff/ Applicant has sought for the following orders;
  - i. That the court do find that the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants/Respondents are in contempt and disobedience of the court orders given on 26<sup>th</sup> September 2024;
  - ii. Consequently, that this court do penalise the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants/Respondents by committing them to civil jail for a period of 6 months or such period as the court may decide, for contempt and disobedience of court orders given on 26<sup>th</sup> September 2024;
  - iii. That the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants do compensate the Plaintiff/ Applicant for the loss occasioned as a result of the acts of contempt and disobedience;
  - iv. That the costs of this application be borne by the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants/ Respondents.



2. The Application is premised on the various grounds set out on the face of the Application, and on the Supporting Affidavit of Rhoda Kuusa Owino, the Plaintiff/ Applicant herein. These grounds are;
  - i. Despite the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants/ Respondents having knowledge of the Orders given on the 26<sup>th</sup> September 2024, they have disobeyed and continues to disobey the said Court Orders with impunity;
  - ii. Further, despite having been properly served with the Orders given on the 26<sup>th</sup> September 2024, the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants have disobeyed and continues to disobey the said orders with impunity.
3. Further, that the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants have not only denied the Plaintiff/ Applicant access to Plot Number Cis Mara/Maji Moto/ 30, 31 and 31, but have forcefully driven out the Plaintiff's cattle and employees, and have also stationed goons on the entrance to stop the Plaintiff/ Applicant and employees from accessing the Plots, contrary to the court orders;
4. It was also averred that the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants have intimidated and continues to intimidate the Plaintiff/ Applicant so that they can continue with the illegal hold on the Plaintiff's/Applicant's suit properties; As a result of the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants/Respondents contemptuous actions, the Plaintiff/Applicant stand to lose irreparably, and the said 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants/Respondents have threatened total violence and destruction of property should the Plaintiff lay further claim to the property; that court orders must be obeyed as they are not suggestions open to debate.
5. In her Supporting Affidavit, the Plaintiff/ Applicant averred that the court issued an order in her favour on 26<sup>th</sup> September 2024, which orders were in respect of her Application dated 2<sup>nd</sup> May 2024, in which the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants/Respondents actively participated. Further, that when the orders were granted, their advocate was in attendance, and was expected to have informed his clients about the said orders.
6. She further averred that still, the Defendants/ Respondents were served with the said Orders as per the annexed Return of Service. It was her further contention that even with the said service, the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants/ Respondents continued to intimidate the Plaintiff/ Applicant's employees, threatening them with violence, and illegal eviction, but she thought that they would not make good their threats, since they have an advocate to advise them, and also because they had been served with the Orders of injunction.
7. She also claimed that on 20<sup>th</sup> November 2024, the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants/Respondents hired goons who were armed to the teeth, and the goons descended on her properties, which properties are from her hard work. Further that the goons also drove away her herd of cattle away and threatened her employees with violence if any was to interfere with their illegal activities. Further, that they have now denied her employees access to the suit properties.
8. Therefore, the Orders sought are meant to protect herself and restrain the Defendants/Respondents from interfering with her use and occupation of the suit land, and also from the illegal actions of the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants.
9. The Plaintiff/ Applicant urged the court to allow the application and grant the orders sought.
10. The Application is opposed by the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants/ Respondents through the Replying Affidavit Parmintoro Ole Siololo, the 1<sup>st</sup> Defendant who averred that he has been advised by his advocate on record that the application herein is fatally defective, incompetent, scandalous, vexatious and frivolous and an abuse of the court process.



11. He denied that they have been in breach of the court orders as alleged, and he confirmed that indeed on 9<sup>th</sup> October 2024, the court did issue a temporary injunction order, and their advocates explained to them about the 3 said orders.
12. Further, he averred that the Plaintiff/ Applicant is misleading the court and the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants/Respondents are strangers to such allegations made against them, as they are law abiding citizens, and they hold the rule of law with regard.
13. It was his contention that the allegations made by the Plaintiff/Applicant are not substantiated, as the supporting documentary evidence are not clear on which parcels of land were the photographs taken from. Further, that the alleged photographs are unclear and it would be unjust to punish them on evidence that has not met the threshold for such application.
14. The deponent deposed that he has been advised by his advocate on record that in such an application, the court has a duty to satisfy itself beyond any shadow of doubt since allegations of contempt of court are criminal in nature, which might lead to any of them losing their right to liberty, and hence clear evidence is needed to support the same.
15. He also contended that the available evidence does not meet the standard of proof for contempt of court, which standard is higher than in civil suits. He urged the court to dismiss the instant application with costs.
16. The Plaintiff/ Applicant filed a Further Affidavit, wherein she averred that the averments by the Deponent of the Replying Affidavit are false and a blatant lie, and that the Defendants have continued to commit further acts of contempt.
17. It was her further allegations that the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants/Respondents have forcefully removed her and her herd of cattle from the three parcels of land, and have threatened violence should she attempt to take possession of the said parcels of land. That her workers are living in fear of attack by the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants/ Respondents and their goons. She reiterated that the said 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants/Respondents have contravened and continues to contravened the court orders, and they are not truthful.
18. She contended that she has no ill will to allege contempt when there is none, and she has been prompted to file the instant application due to the suffering and likelihood of great loss if the contempt is not purged.
19. The court directed that the said Application be canvassed by way of written submissions. The Plaintiff/ Applicant complied and filed her written submissions dated 20<sup>th</sup> January 2025, through J. Martim & Co Advocates, and urged the court to allow her prayers.
20. The Plaintiff/ Applicant submitted on several issues being;
  - i. whether there was service of the said orders which are the subject of the instant contempt proceedings;
  - ii. whether there is contempt or evidence of contempt by the Defendants/ Respondents;
  - iii. if the answer to the above is affirmative, whether the Defendants/ Respondents should compensate the Plaintiff/ Applicants for the loss occasioned;
  - iv. who should bear the costs of this application.



21. On the first issue, the Applicant submitted that in his Replying Affidavit sworn by the 1<sup>st</sup> Defendant/ Respondent he acknowledged knowledge of the existence of the order in place. Further, that the said 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants/ Respondents had participated in the proceedings until the Ruling was issued that gave rise to the subject orders, and so they actually knew about the orders. It was also submitted that the said Orders were also served upon them as can be discerned from the Return of Service of one John Mwangi Hinga, which is annexed to the Application. Therefore, there is no dispute about service of the Order.
22. On whether there is contempt or evidence of contempt, it was submitted that in fact the acts of contempt complained of are still going on. The Plaintiff/ Applicant relied on the various cases among them the case of Nabro Properties vs Sky Structures Ltd & 2 others (2002) eKLR, where the court held;

“it is a maxim of law recognized that no party shall take advantage of its own wrong and this maxim which is based on elementary principles is fully recognized in courts of law and of equity, and indeed admits of illustrations from every branch of legal procedures. The reasonableness of the rule being manifest ...we may observe that a man shall not take advantage of his own wrong....”
23. Further, it was submitted that the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants/ Respondents have committed a wrong through threats and intimidation to ensure that no proper photographs are taken, and hence the court should not allow them to take advantage of the wrong committed.
24. The Plaintiff/Applicants further relied on the cases of Edia Atieno Muga vs Peter Akoth Alingo Nairobi Court of Appeal No. 14 of 2017( Reported). She also relied on the cases of Chuck vs Creamer ( 1846) 1 Coop Temp, cott , 205; 47 ER 820; Teachers Service Commission vs Kenya National Union of Teachers & 2 others ( 2013) eKLR; Mutitika vs Baharini Fram Ltd ( 1985) KLR 229; and urged the court to find that the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants/Respondents are in contempt of court and continues to commit such acts of contempt.
25. On whether the court should make an order of compensation if 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants/ Respondents are found to be in contempt, it was submitted that the Plaintiff/ Applicant has been forced to buy fodder for her animals as she has been evicted from the suit land by the Defendants/ Respondents, and thus an amount of ksh 300, 000/= is sufficient compensation, and contempt should be purged.
26. On who should pay costs, it was submitted that costs follow the event, and the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants/ Respondents being in contempt of court should be ordered to pay costs of this application.
27. The Defendants/Respondents did not file their written submissions, but instead the advocate for 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants/Respondents filed an Application to cease acting for the said Defendants, which application is dated 14<sup>th</sup> February 2025. However, the said Application was not prosecuted, and thus the Advocate is still on record. Without their written submission, then this court finds that the Plaintiff/ Applicant’s submissions have not been rebutted.
28. Having considered the instant Application for Contempt of court orders, and the denial by the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants/ Respondents, this court finds that there is no doubt that the Plaintiff/ Applicant herein did file an Application dated 2<sup>nd</sup> May 2024, wherein she sought for injunctive Orders against the Defendants/ Respondents over Land Parcels No. Narok/ Cis Mara/ Maji Moto/ 29, 30 31 and 32.



29. The said Application was opposed by the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants/ Respondents, who filed their Replying Affidavit dated 4<sup>th</sup> June 2024, sworn by Parmontoro Ole Siololo, the 1<sup>st</sup> Defendant/ Respondent herein.
30. Further, it is evident that the said application was canvassed through written submissions, and after inter-parties hearing through written submissions, the court on 26<sup>th</sup> September 2024, delivered a Ruling and allowed the said Application for temporary injunction, and restrained the Defendants/ Respondents from interfering with the Plaintiff/ Applicant's occupation of the suit properties.
31. From the court record, the said Court Order was issued on 9<sup>th</sup> October 2024, with a Penal Notice that; "any person who does not comply with the terms of the order is guilty of contempt of court and is liable to imprisonment for a period of not more than six (6) months."
32. The above order of the Court is clear and unambiguous and there has been no complaint from the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants/ Respondents that the said order was ambiguous or confusing in any way. For this reason, this court finds that there was in existence clear and unambiguous orders capable of being executed and/or obeyed by the Defendants.
33. From the above background of the case, and analysis of the orders issued by the court, it is evident that there is inexistence a valid an unambiguous court order issued by the court, and thus the said order needed to be obeyed. The question to be determined with regards to contempt of court, is whether there is a valid order capable of being obeyed. This limb also requires that the order must be clear and unambiguous. It is evident that on 26<sup>th</sup> September, 2024, the court pronounced itself on the Plaintiff's Application dated 2<sup>nd</sup> May 2024 in the presence of both counsel for the Plaintiff and the Defendants.
34. In the case of Samuel M. N. Mweru & Others vs National Land Commission & 2 others [2020] eKLR the court held that as follows:-

It is an established principle of law that 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. Upon proof of these requirements the presence of willfulness and bad faith on the part of the Respondent would normally be inferred, but the Respondent could rebut this inference by contrary proof on a balance of probabilities. Perhaps the most comprehensive of the elements of civil contempt was stated by the learned authors of the book Contempt in Modern New Zealand who succinctly stated:-

‘There are essentially four elements that must be proved to make the case for civil contempt. The applicant must prove to the required standard (in civil contempt cases which is higher than civil cases) that:-

- a. the terms of the order (or injunction or undertaking) were clear and unambiguous and were binding on the defendant;
- b. the defendant had knowledge of or proper notice of the terms of the order;
- c. the defendant has acted in breach of the terms of the order; and
- d. the defendant's conduct was deliberate’.

35. The Plaintiff/ Applicant has averred that after the court order was issued, the same was served upon the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants / Respondents on 18<sup>th</sup> October 2024, as per the Affidavit of Service of



John Mwangi Hinga sworn on 30<sup>th</sup> October 2024. The 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants/ Respondents have not disputed having been served with the said Court order. Further, the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants/ Respondents fully participated in the inter-parties hearing of the said Application, and are fully aware of the orders issued by the court.

36. The court having issued such temporary orders, the parties to the suit have a duty to obey the said orders of the court. As the court held in the case of *Teachers Service Commission vs Kenya National Union of Teachers & 2 Others* (Supra);

“ A court orders is not a mere suggestion or an opinion or a point of view. It is a directive.....”

37. The Plaintiff/Applicant has averred and alleged that the court order has not been obeyed by the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants/ Respondents herein, and they have continued to disobey the said court orders. The said 1<sup>st</sup>, 2<sup>nd</sup> and Defendants/Respondents have not denied having disobeyed the said court orders, but have only disputed the photographs produced in court as evidence of such contempt.

38. The provisions of law on contempt of court is Section 5 (1) of the *Judicature Act*, which grants the High Court and the Court of Appeal the power to punish for contempt. Further, for the ELC, Section 29 of the *Environment and Land Court Act* provides 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.”

39. In the case of *Hadkinson vs Hadkinson* ( 1952) All ER 567, the court held;

“ it is 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 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 hi not entertained until he has purged his contempt.”

40. Therefore, if the court is to find that the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants/Respondents are in contempt of court, then the court would not shy away from punishing the said contemnors. See the case of *Mutitika vs Baharini*( Supra), where the court held;

“ a person who knowing of an injunction or an order of stay wilfully does something or causes others to do something to break the injunction or interfere with the stay is liable to be committed for contempt of court as such person has by his conduct obstructed justice.”

41. It is evident that the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants/Respondents are aware of the court order of 26<sup>th</sup> September 2024, and have Knowledge of the same. Having been aware of and having knowledge of the said court orders, the Defendants have no option, but to obey the said court order, for purpose of safeguarding the rule of law. See the *Halsbury’s Laws of England* (4<sup>th</sup> Edition) Vol 9 at Page 37, which provides that: -

“ as a general rule, no order of court requiring a person to do or abstain from doing an act may be enforced unless a copy of the order has been served personally on the person required to do or abstain from doing the act in question”



42. Further, Order 52 rule 3(1) of the England Supreme Court Practice Rules, which are applicable herein provides;

“no order will normally be issued for committal of a person unless he has been personally served with the order, disobedience to which is said to constitute the contempt, or if the order is directed to a group of persons, or a corporation, some appropriate member has been personally served.”

43. The Plaintiff/Applicant have averred that the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants/Respondents were personally served with the court order, and they demonstrated such service by filing a Return of service sworn by a process server. Such service was not disputed by the Respondents herein. The Respondents had also participated in the inter-parties hearing of the Application that brought about the court orders in issue, and thus they cannot claim not to have knowledge of the court orders. See the case of Shadrack Arap Baiwo vs. Bodi Bach [1987] eKLR

“There is a presumption of service as stated in the process server's report, and the burden lies on the party questioning it, to show that the return is incorrect. But an affidavit of the process server is admissible in evidence and in the absence of contest it would normally be considered sufficient evidence of the regularity of the proceedings. But if the fact of service is denied, it is desirable that the process server should be put into the witness box and opportunity of cross-examination given to those who deny the service.”

44. From the court record, it is evident that instead of appealing against the said court order, the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants/ Respondents filed an Application dated 18<sup>th</sup> November 2024, seeking maintenance of status quo over the suit property. The court had granted the Plaintiff/ Applicant her prayers of temporary injunction against the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants. It defeats logic, why the said Defendants/ Respondents would later come to court for maintenance of status quo.

45. The Court of Appeal in the case of Woburn Estate Limited vs Margaret Bashforth [2016] Eklr, while citing the decision in Refrigeration and Kitchen Utensils Ltd v Gulabchand Popatlal Shah & Another, Nairobi Civil Application No.39 of 1990, held as follows;-

“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.”

46. What is not in doubt is that the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants/ Respondents have not obeyed the court orders of 26<sup>th</sup> September 2024, and they have filed two applications to try and defeat the said court orders. It trite that a court order must be obeyed whether a party agrees with its contents or not, and as long as the order still subsists, then it remains a valid court order that must be adhered to.

47. Further, it is trite that obeying or complying with the court order is not optional, even if a party has applied for review, variation or appeal of the said order, but is necessary to safeguard the rule of Law, and prevent chaos. In the case of Kenya Tea Growers Association vs Francis Atwoli and 5 Others (2012)



eKLR, , the court cited with approval the case of Clarke and Others vs Chadburn & Others [1985] 1All E.R (PC), 211, wherein the court held that:

“I need not cite authority for the proposition that it is of high importance that orders of the courts should be obeyed, wilful disobedience to an order of the court is punishable as a contempt of court, and I feel no doubt that such disobedience may properly be described as being illegal...even if the Defendants thought that the injunction was improperly obtained or too wide in its terms, that provides no excuse for disobeying it. The remedy is to vary or discharge it.”

48. The Plaintiff/ Applicant attached photographs to show the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants/ Respondents and their goons invading the Plaintiff's Land. The said Respondents did not provide contrary evidence to prove that they did not disobey the court order. This court finds that indeed, the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants/Respondents are in contempt of court orders, and for that reasons, they need to purge the said contempt, and in default, they would definitely be punished as provided for by the law.
  49. For the above reasons, the court finds and holds was that the Plaintiff/ Applicant's application herein is merited and the same is allowed entirely in terms of prayers Nos. 2, 3 and 4 of the said Application dated 21<sup>st</sup> November 2024.
  50. Having found that the Plaintiff/ Applicant is entitled to be compensated for the loss incurred, this court finds that the Plaintiff sought for a compensation in the tune of ksh 300,000/= for the loss incurred. The said submission was not disputed by the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants/ Respondents. Thus, the court allows the Plaintiff/ Applicant's prayer of compensation of ksh 300,000/= for the loss incurred due the contempt of the court orders of 26<sup>th</sup> September 2024.
  51. The court having found that the Plaintiff/ Applicant is entitled to the prayers sought in her Application dated 21<sup>st</sup> November 2024, it further finds and holds that she is entitled to costs of this Application.
  52. Ultimately, the court finds and holds that the Plaintiff/ Applicant's Application dated 21<sup>st</sup> November 2024, is allowed entirely with costs to be borne by the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants/ Respondents herein.
- It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAROK THIS 8<sup>TH</sup> DAY OF APRIL, 2025**

**L. GACHERU**

**JUDGE.**

Delivered online in the presence of

Meyoki - Court Assistant

M/s Chepkemoi holding brief Miss Maritim for Plaintiff/ Applicant

N/A for 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants/ Respondents

N/A for 4<sup>th</sup> & 5<sup>th</sup> Defendants/Respondents

**L. GACHERU**

**JUDGE.**

