



REPUBLIC OF KENYA



KENYA LAW
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Rugut & 8 others v County Government of Uasin Gishu & 5 others (Environment & Land Case E069 of 2024) [2025] KEELC 3644 (KLR) (8 May 2025) (Ruling)

Neutral citation: [2025] KEELC 3644 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ELDORET
ENVIRONMENT & LAND CASE E069 OF 2024**

CK YANO, J

MAY 8, 2025

BETWEEN

DANIEL KIBET RUGUT 1ST PLAINTIFF
STANLEY KIPKOECH KETER 2ND PLAINTIFF
SHADRACK KIBIWOTT KETER 3RD PLAINTIFF
ABRAHAM KIPKORIR 4TH PLAINTIFF
KIPKUGAT YEGO 5TH PLAINTIFF
BARNABA K. KETER 6TH PLAINTIFF
BEN CHEPKWONY 7TH PLAINTIFF
KIRWA KETER NGOSOSEI 8TH PLAINTIFF
ISAAC SOIMO 9TH PLAINTIFF

AND

COUNTY GOVERNMENT OF UASIN GISHU 1ST DEFENDANT
THE COUNTY LAND REGISTRAR, UASIN GISHU 2ND DEFENDANT
COUNTY SURVEYOR UASIN GISHU 3RD DEFENDANT
THE ATTORNEY GENERAL 4TH DEFENDANT
THE MCA KIPCHAMO WARD 5TH DEFENDANT
THE WARD ADMINISTRATOR 6TH DEFENDANT



RULING

1. Vide a Notice of Motion dated 19th March, 2025 and filed under certificate of urgency, the Plaintiffs/Applicants sought the following orders: -
 - a. Spent.
 - b. That the 1st, 5th and 6th defendants/respondents do show cause why they should not be detained in Civil jail for a period of six months for blatantly disobeying the court order issued on the 29th January, 2025.
 - c. That the 1st, 5th and 6th defendants/respondents to pay costs of this application.
2. The application is based on the 11 grounds thereon and on the 4th Applicant's Supporting Affidavit sworn on 20th March, 2025, on his own behalf and on behalf of the co-applicants.
3. He stated that he is the beneficial owner of the suit land parcel Cheptiret/ Kapkoi Block 4 (Emkwen) 24, having lived on the subject land since 1974 together with the co-applicants, who are his brothers.
4. It is his claim that on 29th January, 2025, this court issued Interim Orders of Injunction against the defendants/respondents, restraining them from further encroaching onto, destroying the fence and maize plantation, felling trees, excavating earth and interfering with the applicants right to the subject land pending the determination of the suit.
5. He deponed that the respondents were duly served with the said court order on 14th March, 2025 and an affidavit of service duly filed to that effect. That they were therefore fully aware of the injunctive orders.
6. It is his contention that between the 17th and 18th March, 2025, despite having knowledge of the said orders, the 1st, 5th and 6th respondents unlawfully disobeyed and defied the said orders by trespassing into the suit land with the use of an excavator, illegally destroyed their fence, felled trees and houses, excavated earth while purporting to create a road.
7. He also accused the respondents of hiring goons and police officers attached to the 1st respondent, who harassed and assaulted them causing grievous harm and illegally detained them without justification and/or warrants of arrest.
8. It was further his contention that despite being served again through the local police officers from Cheptiret Police Post and by a Court Process Server between the 24/3/2025 and 27/3/2025, the respondents continued with their deliberate and willful disobedience and ignored the court orders and even dismissed the said orders as being fake.
9. It is his claim that the 1st, 5th and 6th respondents have persisted in further trespassing, encroaching, destroying fence, felling trees and houses, excavating earth and interfering with their rights to the suit land and raising threats.
10. He thus maintained that it is in the interest of justice that the 1st, 5th and 6th respondents should be committed to civil jail for contempt of the court orders and urged the court to allow the application as prayed.



11. Despite the respondents being duly served with the instant application and an affidavit of service being filed to that effect, the respondents did not file any response to the allegations raised against them. The application is therefore not opposed and applicants' claim and evidence thus remain uncontroverted.
12. When the matter came up for inter-partes hearing on 1.4.2025, counsel for the applicants informed the court that they would be relying entirely on the supporting affidavit. I will therefore proceed to determine the application as hereunder.

Analysis and Determination:

13. Having carefully considered the grounds in the application, the averments in the supporting together with the annexures thereto, it is my considered view that the only issue arising for determination is whether the Applicants have proved contempt on the part of the 1st, 5th and 6th Respondents to warrant the grant of the orders sought.
14. Contempt is defined in the Black's Law Dictionary as follows:-

“Contempt is a disregard of, 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 to impair the respect due to such a body.”
15. In *Teacher's Service Commission vs. Kenya National Union of Teachers & 2 Others* Petition No. 23 of 2013, the court while addressing the basis for contempt proceedings held as follows: -

“The reason why courts will punish for contempt of court is to safeguard the rule of law which is fundamental in the administration of justice. It has nothing to do with the integrity of the judiciary or the court or even the personal ego of the presiding judge. Neither is it about placating the applicant who moves the court by taking out contempt of court proceedings. It is about preserving and safeguarding the rule of law. A party who walks through the justice door with a court order in his hands must be assured that the order will be obeyed by those to whom it is directed. A court order is not a mere suggestion or an opinion or a point of view. It is a directive that is issued after much thought and with circumspection. It must therefore be complied with and it is in the interest of every person that this remains the case. To see it any other way is to open the door to chaos and anarchy and this Court will not be the one to open that door. If one is dissatisfied with an order of the court, the avenues for challenging it are also set out in the law. Defiance is not an option.”
16. The court went further to express itself that; “A court order is not a mere suggestion or an opinion or a point of view. It is a directive that is issued after much thought and with circumspection. It must therefore be complied with and it is in the interest of every person that this remains the case. To see it any other way is to open the door to chaos and anarchy and this Court will not be the one to open that door. If one is dissatisfied with an order of the court, the avenues for challenging it are also set out in the law. Defiance is not an option.”
17. It is the Applicants claim that the respondents have willfully disobeyed, disregarded and failed to comply with the orders of the court in the nature of a temporary injunction issued on the 29th January, 2025 despite being duly served and being aware of the said orders and the terms outlined therein.
18. Even though the respondents were served with the instant Application, they failed to respond and/or give a sufficient explanation or justification for their continued non-compliance/ disobedience of the



valid court orders. The evidence adduced by the Applicants in support of their claim have not been challenged.

19. The elements to be proved in contempt proceedings were discussed in the South African case of Kristen Carla Burchell vs Barry Grant Burchell where it was held 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.
20. Service goes to the root of the claim in contempt proceedings. The onus is on the applicants to demonstrate that proper service of the court order in question was duly effected upon the Respondents.
21. This court appreciates the higher burden of proof required in contempt of court matters to warrant committal to civil jail as sought by the Applicants. The standard of proof in matters of contempt of court is well settled. The Court of Appeal in Civil Application No. 39/1990, Refrigerator & Kitchen Utensils Limited –Vs- Gulabchand Popattal Shah & others approving the standard of proof in contempt cases as set out in the case of Gatharia Mitika & others –vs- Baharini Farm Limited Civil Application No. 24 of 1995 held that in cases of alleged contempt, the breach for which the contemnor is cited must not only be precisely defined but proven to a standard which is higher than proof on a balance of probabilities, but not as high as proof beyond reasonable doubt. This is because the charge of contempt of court order is an offence of criminal character and a party may lose his liberty. Committal to civil jail involves the limitation of a person’s liberty and even though the law allows for a person’s liberty to be curtailed under certain circumstances, due process must be followed. Any such orders of arrest and detention must bear in mind the fundamental right to liberty and freedom under Articles 28 and 29 of *the Constitution*. This court is therefore cautious before denying someone’s liberty by taking into consideration the circumstances of each case.
22. On 27th January, 2025 this court granted interim orders of injunction against the Respondents herein restraining by themselves, their servants or agents from further encroaching onto, destroying fence and maize plantation, felling trees, excavating earth or in any other way interfering with the applicants right to the suit land pending the hearing and determination of the suit. The order was issued on 29th January, 2025.
23. I have looked at the two copies of affidavits of service sworn by Bornes Lucy Chebet Advocate having conduct of the matter on behalf of the Applicants, marked “AK-2” and the other sworn by George Ochieng, a process server, marked “AK -6”. M/s Bornes stated that on 14th March, 2025, she effected service upon one Evelyn, a clerk at the office of the Attorney General and one Kangogo, a clerk at the office of the Solicitor General of the County Government of Uasin Gishu. On his part, the process server stated that he also effected service upon the 5th and 6th Respondents in person on 25.3.2025 and 27.3.2025 respectively. The 5th and 6th Respondents are the MCA Kipchamo Ward and the Ward Administrator. The process server further stated that he met a lady Police officer who pointed out for him the Ward Administrator and that he effected service upon her on behalf of the MCA. It is important to note that the names of the said MCA and the Ward Administrator have not been disclosed to the court. Even the Police Officer who allegedly pointed out the Ward Administrator to the process server has not been stated.



24. Further, I wish to point out that the Applicants have not stated with specificity the exact persons, servants or agents of the 1st Respondent who committed the acts of disobedience in the name of the 1st Respondent. The Applicants have merely stated that the 1st Respondent which is the County Government of Uasin Gishu, the 5th Respondent, the MCA Kipchamo Ward and the 6th Respondent the Ward Administrator were liable for contempt of Court orders. Without giving the names of the persons responsible for the alleged willful disobedience, this court is unable to safely determine the person liable for committal to civil jail. The Applicants merely outlined the offices of the persons allegedly responsible for the alleged disobedience. Even from the bundle of photographs annexed to the supporting affidavit of the Applicants, this court cannot be in a position to tell if the persons appearing thereon are agents of the 1st, 5th and 6th Respondents, unless pointed out by the Applicants which they failed to do. Moreover, the Applicants have specifically sought the mode of punishment for the alleged contemnors in the manner of committal to civil jail. I wish to reiterate that such orders in the manner sought are untenable against a legal entity such as the 1st Respondent.
25. In view of the above, I find that the Applicants have failed to satisfactorily prove the alleged contempt on the part of the Respondents to the required standard.
26. In conclusion, I find that the Notice of Motion application dated 19th March, 2025 is not merited and is hereby dismissed with no order as to costs.
27. It is so ordered.

DATED, SIGNED AND DELIVERED IN ELDORET THIS 8TH DAY OF MAY, 2025.

HON. C. K. YANO

JUDGE, ELC

Ruling delivered in the virtual presence of: -

Ms. Bornes for the Plaintiffs/Applicants

No appearance for Respondents

Court Assistant – Laban

