



REPUBLIC OF KENYA



KENYA LAW
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Vros Produce Limited v Mwawthethe & 14 others; Shera & 2 others (Contemnor)
(Environment & Land Case 2 of 2023) [2025] KEELC 4089 (KLR) (29 May 2025) (Ruling)

Neutral citation: [2025] KEELC 4089 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
ENVIRONMENT & LAND CASE 2 OF 2023

EK MAKORI, J

MAY 29, 2025

BETWEEN

VROS PRODUCE LIMITED PLAINTIFF

AND

SAMSON JEFWA MWAWTHETHE 1ST DEFENDANT

AMINA MWATHETHE 2ND DEFENDANT

BEN MUNGAI 3RD DEFENDANT

ANTHONY THAIRU 4TH DEFENDANT

JOAN GATHONI 5TH DEFENDANT

JOSEPH NJAU 6TH DEFENDANT

PATRICIA NYAMBURA 7TH DEFENDANT

IRVIN NGUGI 8TH DEFENDANT

SAMUEL GATHEGI 9TH DEFENDANT

RASHID ALI JUMA 10TH DEFENDANT

JILA ENTERPRISES (K) LIMITED 11TH DEFENDANT

NZARO MWATHETHE 12TH DEFENDANT

MULEWA MWATHETHE 13TH DEFENDANT

AMISA KADZO 14TH DEFENDANT

ZAFARANI CHIGARA 15TH DEFENDANT

AND

DENNIS CHAMOTO SHERA CONTEMNOR



MAGHANGA MOHAMED RUWANGE CONTEMNOR
ABDALLA KESI SAHA CONTEMNOR

RULING

1. The Applicant filed its Notice of Motion dated February 24, 2025, under a Certificate of Urgency seeking the following orders:
 - a. Spent;
 - b. That the Court be pleased to impose sanctions on Dennis Chamoto, Maghanga Ruwange, also known as Shaban, and Abdalla Sala for disobeying or disregarding the Court's directives issued on the 7th of March, 2023;
 - c. Consequently, with respect to prayer 2 herein being granted, this Court should kindly issue warrants of arrest for Dennis Chamoto, Maghanga Ruwange, also known as Shaban, and Abdalla Sala prior to this Court for commitment to civil jail due to their disobedience;
 - d. Furthermore, regarding prayer 3, this Court should kindly commit Dennis Chamoto, Maghanga Ruwange, also known as Shaban, and Abdalla Sala to civil jail for a duration not exceeding six months, or for a shorter period as the Court may deem appropriate and expedient;
 - e. Alternatively, the Court may consider imposing a fine of Kenya Shillings Twenty Million on Dennis Chamoto, Maghanga Ruwange, also known as Shaban, and Abdalla Sala, or such amount as the Court may find just and convenient to remedy the breach and contempt of court;
 - f. Costs of the application should be provided for.
2. The application is supported by the attached affidavit of Mr. John Nganga, sworn on February 24, 2025. In contrast, the contemnors have filed their respective responses to the motion, accompanied by a replying affidavit from Mr. Dennis Chamoto Shera, submitted on March 15, 2025, which opposes the relief sought and requests the dismissal of the application with costs awarded to them.
3. The application was canvassed through written submissions as directed by the court. The alleged contemnors complied; however, the applicants did not.
4. The matters that require resolution by this court primarily pertain to whether the alleged contemnors are liable for contempt of court and the determination of who should be responsible for the costs of the application.
5. According to the affidavit submitted by the applicant, it is asserted that the alleged contemnors were served with the orders issued by this court; however, they have disregarded these orders and have proceeded to erect and continue construction on the suit property. This situation has given rise to the current application.
6. Conversely, the alleged contemnors assert that they were never served and are not participants in these proceedings; therefore, the present application is fundamentally misconceived and should be dismissed.



7. The alleged contemnors correctly cite Black’s Law Dictionary (Ninth Edition) to define contempt of court as:

“Conduct that defies the authority or dignity of a court. Because such conduct interferes with the administration of justice, it is usually punishable by fine or imprisonment.”
8. Furthermore, Section 29 of the Environment and Land Court states 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 “
9. The Supreme Court of Kenya, in the case of Republic v Ahmad Abolfathi Mohammed & Another [2018] eKLR, provided commentary on the powers to impose penalties for contempt, pronouncing that:

“The power, to commit a person to jail, must be exercised with utmost care, and exercised only as a last resort. It is of utmost importance, therefore, for the Respondents to establish that the alleged Contemnor’s conduct was deliberate, in the sense that he or she willfully acted in a manner that flouted the Court Order.”
10. I concur with the alleged contemnors that it is well-established that a court order is binding upon the party to whom it is directed and remains valid until it is set aside. Consequently, it is undisputed that interim orders were issued by the court on the 7th of March, 2023, prohibiting any activities on the disputed area. However, the contemnor asserts that the proceedings and pleadings in existence at the time of filing the main suit indicate that they were neither a party to the proceedings nor present at the suit property. Therefore, it defies reason and the confines of the law to hold the contemnors accountable for allegedly breaching court orders to which they were not parties and/or privy. In fact, to date, the Applicant has neglected to seek leave to join the contemnors to the main suit to rectify the evident anomaly apparent in the current proceedings. Notwithstanding the aforementioned, the contemnors have denied possessing any beneficial and/or registered interest in the suit property, and the annexures submitted in support of the Motion lack probative value as they do not disclose the date or time they were taken; furthermore, they do not establish the nexus or connection between the images and the cited contemnors concerning ownership or possession thereof. Under the first heading, the current motion fails as it does not substantiate that the contemnors are parties to the suit.
11. Additionally, I concur with the alleged contemnors that under the secondary heading, there exists a dispute regarding the service of the orders issued on the 7th of March, 2023. The court has conducted a thorough review of the evidence, and it is clear that the affidavit of service sworn by Alex Nzuki, dated the 17th of January, 2025 (which has not been filed for reasons known only to the applicant and thus does not constitute part of the court record), along with the subsequent affidavit dated the 11th of March, 2025, is inadequate and does not comply with Order 5 of the Civil Procedure Rules. This documentation fails to confirm the date, time, and physical address of each contemnor, thereby failing to meet the criteria for personal service upon an individual.
12. In agreement with the alleged contemnors, the application dated 24 February 2025 is hereby dismissed, with costs awarded to the alleged contemnors.

DATED, SIGNED, AND DELIVERED VIRTUALLY IN MALINDI ON THIS 29TH DAY OF MAY 2025.

E. K. MAKORI



JUDGE

In the Presence of:

Mr. Kinaro for the 3rd – 15th Defendants

Mr. Ireri for the alleged Contemnors

Happy: Court Assistant

In the Absence of:

Mr. Olwande for the Applicants

