



King’ori v Oloo & another (Applying as legal administrators of the Estate of the Late Oloo Agoro Oloo) (Environment and Land Appeal 4 of 2019) [2025] KEELC 158 (KLR) (24 January 2025) (Judgment)

Neutral citation: [2025] KEELC 158 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
ENVIRONMENT AND LAND APPEAL 4 OF 2019**

**LL NAIKUNI, J
JANUARY 24, 2025**

BETWEEN

PETER KING’ORI APPELLANT

AND

CAROLINE AKINYI OLOO 1ST RESPONDENT

JULIUS OTIENO OLOO 2ND RESPONDENT

**APPLYING AS LEGAL ADMINISTRATORS OF THE ESTATE OF THE LATE
OLOO AGORO OLOO**

JUDGMENT

I. Preliminaries

1. The Judgment herein pertains to an appeal lodged before this Honorable Court by Peter King’ori – the Appellant herein. The appeal was filed through a Memorandum of Appeal dated 15th February, 2019 and a Record of Appeal dated 26th July, 2024 against Caroline Akinyi Oloo and Julius Otieno Oloo (Applying as Legal Administrators of the estate of the late Oloo Agoro Oloo), the Respondents herein. In a nutshell, the appeal revolves around the interpretation by the lower court of its own orders herein as seen here below.
2. The Appeal emanated from the Ruling and Order of the Principal Magistrate (Hon. C. Ndegwa) (PM) Delivered on 13th February, 2019 in “CMCC (Mombasa) Land Case No. 41 Of 2018 Caroline Akinyi Oloo & Anor. - Versus - Peter King’ori”. Based on the Affidavit of Service on record the Record of Appeal was properly served upon the Respondents.
3. On 28th October, 2024 having confirmed that the Record of Appeal dated 26th July, 2024 has been filed and served the Honourable Court. Subsequently, direction were taken under the provision of Sections



79B & G of the Civil Procedure Act Cap. 21 and Order 42 Rules 16, 17 and 18 of Civil Procedure Rules court's directed that the matter be discharged with effectively.

II. The Appellant's case

4. From the filed Memorandum of Appeal, the Appellant averred as follows: -
 - a. The Learned trial Magistrate erred in law and fact by finding and holding that the Appellant conduct amounted to contempt of court when the Respondents had not proved the same to the required standards.
 - b. The Learned trial Magistrate erred in law and fact by finding and holding that the Appellant was in contempt of court when there was no adequate material and evidence before the court to prove the same.
 - c. The Learned trial Magistrate erred in law and fact by failing to apply or properly apply the relevant law and precedent on contempt of court.
 - d. The Learned trial Magistrate erred in law and fact by failing to find and hold that there was no service or proper service of the order dated 17th January, 2018 the subject of the contempt of court Application upon the Appellant.
 - e. The Learned trial Magistrate erred in law and fact by finding and holding and issuing a warrant of arrest against the Appellant.
 - f. The Learned trial Magistrate erred in law and fact by failing to find that the Respondents' evidence was hearsay and inadmissible and inadequate to allow the application.
 - g. The Learned trial Magistrate erred in law and fact by failing to find and hold that the Respondent had not been duly served with the order at all.
 - h. The Learned trial Magistrate erred in law and fact by considering irrelevant facts and material in arriving at the decision including that the Appellant tore the Order and said that it was fake and useless when there was no such evidence.
 - i. The Learned trial Magistrate erred in law and fact by failings to analyze and/or properly analyze all the facts, the evidence, submissions and the law.
 - j. The Learned trial Magistrate erred in law and fact by failing to find and hold that the alleged video clips were not availed in court while the alleged photographs did not show the Appellant carrying on the alleged construction or any dates thereof and/or the state of the alleged construction before or after the order.
 - k. The Learned trial Magistrate erred in law and fact by finding and holding the Respondents evidence was not disputed when there was a Replying affidavit disputing and denying the same but failed to notice and/or consider properly consider the same.
 - l. The Learned trial Magistrate erred in Law and fact by allowing the Respondent's application with costs without adequate and/or proper evidence of the same.
5. The Appellant prayed that the Ruling and orders made on 13th February, 2019 in Mombasa CMCC Land Case No. 41 of 2018 Caroline Akinyi Oloo & Anor. - Versus - Peter King'ori set aside and substituted with a finding of this court dismissing the Respondent's application dated 8th August, 2018 with costs.



6. From the filed Pleadings, the applicants, that is, Caroline Oloo and Julius Otieno Oloo had filed a Notice of Motion application dated 8th August 2018. The application sought for several orders; Prayer 1 was already spent since it only sought for the application to be certified urgent. The prayers that remained for consideration by the court were the following:-
 - a. Spent.
 - b. That the Honourable court be pleased to issue warrants of arrest to the Respondent together with the servants and or agents for having acted in contempt of the orders of this court given on 17th January 2018.
 - c. That the Honourable court be pleased to give orders that the Respondent has disobeyed the orders of the court and therefore be cited as having acted in contempt of court orders and be punished for the same.
 - d. That the OCS Inuka Police Station be ordered to enforce the order 2 & 5.
 - e. That the Honourable Court be pleased to order new structures be demolished forthwith.
 - f. That the Honourable court be pleased to order new structures be demolished forthwith.
7. The application was supported by the affidavit of Caroline Akinyi Oloo sworn on 8th August, 2018. There was no replying affidavit was filed to the application. Thus, the application was not opposed. The factual background to the application was as follows: -
 - a. They obtained court orders from this Court dated 17th January, 2018 and they effected service upon the advocate of the Respondent at NSSF Building 10th Floor on 19th January, 2018 and they acknowledged the same by signing and stamping at the back of their copy at 2.30pm. Annexed in the affidavit and the same marked as “C.A.O 1”.
 - b. The Respondent had disobeyed the court orders by his continual of erecting further buildings on the disputed land despite having been restrained by this court pending hearing and determination of the suit.
 - c. She took some photos showing the erected structures and a video clip recorded taken on 5th August, 2018 while workers were at the site at 10.00 am. Annexed in the affidavit and the same marked as “C.A.O.2”.
 - d. After serving the advocate of the Respondent with the court orders, they also pinned the same at the disputed premises but he read it, tore it and removed it calling it to be a fake document and useless.
 - e. The Respondent had acted in contempt of the court orders and was liable to be punished in accordance with the law by this court.
 - f. They had restrained themselves from engaging with the Respondent which act could cause bloodshed and death hence the court's action will safe the situation.
8. In its determination, the Trial Court opined itself as follows:-

“The extracted order was signed by the Deputy Registrar on 18th January 2018. The Respondent's advocate was served with the court order on 19th January, 2018 and subsequently, a copy of the order was pinned at the disputed premises. According to the Applicants, when the Respondent found the order pinned on the suit premises, he tore it



after reading it and said that it was fake and useless. He then proceeded with the construction as if there was no restraining order.

As I have indicated above, the facts relied upon by the Applicants have not been challenged and it is my finding that the conduct of the Respondent amounts to contempt of court. A warrant of arrest is accordingly issued. The court will impose the appropriate punishment once the Respondent is arrested and brought before the court. I also grant prayers 5 and 6 of the application.

Orders accordingly.

Right of appeal 30 days.”

III. Submissions

9. On 9th July, 2024 as stated the Record of Appeal was admitted and directions given specifically in the presence of all the parties. The Honorable Court directed that the said appeal be disposed of by way of written submissions with given stringent time lines. Pursuant to that all the Counsels were granted ample opportunity file their written submissions, pursuant to that the Honourable Court reserved to deliver the Judgment on 18th September, 2024 through Micro Soft Teams Virtual Means.
10. However, due to unavoidable circumstances, the Judgement was eventually delivered on 24th January, 2025. The Honourable Court is sincerely grateful to the Learned Counsels for their dedication, diligence and devotion in the manner in which they had executed their mandate in this matter with utmost professionalism.

IV. Analysis and Determination

11. The Honourable Court has had a chance to critically assess all the pleadings filed in this Appeal being the Record of Appeal and its contents, the Memorandum of Appeal by the Appellants, the written submissions, the Plethora of cited authorities by the parties, the relevant provisions of *the Constitution* of Kenya, 2010 and the statutes.
12. For the Honorable Court to be in a proper position to arrive at an informed, plausible, just, fair and reasonable decision from the filed Appeal by the Appellant herein, the Honorable Court has condensed the subject matter into the following two issues (2) salient issues for its determination. These are: -
 - a. Whether the file appeal by the Appellants being aggrieved by the Ruling and Order of the Principal Magistrate (Hon. C. Ndegwa) (PM) delivered on 13th February, 2019 in Mombasa CMCC Land Case No. 41 of 2018 Caroline Akinyi Oloo & Anor. - Versus - Peter King'ori.
 - b. Who will bear the costs of the Appeal?

ISSUE No. A). Whether the file appeal by the Appellants being aggrieved by the Ruling and Order of the Principal Magistrate (Hon. C. Ndegwa) (PM) delivered on 13th February, 2019 in Mombasa CMCC Land Case No. 41 of 2018 Caroline Akinyi Oloo & Anor. - Versus - Peter King'ori.

13. Before embarking on the issues for analysis under this sub-heading as indicated earlier in the Judgement the Honourable Court in a preamble form the court makes two assertions. First on the re-evaluation of the evidence from trial court and secondly the brief facts of this case. This is a first appeal. In the



case of “Kenya Ports Authority – Versus - Kuston (Kenya Ltd, (2009) 2 EA 212” this Court stated as follows regarding the duty of first appellate court: -

“This being a first appeal to this Court, the duty of the court, is to reconsider the evidence, evaluate and draw its own conclusion though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in that respect...”

14. Similarly, in the case of “Peter –Versus - Sunday Post Limited 1958 E.A. 424” Sir Kenneth O’Connor P. rendered the applicable principles as follows: -

“It is a strong thing for an appellate court to differ from the finding on a question of facts, of the Judge who tried the case and who had the advantage of seeing and hearing the witnesses. An appellate court has indeed, jurisdiction to review the evidence in order to determine whether the conclusion originally reached upon the evidence should stand. But this is a Jurisdiction which should be exercised with caution. It is not enough that the appellate court might itself have come to a different conclusion...”

15. The various powers of the Court on appeal, the provision of Section 78 of the Civil Procedure Act Cap. 21 provide as follows:

“78. Powers of appellate court.

(1) Subject to such conditions and limitations as may be prescribed, an appellate court shall have power—

- (a) To determine a case finally;
- (b) To remand a case;
- (c) To frame issues and refer them for trial;
- (d) To take additional evidence or to require the evidence to be taken;
- (e) To order a new trial.

(2) Subject as aforesaid, the appellate court shall have the same powers and shall perform as nearly as may be the same duties as are conferred and imposed by this Act on courts of original jurisdiction in respect of suits instituted therein.”

16. The only issue for determination in the appeal is whether this Honourable Court can interfere with the ruling of the lower court by find the claim by the Appellant. The brief facts are discussed above in this Judgment it will be prudent to proceed with the examination of the grounds of appeal.

17. The main substratum is on the Contempt of Court order. The Honourable Court will expansively deliberate on this concept for ease of appreciation. Striving to abide by court orders is not an option. It protects the dignity and the authority and a rule of law. It must be zealously guarded by the court by dealing firmly with any person who deliberately disobeys court orders or attempts to scuttle the court's process. The provision of Section 5 of the Judicature Act as read together with Section 29 of the Environment and Land Court Act, No. 19 of 2011 are the guiding laws on contempt of court after the Contempt of Court Act was declared unconstitutional. The procedural law remains in the provision of Order 40 Rule 3 (1) (1) of the Civil Procedure Rules, 2010 in case of contempt of court.



18. Contempt of court is that conduct or action that defies or disrespects authority of court. Black's Law Dictionary 9th Edition, defines contempt as:

“The act or state of despising; the conduct of being despised. Conduct that defies the authority or dignity of a court or legislature. Because such conduct interferes with the administration of justice.

19. Properly put, contempt is conduct that impairs the fair and efficient administration of justice. Section 5 of the *Judicature Act* confers jurisdiction on the superior courts to punish for contempt. The applicants also cited provisions of the *Contempt of Court Act* No. 46 of 2016. That Act was however declared constitutionally invalid and nullified in 2018, (See “Kenya Human Rights Commission – Versus - Attorney General & 2 Others [2018] eKLR”).

20. In the case of:- “Republic – Versus - Mohammed & another Petition 39 of 2018 (2019) KESC 47 (KLR) (15th March 2019) (ruling)”, the court said that an act in contempt of court constitutes an affront to judicial authority and the court has liberty and empowerment to mete out the penalty for such conduct in a proper case, the object being to vindicate the courts authority, secondly, to safeguard its processes so as to sustain the rule of law and the administration of justice.

21. The provision of Order 40 Rule (3) of the Civil Procedure Rules (2010) provides that in cases of disobedience, or of breach of any terms of a temporary injunction, the court granting that 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. This application has therefore invoked this court's powers in terms of Order 40 Rule (3).

22. The reason why courts punish for contempt is to uphold the dignity and authority of the court, ensure compliance with directions of the court, observance and respect of due process of law, preserve an effective and impartial system of justice, and maintain public confidence in the administration of justice by courts. Without sanctions for contempt, there would be a serious threat to the rule of law and administration of justice. For a party to be cited for contempt, he must have violated and or disobeyed an order that was directed at him.

23. The Appellant was cited for contempt of court orders by disobeying the court orders issued on 17th January, 2018 by his continual of erecting further buildings on the disputed land despite having been restrained by this court pending hearing and determination of the suit in the trial court. The Respondents sought for the Appellant to be committed to civil jail. In case of:- “Duncan Mamel Murigi – Versus - Kenya Railway Corporation (2008) eKLR” the court cited “Bramblevale Limited (1970) CH 128” that contempt of court is an offense of a criminal nature and that a man may be sent to prison for it once it is proved that when the man was asked about it, he told lies and that there should be further evidence to incriminate him.

24. The power to punish for contempt is inherent in a system of administration of justice and such power is held by every judge. Dealing with the question of contempt in “Econet Wireless Kenya Ltd – Versus - Minister for Information & Communication of Kenya & another [2005] KLR 828”, Ibrahim, J. (as he then was), underscored the importance of obeying court orders, stating:

“It is essential for the maintenance of the rule of law and order that the authority and the dignity of our courts are upheld at all times. The Court will not condone deliberate disobedience of its orders and will not shy away from its responsibility to deal firmly with proved contemnors. It is the plain and unqualified obligation of every person against whom



an order is made by court of competent jurisdiction, to obey it unless and until the 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 the order believes it to be irregular or void.” (emphasis).

25. In the case of “T. N. Gadavarman Thiru Mulpad – Versus - Ashok Khot And Anor [2006] 5 SCC”, the Supreme Court of India also emphasized on the dangers of disobeying Court orders, thus:

“Disobedience of this Court’s order strikes at the very root of the rule of law on which the judicial system rests. The rule of law is the foundation of a democratic society. Judiciary is the guardian of the rule of law. Hence, it is not only the third pillar but also the central pillar of the democratic State. If the judiciary is to perform its duties and functions effectively and remain true to the spirit with which they are sacredly entrusted to it, the dignity and authority of the Courts have to be respected and protected at all costs. Otherwise, the very corner stone of our constitutional scheme will give way and with it will disappear the rule of law and the civilized life in the society. That is why it is imperative and invariable that Court’s orders are to be followed and complied with.”

26. Contempt of Court is in the nature of criminal proceedings and, therefore, proof of a case against a contemnor is higher than that of balance of probability. This is because liberty of the subject is usually at stake and the applicant must prove willful and deliberate disobedience of the court order, if he were to succeed. This was aptly stated in the case of:- “Gatharia K. Mutikika – Versus - Baharini Farm Limited [1985] KLR 227” that:

“A contempt of court is an offence of a criminal character. A man may be sent to prison. It must be proved satisfactorily.... It must be higher than proof on a balance of probabilities, almost but not exactly, beyond reasonable doubt. The standard of proof beyond reasonable doubt ought to be left where it belongs, to wit criminal cases. It is not safe to extend it to offences which can be said to be quasi-criminal in nature.

However, the guilt has to be proved with such strictness of proof as is consistent with the gravity of the charge... Recourse ought not to be had to process of contempt of court in aid of a civil remedy where there is any other method of doing justice. The jurisdiction of committing for contempt being practically arbitrary and unlimited, should be most jealously and carefully watched and exercised with the greatest reluctance and the greatest anxiety on the party of the judge to see whether there is no other mode which is not open to the objection of arbitrariness and which can be brought to bear upon the subject... applying the test that the standard of proof should be consistent with the gravity of the alleged contempt... it is competent for the court where contempt is alleged to or has been committed, and or an application to commit, to take the lenient course of granting an injunction instead of making an order for committal or sequestration, whether the offender is a party to the proceedings or not”.

27. Due to the gravity of consequences that ordinarily flow from contempt proceedings, it is proper that the order be served and the person cited for contempt should have had personal knowledge of that order. The Appellant was served by the Respondents and he allegedly tore up the order and continual of erecting further buildings on the disputed land despite having been restrained by this court. For the Appellant to be held in contempt, the Respondents must demonstrate that there was willful disobedience of the order.



28. In this regard, the Supreme Court of India held in the case:- “Indian Airports Employees Union – Versus - Ranjan Catterjee & Another [AIR 1999 SC 880: 1999(2) SCC:537”, that in order to amount to “civil contempt” disobedience must be willful. If disobedience is based on the interpretation of court’s order, notification and other relevant documents, it does not amount to willful disobedience.
29. As was again stated by the Supreme Court of India in case:- “Mahinderjit Singh Bitta – Versus - Union of India & Others 1 A No. 10 of 2010 (13th October, 2011)”:
- “In exercise of its contempt jurisdiction, the courts are primarily concerned with enquiring whether the contemnor is guilty of intentional and willful violation of the order of the court, even to constitute a civil contempt. Every party is lis before the court and even otherwise, is expected to obey the orders of the court in its spirit and substance. Every person is required to respect and obey the orders of the court with due dignity for the institution. (Emphasis).
30. The emphasis as shown in the above cases is that there must be “willful and deliberate disobedience of court orders.” There cannot be deliberate and willful disobedience, unless the contemnor had knowledge of the existence of that order. And because contempt is of a criminal nature, it is always important that breach of the order be proved to the required standard; first, that the contemnor was aware of the order having been served or having personal knowledge of it, and second; that he deliberately and willfully disobeyed it. In case of:- “Peter K Yego & others – Versus - Pauline Wekesa Kode, (Acc No. 194 of 2014)”, the court stated that:-
- “it must be proved that one had actually disobeyed the court order before being cited to contempt.”
31. In case of:- “Sammy Nyamweya & others – Versus - Kenya Premier League Limited & others (2015) eKLR”, the court observed that the power to punish for contempt of court has never been about protecting a judge’s feelings, ego or dignity. It is to safeguard the rule of law and its supremacy. It has nothing to do with the integrity of the judiciary or the court or even the personal ego of the presiding judge. It is not about placating the applicant who moves the court by taking out the contempt proceedings. It is about assuring a party who walks through the justice door with a court order in his hands that the order will be obeyed by those to whom it is directed.
32. Further a court order requiring compliance is not a mere suggestion or an opinion or a point of view. It is a command that is issued after much thought and with circumspection. The court said that an order must be complied with and it is in the interest of every person that it remains the case, otherwise, to see it any other way is to open the door of chaos and anarchy. Additionally anyone dissatisfied with an order of a court has avenues to challenge it, otherwise defiance should not be an option. Contempt proceedings are coercive and or punitive yet very important in the administration of justice.
33. As for service, the Respondents in their application averred that they obtained court orders from this Court dated 17th January, 2018 and they effected service upon the advocate of the Respondent at NSSF Building 10th Floor on 19th January, 2018 and they acknowledged the same by signing and stamping at the back of their copy at 2.30pm. Annexed in the affidavit and the same marked “C.A.O 1”. There was an affidavit of service provided for that this Honourable Court has confirmed on record to exist. Therefore service of the orders was legally and properly done and the Appellant’s advocate was aware of it.
34. I shall not fault the decision of the Trial Court being that the Appellant was truly disobedient of the Temporary injunctive orders issued on 17th January, 2018 being that there was evidence (pictorial



evidence) showing the erected structures and a video clip recorded taken on 5th August, 2018 while workers were at the site at 10am. Annexed in the affidavit and the same marked “CA0. 2”. For the reasons stated above I find all the grounds of appeal fail as the Respondents have proved their case in the Honourable trial court for the grant of contempt of court orders and the Honourable Trial Court has the discretion after examining the evidence to issue warrants of arrest against the Appellant.

35. The upshot of the foregoing is that the appeal as it is fails. The Ruling and Order of the Principal Magistrate (Hon. C. Ndegwa) (PM) Delivered on 13th February, 2019 in “Mombasa CMCC Land Case No. 41 Of 2018 Caroline Akinyi Oloo & Anor. - Versus - Peter King'ori” is herein upheld as the Appellant has not made out a clear case to vary the same.

Issue No. B. Who will bear the costs of the Appeal

36. The issue of Costs is at the discretion of Courts. Costs mean the award that a party is granted at the conclusion of any process, legal action or proceeding in any litigation. The Proviso of the provision of Section 27 (1) of the *Civil Procedure Act*, Cap. 21 provides that Costs follow the event whereby by events it means the result of the said process, legal action or proceedings. In the instant case, I find that the Appellant having failed to establish his claim on the appeal the Respondents have the costs of the appeal.

V. Conclusion and Disposition

37. The upshot of the foregoing, and having conducted an in-depth analysis of the framed issues herein, the Honorable Court finds that the Appeal by the Appellant lacks merit and is hereby dismissed. Accordingly, and for avoidance of any doubts, the Honorable Court makes the following orders for disposal thereof: -
- a. That the appeal filed through a Memorandum of Appeal dated 15th February, 2019 and a Record of Appeal dated 26th July, 2024 herein be and is hereby found to lack merit and hence it is hereby dismissed in its entirety with costs.
 - b. That the Honourable Court reserves the right and discretion to uphold the Ruling and Order of the Principal Magistrate (Hon. C. Ndegwa) (PM) Delivered on 13th February, 2019 in “Mombasa CMCC Land Case No. 41 of 2018 Caroline Akinyi Oloo & Anor. - Versus - Peter King'ori”.
 - c. That the Respondents shall have the costs of the appeal to be borne by the Appellant herein.

It is so Ordered Accordingly

JUDGEMENT DELIEVERD THOUGH THE MICROSOFT TEAMS VIRTUAL MEANS, SIGNED AND DATED AT MOMBASA THIS 24TH DAY OF JANUARY 2024.

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HON. MR. JUSTICE L.L. NAIKUNI

ENVIRONMENT AND LAND COURT AT MOMBASA

Judgment delivered in the presence of:

- a. M/s. Firdaus Mbula, Court Assistant.
- b. Mr. S. M Mutisya Advocate for the Appellant.
- c. No appearance Advocate for 1st & 2nd Respondents.

