



REPUBLIC OF KENYA



**KENYA LAW**  
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**Kambi & 3 others v Chome & 9 others (Environment & Land Case  
54 of 2019) [2025] KEELC 421 (KLR) (6 February 2025) (Ruling)**

Neutral citation: [2025] KEELC 421 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MALINDI  
ENVIRONMENT & LAND CASE 54 OF 2019  
FM NJOROGE, J  
FEBRUARY 6, 2025**

**BETWEEN**

**CHARLES PASI KAMBI ..... 1<sup>ST</sup> PLAINTIFF  
JOSHUA RADHI ..... 2<sup>ND</sup> PLAINTIFF  
AGNES KABIBI PONDA ..... 3<sup>RD</sup> PLAINTIFF  
COLLINS CHOME NGONYO ..... 4<sup>TH</sup> PLAINTIFF**

**AND**

**GIBSON CHOME ..... 1<sup>ST</sup> DEFENDANT  
CHRISTOPHER KAMBI ..... 2<sup>ND</sup> DEFENDANT  
KENNEDY MADARAKA ..... 3<sup>RD</sup> DEFENDANT  
KIPONDA KAMBI ..... 4<sup>TH</sup> DEFENDANT  
NGALA KAMBI ..... 5<sup>TH</sup> DEFENDANT  
GEORGE KAMBI ..... 6<sup>TH</sup> DEFENDANT  
ELIZABETH KAMBI KIPONDA ..... 7<sup>TH</sup> DEFENDANT  
JUMWA KAMBI ..... 8<sup>TH</sup> DEFENDANT  
MAPENZI KAMBI ..... 9<sup>TH</sup> DEFENDANT  
HELLEN KAMBI ..... 10<sup>TH</sup> DEFENDANT**



## RULING

### The Application

1. The defendant filed a Notice of Motion dated 8<sup>th</sup> April, 2024 in which it sought the following orders:
  1. ....Spent;
  2. That the Court be pleased to order the arrest and detention in prison of the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, Plaintiffs/Respondents, Kelly Ponda, Patrick Nyanje Kambi, Perry Radhi and Bahati Karibu for such time as this Court may deem fit or until they purge their contempt by honouring this Court Order dated 22<sup>nd</sup> February, 2023;
  3. That the said orders to be enforced by the DCIO Malindi Police Station;
  4. That the costs of this application be provided for;
  5. That the Honourable Court be pleased to make such further or other orders as it may deem just and expedient in the circumstances of this case.
2. The application is supported by the sworn affidavit of Christopher Mumba Kambi, the 2<sup>nd</sup> defendant, also dated 8/4/2024. The defendant's application is premised on the grounds that this court upheld an award of the Land Disputes Tribunal on 22/2/2023 adopted by the Kilifi Magistrate's court as a judgment in 2006; that the judgment restricted the owners of the suit plots from disposing of them till the finalization of the appeal; that the titles already issued be nullified if the appeal will be unsuccessful, and that the order be served on the land registry Kilifi.
3. It is deponed that the said order was served upon the respondents and/or the respondent's advocate on record and they have at all times acknowledged the existence of the said order. However, the plaintiffs have trespassed onto the land, obstructed and restricted the defendants, and interfered with it by conducting wanton destruction and burning and felling of trees and the building of houses in deliberate disregard of this court's orders.
4. They also are alleged to compromise the administrative officials into arresting and detaining the defendants in police custody on fabricated charges while claiming ownership of the suit land.

### Defendant's Response.

5. The plaintiffs filed a notice of preliminary objection dated 23<sup>rd</sup> May 2024 in which they set out the following limbs:
  - a. The application is incompetent and lacks merit;
  - b. That application is fatally defective since the court was rendered functus officio on 30<sup>th</sup> January 2023 when judgment herein was entered;
  - c. That there currently exists a similar injunction application filed by the respondents herein against the applicants herein before the Malindi court of appeal in Malindi COA MISC APP E 013 OF 2024;
  - d. That the application does not disclose any reasonable cause of action against the respondents;
  - e. That no ends of justice or value will be served by the application.



Reply to preliminary objection.

This document was filed on 5/6/2024.

## Submissions

### Applicants submissions

6. The applicant's submissions state that the matter involves a family dispute over community land, and that the plaintiffs seek to dispossess the defendants and possess the suit property. Determinations by various authorities regarding the dispute have constantly held in favour of the defendants. Rather than pursue an appeal the plaintiffs filed the present suit, 10 years after abandoning their appeal. This court issued a judgment in favour of the defendants.
7. The defendants relied on definitions of contempt of court in several sources including section 27(b) of the *Contempt of Court Act* No 46 Of 2016 (which has already been declared as unconstitutional) and assert that by their actions the plaintiffs are in deliberate disregard of the court orders and thus in contempt. The defendants rely on *Wainaina Kirungu (Suing as Personal Representative of the Estate of John Karanja Wainaina (Deceased) V Elijah Oketch Adella* 2015 eKLR, and aver that their averments have not been controverted by the plaintiffs; that the plaintiffs were at all times aware of the court order and their defiance was wilful, and the defendants have thus established their case on a balance of probability. They also rely on *Shimmers Plaza Limited V National Bank of Kenya Limited* 2015 eKLR which held that courts should not fold their hands in helplessness and watch as their orders are disobeyed with impunity, and *B v Attorney General* 2004 1 KLR 431 which reflects the same position in another language, stating that the court should not be seen to make orders in vain.
8. On 19/6/2024 the respondents were represented in court by Ms Katama. This court ordered that the respondent's substantive response to the application should be served within 14 days and their submissions within 42 days from 19/6/2024, i.e. by 5<sup>th</sup> July 2024 and 2/8/2024 respectively but neither replying affidavit nor submissions had been filed by those dates and this court will proceed with the application purely on the basis of, in respect of the plaintiffs, their grounds of opposition.

### Determination.

9. The application before this court raises only the two issues as follows: whether the application is properly before this court, and whether the respondents are in contempt of court.
10. Though no reply in opposition to the application in the form of a substantive sworn affidavit was filed in compliance with the orders of the court, and therefore the facts set out by the applicants must be deemed to be not in dispute, this court must establish whether the applicants have by those facts proved contempt against the named persons.
11. Section 5 (1) of the *Judicature Act*, directly links the exercise of the power to punish for contempt of court in Kenya to the prevailing law of in England. That section provides that:
  5.
    - (1) The High Court and the Court of Appeal shall have the same power to punish for contempt of court as is for the time being possessed by the High Court of Justice in England, and that power shall extend to upholding the authority and dignity of subordinate courts.



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

12. Back here in Kenya, Section 29 of the *Environment and Land Court Act* does not expressly refer to “contempt of court” but provides for punishment for refusal to obey an order of the court, which in this court’s view is also tantamount to contempt, as follows:

”29. Offences

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.”

13. Even where no replying affidavit is filed, proof of contempt is a must especially because in the end, as observed in *Gatharia K. Mutikika v Baharini Farm Ltd [1985] KLR*, the application may result in the issuance of orders that may lead to the loss of liberty or property of the respondents which are safeguarded by the law. As per *Gatharia K. Mutikika (supra)*, while the court is considering the above ingredients, the standard of proof required to establish a charge of contempt is higher than the standard of “balance of probabilities” required in an ordinary civil case but lower than the standard of “beyond reasonable doubt” required in criminal cases.

14. Besides relying on the express provisions of Section 29 herein above, this court has inherent powers to prevent abuse of its process and also to ensure that its authority and dignity is upheld at all times. In *Refrigeration and Kitchen Utensils Ltd v Gulabchand Popatlal Shah & Another, Civil Application No.39 of 1990*, the court observed 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.”

15. The ingredients of the offence of contempt of court are that:

- a. there must be an order that is alleged to have been disobeyed;
- b. the alleged contemnor must have knowledge of the order; and
- c. he must be found by this court to be in wilful disobedience of that order for him to be committed for contempt.

16. The first issue to be dealt with is whether there is an order of the court and what its terms are. It is not in dispute that a judgment was entered in this case which dismissed both the plaintiff’s claim and the defendant’s counterclaim on the basis that this court could not deal with a fresh matter which is not an appeal. It has not been demonstrated by the plaintiffs that an appeal has been successfully lodged against the judgment of the lower court. That judgment is therefore still in force unless it is overturned in an appeal.

17. It is correct that the lower court judgment envisaged that the titles to the suit land should not be disposed of pending finalization of the appeal, and that the titles should be nullified in the event the appeal is not successful. The only order that lay within the ability of the respondents to obey is that



injunction them from disposal of the suit titles. Also, save the restriction regarding the disposal of the suit titles and the provision for their nullification perchance the appeal is unsuccessful, there is no other express order that was made by the lower court.

18. The applicants' complaint in the present application is not that the respondents have disposed of the suit properties, but that they have trespassed thereon and committed acts of waste to some assets affixed to the land such as indigenous trees. They are also said to have constructed houses on the suit plots. Much as this court thinks, owing to the framing of the orders of the lower court and the risk of losing everything in the event the appeal fails, that it should be common sense for the plaintiffs to avoid trespassing and planting houses on the land, those actions are not prohibited in the orders of the lower court that the defendants rely on.

### **Conclusion**

19. Consequently, this court is not able to find the plaintiffs in wilful disobedience of any order of the lower court or this court and the application dated 8<sup>th</sup> April, 2024 lacks merit and it is hereby dismissed. As the same was occasioned by acts on the part of the plaintiffs, there shall be no orders as to costs.

**RULING DATED, SIGNED AND DELIVERED AT MALINDI VIA ELECTRONIC MAIL ON THIS 6<sup>TH</sup> DAY OF FEBRUARY 2025.**

**MWANGI NJOROGE**

**JUDGE, ELC MALINDI.**

