



**Matipe v Murunya & 6 others (Environment and Land Constitutional  
Petition E001 of 2024) [2025] KEELC 4287 (KLR) (5 June 2025) (Ruling)**

Neutral citation: [2025] KEELC 4287 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAROK  
ENVIRONMENT AND LAND CONSTITUTIONAL PETITION E001 OF 2024  
LN GACHERU, J  
JUNE 5, 2025**

**BETWEEN**

**KIRIGA OLE MATIPE ..... APPLICANT**

**AND**

**TUKERO OLE MURUNYA ..... 1<sup>ST</sup> RESPONDENT**

**KEMET ENE MURUNYA ..... 2<sup>ND</sup> RESPONDENT**

**SAITA OLE NANGARI ..... 3<sup>RD</sup> RESPONDENT**

**KOIRESOI BWAKITA ..... 4<sup>TH</sup> RESPONDENT**

**KANTA MAKO ..... 5<sup>TH</sup> RESPONDENT**

**DISTRICT SURVEYOR ..... 6<sup>TH</sup> RESPONDENT**

**DISTRICT LAND REGISTRAR ..... 7<sup>TH</sup> RESPONDENT**

**RULING**

1. The Application for determination is the one dated 1<sup>st</sup> February 2025, brought by the Petitioner/  
Applicant who has sought the following orders: -
  - a. That this court be pleased to declare and hold that having been served/having been aware of  
the orders made by this court herein on 3<sup>rd</sup> May 2024, and issued on 21<sup>st</sup> May 2024, the 1<sup>st</sup>,  
2<sup>nd</sup>, 6<sup>th</sup> and 7<sup>th</sup> Respondents herein, have jointly with their servants and agents disobeyed those  
orders and hence are in civil contempt of court.
  - b. That this court be pleased to declare and hold that having been served/having been aware of  
the orders made by this court on 3<sup>rd</sup> May 2024 and issued on 21<sup>st</sup> May 2024, the 1<sup>st</sup>, 2<sup>nd</sup>, 6<sup>th</sup>  
and 7<sup>th</sup> Respondents herein, have jointly with their servants and agents disobeyed those orders  
by procuring the cancellation of the registration of the suit property Cis Mara/Oletukat/674,



and purported to make the same portions of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents' parcels of land LR Cis Mara/Oletukat/337 and LR Cis Mara/Oletukat/338 across the road hence are in civil contempt of court.

- c. That it be declared that the cancellation of the registration of Cis Mara/Oletukat/674, hitherto registered in favour of the Petitioner/Applicant is null and void.
  - d. That an order do issue restoring the registration of CisMara/Oletukat/674, in favour of the Petitioner/Applicant as of the filing of the Petition herein and issuance of the order made on 3<sup>rd</sup> May 2024.
  - e. That the 1<sup>st</sup>, 2<sup>nd</sup>, 6<sup>th</sup> and 7<sup>th</sup> Respondents be committed to civil jail for a period of 6 months or any other period or any other sanction as this court may deem fit and appropriate to make.
  - f. That the 1<sup>st</sup>, 2<sup>nd</sup>, 6<sup>th</sup>, and 7<sup>th</sup> Respondents be committed to civil jail for a period of 6 months or any other period or any other sanction as this court may deem fit and appropriate.
  - g. That costs of this application be provided for.
2. The grounds in support of the application are; -
- a. The 1<sup>st</sup>, 2<sup>nd</sup>, 6<sup>th</sup> and 7<sup>th</sup> Respondents have committed a contempt of court in respect of a prohibition order made by this court on 3<sup>rd</sup> May 2024, and issued on 21<sup>st</sup> May 2024, prohibiting the said Respondents from interfering in any way including and not limited to encroaching, accessing, modifying or utilizing the parcel of land known as Cis Mara/Oletukat/674.
  - b. Despite the application filed by the 1<sup>st</sup> to 5<sup>th</sup> Respondents/Applicants on 22<sup>nd</sup> May 2024, being served on the 6<sup>th</sup> and 7<sup>th</sup> Respondents, who were require to file their responses within 4 days, the 6<sup>th</sup> and 7<sup>th</sup> Respondents failed to do so. Consequently, the court delivered its ruling on 29<sup>th</sup> October 2024, finding the application without merit.
  - c. As stated above, on 14<sup>th</sup> January 2025, aided and abetted in so doing by the 1<sup>st</sup>, 2<sup>nd</sup>, 6<sup>th</sup> and 7<sup>th</sup> Respondents, the 7<sup>th</sup> Respondent cancelled or purported to cancel the entire register in respect of Cis Mara/Oletukat/674, in which the Petitioner was and is still the registered proprietor.
  - d. Through the contempt referred in a) above. The 1<sup>st</sup>, 2<sup>nd</sup>, 6<sup>th</sup> and 7<sup>th</sup> have set out to interfere with or obstruct the course of justice or render unenforceable the decree of this court made by on 3<sup>rd</sup> May 2024, and issued on 21<sup>st</sup> May 2024, through the said order this court ordered as follows:
    - i. That the Respondents herein not to effect/apprehend/prosecute the intended change of ownership of Cis Mara/Oletukat/674, of the Proposed amendments of the structure on the ground and outline of Cis Mara/ Oletukat/ 337 and Cis Mara/ Oletukat/338.
    - ii. That the Respondents herein, their servants, agents, anyone acting under their authority not to interfere in any way including and not limited to encroaching, accessing, modifying or utilizing parcel of land Cis Mara/Oletukat/674, pending the hearing and determination of this application.
    - iii. That the Respondents herein, their servants, agents, anyone acting under their authority not to interfere in any way including encroaching, accessing, modifying, or utilizing parcel of land known as Cis Mara/Oletukat/674, pending hearing and determination of this suit.



- iv. That costs of this application be provided for.
  - e. whilst the order referred to in b) above, the 7<sup>th</sup> Respondent purported to cancel the title deed for the parcel of land known as Cis Mara/Oletukat 674, and purportedly reinstated Cis Mara/Oletukat/337, and 338, and register them in the names of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents.
  - f. On their part the 1<sup>st</sup>, 2<sup>nd</sup>, 6<sup>th</sup>, and 7<sup>th</sup> Respondents have disobeyed the said prohibition order made by this court on 3<sup>rd</sup> May 2024 and issued on 21<sup>st</sup> May 2024.
  - g. The 7<sup>th</sup> Respondent who is under a statutory duty under Section 9 of the *Land Registration Act*, 2012, to maintain a Land Register in respect of Cis Mara/Oletukat 674, disobeyed the probatation order and purported to cancel the title deed and reinstate Cis Mara/Oletukat 337 and 338 and subsequently purport to declare that the 1<sup>st</sup> and 2<sup>nd</sup> Respondents are the registered owners whilst the said prohibition order was registered against the title in respect of the said parcel of land.
  - h. As demonstrated by Refrigerator and Kitchen Utensils Ltd vs G.P Shah and others. Court of Appeal at Nairobi, Civil Application No. NAI 39 of 1990 and Kenya Tourist Development Corporation vs Kenya National Capital Corporation Nairobi HCCC No.6776 of 1992; it is the practice and policy of this court to uphold the rule of law and authority of this court to declare null and void actions done in defiance of court orders and to commit to jail those who disobey its orders.
  - i. Through their actions, the 1<sup>st</sup>, 2<sup>nd</sup>, 6<sup>th</sup> and 7<sup>th</sup> Respondents have contravened the Applicant/Petitioner's right under Article 40 of *the constitution* not to be subjected to arbitrary deprivation of enjoyment of his rights as a proprietor; the 6<sup>th</sup> and 7<sup>th</sup> Respondents have contravened the Applicant/Petitioner's right to an administrative action which is expeditious, expedient, lawful and procedurally fair by not informing him in writing under Article 47(2) of the reasons for cancellation of his registration as a proprietor and removal of the map showing him to be the owner of Cis Mara/Oletukat/674.
  - j. It is in the interest of justice that the application be allowed as prayed.
3. The application is supported by the Affidavit of Kiriga Ole Matipe, the Petitioner/Applicant herein who reiterated the grounds in support of the application, and further averred that the 1<sup>st</sup>, 2<sup>nd</sup>, 6<sup>th</sup> and 7<sup>th</sup> Respondents have disobeyed the court orders issued on 3<sup>rd</sup> May 2024, and the 7<sup>th</sup> Respondent has proceeded to cancel the Register, which registration was in his favour in respect of Cis Mara/Oletukat/674. He contended that the said cancellation took place on 14<sup>th</sup> January, 2025, as is evident from annexure KOM2.
  4. It was his further contention that following the cancellation of the said register, he is fearful that the earlier publication made on 4<sup>th</sup> August 2023, by the 7<sup>th</sup> Respondent of its decision to cancel the register in respect of the Applicant's registration will take effect, and then the 1<sup>st</sup> and 2<sup>nd</sup> Respondents will proceed to evict him from his property.
  5. He also contended that he is the registered proprietor of Cis Mara/Oletukat/674, and the register in respect of that parcel of land was opened in 2019, by the 7<sup>th</sup> Respondent. Further, that his family has owned and occupied the suit property since time in memorial, and the 1<sup>st</sup> and 2<sup>nd</sup> Respondents land is 3km away from the suit property. He also contended that the 1<sup>st</sup> and 2<sup>nd</sup> Respondents are his neighbours whose parcels of land; Cis Mara/Oletukat/337 and 338, are across the Road as per annexure KOM7.



6. The Applicant further contended that the orders made on 3<sup>rd</sup> May 2024, were made in the presence of the advocates for the Respondents, and therefore the Respondents herein are aware of the said orders, and that the 1<sup>st</sup> to 5<sup>th</sup> Respondents had even filed an application dated 22<sup>nd</sup> May 2024, to set aside the said orders.
7. Further, that notwithstanding the clear and unequivocal terms of the said prohibition order of 3<sup>rd</sup> May 2024, the 7<sup>th</sup> Respondent in contempt of the said orders purported to cancel the title deed for Cis-Mara/Oletukat/674. He alleged that due to the contemptuous acts of the Respondents, he stands to suffer irreparable harm as the parcel of land Cis Mara/Oletukat/674, has been unlawfully interfered with, which is a direct contravention of the court orders. Therefore, the 1<sup>st</sup>, 2<sup>nd</sup>, 6<sup>th</sup> and 7<sup>th</sup> Respondents have committed an act of contempt of court, and he urged the court to grant the orders sought as the Respondent have conspired to defeat the course of justice on the orders made on 3<sup>rd</sup> May 2024, and issued on 21<sup>st</sup> May 2024.
8. This application for contempt is opposed by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents vide the Replying Affidavit of Kemet Ene Murunya, the 2<sup>nd</sup> Respondent herein, who averred that she is the registered owner of land parcel Cis Mara/Oletukat/337, while the 1<sup>st</sup> Respondent is the registered owner of Cis Mara/Oletukat/338.
9. It was her further contention that though the Petitioner/Applicant averred that he is the owner of Cis Mara/Oletukat/674, the said parcel of land does not exist in the Lands Registry and on the ground.
10. Further, that when the 7<sup>th</sup> Respondent realized that the creation of land Parcel No. Cismara/Oletukat/674, was a consolidation of portions of land parcels No. Cis Mara/Oletukat/337 and 338, vide a Kenya Gazette Notice No.10273 of 4<sup>th</sup> August 2023, he revoked the said parcel of land Cis Mara/Oletukat/674, and he issued the new title in respect of Cis Mara/Oletukat/337 and 338, in the names of the deponent and the 1<sup>st</sup> Respondent respectively.
11. Further, that even if the court issued the orders on 3<sup>rd</sup> May 2024, the cancellation and/or revocation of the fraudulently procured title held by the Petitioner/Applicant had been done vide a Kenya Gazette of 4<sup>th</sup> August 2023, long before the court order was issued.
12. It was his averment that pursuant to the said Gazette Notice, the Petitioner/ Applicant does not enjoy any proprietary rights over Cis Mara/Oletukat/674, that are capable of being protected by the court, since the said land Parcel No. Cis Mara/Oletukat/674, does not exist. Further that the applicant is misleading this court and has concealed from court all the relevant facts necessary to guide the court in determining the instant application appropriately and judiciously.
13. The 2<sup>nd</sup> Respondent further averred that she is in occupation of her land parcel No. Cis Mara/Oletukat/337, and all her activities are confined to this parcel of land which legally belongs to her. Further, that the 1<sup>st</sup> Respondent is also in occupation of Cis Mara/Oletukat/338, which legally belongs to him.
14. The Deponent also claimed that the Applicant in an attempt to fraudulently create land parcel No. Cis Mara/Oletukat/674, purported to carry out a mutation on land parcel No. Cis Mara/Oletukat/317, which is registered in the name of Mpatunga Ole Ngasila, and not the Petitioner/Applicant herein. It was her contention that the applicant has never occupied and/or resided on Cis Mara/Oletukat/337 and 338, as alleged by himself.
15. Further that though the allegations against the 6<sup>th</sup> and 7<sup>th</sup> Respondents are weighty and borders on integrity, the applicant has never filed any complaint with the E.A.C.C or the Police on the impropriety



of the said Government officers alleged of corruption. He denied that there was any amendment to the Registry Index Map(R.I.M) as alleged by the applicant for the Land parcels Nos Cis Mara/Oletukat/337 and 338, and therefore there was no evidence of disobedience of the court orders. She contended that the Respondents have an obligation to obey the said court orders as advised by their advocate.

16. Further, the deponent admitted that their advocate on record informed them on the contents of the said court orders, and the consequences of disobedience of the court orders in place, and they never contravened any orders of this court. Further, that the applicant's sole intention is to punish the 1<sup>st</sup> and 2<sup>nd</sup> Respondents, and she denied any disobedience of the court orders. Further, that their advocate on record has advised them that the instant application is fatally incompetent, frivolous, vexatious and an abuse of the court process, and he sought for the dismissal of the said Application with costs.
17. The applicant filed a Further Affidavit dated 17<sup>th</sup> March 2025, and averred that the 1<sup>st</sup> and 2<sup>nd</sup> Respondents have committed the contempt of court and consequently, they should be punished as prayed. It was his further averments that through their Replying Affidavits the 1<sup>st</sup> and 2<sup>nd</sup> Respondents have shown contempt of the court orders made on 3rd May, 2024. Therefore, the Respondents should be punished for disobeying the said court orders.
18. Further, that it is evident that the register in respect of his parcel of land was cancelled by the 7<sup>th</sup> Respondent on 14<sup>th</sup> January 2025, in total disobedience of the court order made on 3rd May 2024. He claimed that the 6<sup>th</sup> and 7<sup>th</sup> Respondents are working in cahoots with other Respondents to destroy the subject matter and disobey the court orders.
19. The Application was canvassed by way of oral submissions on 7<sup>th</sup> April 2025, wherein Dr. Kamau Kuria for the Petitioner/Applicant submitted that the 1<sup>st</sup>, 2<sup>nd</sup>, 6<sup>th</sup> and 7<sup>th</sup> Respondents who were aware of the court order of 3<sup>rd</sup> May 2024, disobeyed the said orders of the court, as the court had directed that there should be no change of ownership of the suit land, but the Respondents did so on 14<sup>th</sup> January 2025. The Applicant relied on various decided cases among them: -
20. It was submitted that the 1<sup>st</sup> and 2<sup>nd</sup> Respondents had expressly admitted to have committed the contempt of court, as they admitted being beneficiaries of the said cancellation which was against the court order of 3<sup>rd</sup> May 2024. Further, it was submitted that the 7<sup>th</sup> Respondent cancelled the registration of the applicant over the suit land, and deleted the Register in defiance of the court order and the 7<sup>th</sup> Respondent acted together with 6<sup>th</sup> Respondent.
21. Further, it was submitted that the issue of ownership of the suit land had not been resolved, and this issue was to be heard via viva voce evidence, which had not taken place. The applicant urged the court to allow his application and punish the Respondents for contempt of court, and restore the land to what it was before the said contempt.
22. On their part, the 1<sup>st</sup> and 2<sup>nd</sup> Respondents submitted through Kamwaro & Co Advocates, and opposed the instant application and urged the court to dismiss it with costs.
23. The 1<sup>st</sup> and 2<sup>nd</sup> Respondents denied being in disobedience of the court orders and argued that they do not work at the lands office, and that they did not append their signatures at all over the said cancellation. They also submitted that the Land Registrar had revoked vide a Gazette Notice dated 4<sup>th</sup> August 2023, the title for Cis Mara/Oletukat/674, and while moving to court, the Petitioner/Applicant was aware that the title has been cancelled and title for Cis Mara/Oletukat/337 and 338, had been restored.



24. It was the 1<sup>st</sup> and 2<sup>nd</sup> Respondents further submissions that they are in possession of their respective parcels of land, and since the proceedings are quasi-criminal in nature, there is no prove of commission of the said acts, which prove should be on the required standard. Further, that the court should adhere to the tenets of fair hearing, and disallow the instant application.
25. In response thereto, Dr. Kamau Kuria submitted that there is no dispute that the Respondents are in contempt of court orders, and there was no rebuttal of the said claim, and that the 1<sup>st</sup> and 2<sup>nd</sup> Respondents are beneficiaries of such contempt of court and they should not be allowed to benefit from the said wrong. He urged the court to find and hold that the Respondents are in contempt of court and consequently, they should be punished.
26. The court has carefully considered the instant application for contempt of court orders, the oral and written submissions in support and against the said application and cited authorities and finds as follows:-
27. Contempt of court is a serious offence which goes towards undermining the dignity of both the court and the authority that establishes it. Indeed, it is conduct that borders on disrespect of the rule of law and leans towards anarchy. Without the court's authority being respected, there cannot be proper social order and social fabric will be at jeopardy. Courts are the guardians of justice and they do watch against both excessive and misuse of power, therefore the court orders ought to be given due respect. Further, there is no doubt that it is only through courts that decisions are made which do not lean towards certain interests.
28. For the above reasons, court orders ought to be obeyed and respected as the Court orders issued are clothed with total commands and are directives that should be adhered to. Further, as long as the said orders have neither been varied, set aside nor declared nullities or stayed, they ought to be obeyed. In order to make the orders issued by courts to be effective, such orders ought to 'bite' as stated by Kimaru J, and cited by Odunga J in the famous case of Miguna Miguna being ; Fred Matiang, Cabinet Secretary Ministry of Interior and Coordination of National Government of 8 Others [2018] eKLR Justice Odunga stated as follows: where the court stated;
- “This court, like any other court of law, ought not to make orders in vain. It must make sure that its orders 'bite' as Kimaru J said. It must not only make effective orders but orders whose execution can be carried out swiftly and efficiently and orders which it can supervise. It must not issue orders which from the circumstances of the case, there is high likelihood that they will not be implemented whether rightly or not.”
29. Black's Law Dictionary (Tenth Edition) defines contempt of court as follows:
- “Conduct that defies the authority or dignity of a court. Because such conduct interferes with the administration of justice, it is punishable usually by fine or imprisonment.”
30. Further, Section 29 of the *Environment and Land Court Act* states as follows;
- “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.”



31. Again section 4(1) (a) of the *Contempt of Court Act* defines civil contempt as follows:
- “wilful disobedience of any judgement, decree, direction, order, or other process of a court or wilful breach of an undertaking given to a court”.
32. Courts have severally dealt with the issue of contempt of court. In the case of *North Tetu Farmers Co. Ltd v. Joseph Nderitu Wanjohi* (2016) eKLR, Justice Mativo (as he then) while providing parameters to be considered in an application for civil contempt, stated as follows;
- “Writing on proving the elements of civil contempt, learned authors of the book *Contempt in Modern New Zealand* have authoritatively stated as follows:-
- “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 - (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.”
33. In the case of *Mutitika v Baharini Farm Ltd* [1985] KLR, the Court of Appeal held as follows:
- “In our view the standard of proof in contempt proceedings must be higher than proof on the balance of probabilities, almost but not exactly, beyond reasonable doubt. We envisage no difficulty in courts determining the suggested standard of proof. The standard of proof beyond reasonable doubt ought to be left where it belongs, to wit, in criminal cases.”
34. An allegation of contempt of court is a serious matter since it puts the liberty and or property of the alleged contemnor at grave risk. It is for that reason that the standard of proof in contempt proceedings is higher than the usual one in civil proceedings of proof on a balance of probabilities. See the case of *Fred Matiang’i the Cabinet Secretary, Ministry of Interior and Co-ordination of National Government v Miguna Miguna & 4 others* [2018] eKLR.
35. Given the gravity of consequences for contempt of court orders, to succeed in such an application for contempt, the applicant must demonstrate wilful disobedience, and the order said to have been disobeyed, must be clear enough to leave no doubt as what is to be done or refrained from doing. See *Micheal Sistu Mwaura Kamau v Director of Public Prosecutions & 4 others* [2018] eKLR.
36. With the above in mind, this court will now consider the instant application, the orders allegedly disobeyed and the acts allegedly done to arrive at a finding on whether indeed, there was disobedience of the court orders and thus contempt of court.
37. In the case of *Samuel M. N. Maweu & others v National Land Commission* (2020) eKLR the court set out the principles that an applicant must satisfy before the court for the Respondent be found guilty of contempt of court; the applicant must prove.
- i. The terms of the order were clear, unambiguous and binding on the citees.
  - ii. The citees had knowledge of or proper notice of the terms of the order.
  - iii. The citees acted in breach of the terms of the order.
  - iv. The conduct was wilful and deliberate.



38. Has the applicant herein been able to establish the above principles?
39. There is no doubt that on 3<sup>rd</sup> May 2024, the court did issue an order to the effect the Respondents not to effect the intended change on land parcel No. Cis Mara/ Oletukat/ 674, of the proposed amendment of the structure on the ground and outline land parcels no. Cis Mara/ Oletukat/ 337 and 338, pending the hearing and determination of the suit.
40. It is evident that the Respondents were aware of these orders, because after the issuance of the same, the 1<sup>st</sup> to 5<sup>th</sup> Respondents sought to have them set aside vide their application dated 22<sup>nd</sup> May 2024, which application was disallowed on 29<sup>th</sup> November 2024. Therefore, it is obvious that the Respondents were aware of the said court orders and they had no options but to obey them.
41. The Applicant has alleged that the 1<sup>st</sup>, 2<sup>nd</sup> 6<sup>th</sup> and 7<sup>th</sup> Respondents are in contempt of the above referred court orders, as they failed to adhere to them. He alleged that though the said order prohibited the Respondents from effecting any change of ownership over the land parcel no. Cis Mara/ Oletukat/ 674, the 7<sup>th</sup> Respondent in defiance thereof cancelled the register for the said suit land on 14<sup>th</sup> January 2025.
42. The bone of contention herein is the Kenya Gazette Notice No. 10273, which was issued on 4<sup>th</sup> August 2023, to the effect that after expiry of 30 days, the land Registrar would dispense with production of the original title deed for the suit land, and proceed to cancel it for having been acquired through fraudulent amalgamation of land parcels no. Cis Mara/Oletukat/ 337 and 338.
43. The above Kenya Gazette was issued on 4<sup>th</sup> August 2023, and the 30 days were to expire on 4<sup>th</sup> September 2023. The Petition herein was filed on 14<sup>th</sup> February 2024. Therefore, the Petition was filed so many months after the expiry of 30 days.
44. What is not very clear is whether after the expiry of 30 days the Land Registrar dispensed with the original title deed and cancelled the amalgamated title. The title in issue no Cis Mara/ Oletukat/ 674, was issued in 2019. The parcels of land allegedly amalgamated to give rise to 674, were issued in 2010.
45. The Applicant alleged that the Land Registrar effected the changes on 14<sup>th</sup> January 2025, in collusion with the 1<sup>st</sup> and 2<sup>nd</sup> Respondents herein. The Respondents denied having participated in the said cancellation, and even denied ever signing any forms for cancellation of the Register.
46. The Applicant has alleged that the 7<sup>th</sup> Respondent cancelled the Registry Index Map for land parcel No. 674, which was in disregard of the court order of 3<sup>rd</sup> May 2024. Unfortunately, the 6<sup>th</sup> and 7<sup>th</sup> Respondents did not participate in this application, and this court did not have the benefit of having their response to the allegations made against them.
47. Contempt of court is a quasi-criminal in nature, and if the Respondents are found in contempt, then their liberty may be curtailed and they risk being locked up in civil jail. For that reasons, the degree of prove is high. See the case of Githinga & others v Kiru Tea Factory Co. Ltd Petition No. 13 of (2019) (2023) KESC 4 11 (KLR) (16th June 2023) (Judgment), where the Supreme Court of Kenya observed that due to the quasi-criminal nature of contempt proceedings and the gravity of the consequences that flowed from proceedings, courts should adhere to the principles of natural justice, procedure, fairness and the right to fair hearing.



48. Further in the case of *In Gatharia K. Mutikika – vs Baharini Farm Ltd* [1985] KLR 227, the court held 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 heard to process 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 part 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 on 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.”

49. From the emerging jurisprudence on contempt proceeding, it is also evident that the order allegedly breached must be clear and the acts complained of must demonstrate clear breach of the said orders. See the case of *Shimmers Plaza Ltd Shimmers Plaza Ltd* (2015) eklr where the court held;

“It is important however, that the Court satisfies itself beyond any shadow of a doubt that the person alleged to be in contempt committed the act complained of with full knowledge or notice of the existence of the order of the Court forbidding it. The threshold is quite high as it involves possible deprivation of a person’s liberty.

50. In the case of *Justus Kariuki Mate & Another v Martin Nyaga Wambora & another* C.A No. 24 of 2014, the court held that it must satisfy itself beyond any shadow of a doubt that the person alleged to be in contempt committed the acts complained of with full knowledge or notice of the existence of the order of the court, forbidding it since the threshold involves possible deprivation of a person’s liberty.
51. The order issued on 3<sup>rd</sup> May 2024, was to the effect that the Respondents should not alter, or effect any changes to the ownership of Cis Mara/ Oletukat/ 674, or make any amendments to the boundaries of Cis Mara/Oletukat/337 and 338.
52. What the Applicant had attached to prove that there was disobedience of the court order is the Green Card for Cis Mara/ Oletukat/ 674, which has big writing reading “Cancelled See Gazette Notice 10273 Attached”
53. Though this annexure is a copy which is not very legible, above the word cancelled, is the stamp of the Land Registrar Narok signed on 14<sup>th</sup> January 2025. The question that begs answers is whether the cancellation was done on 14<sup>th</sup> January 2025, or after 30 days from the 4<sup>th</sup> August 2023.
54. Further, the court order in issue was issued on 3<sup>rd</sup> May 2024, obviously long after 30 days were over. What is not clear is whether by 3<sup>rd</sup> May 2024, the cancellation had taken place, as per the Kenya Gazette Notice, or not. The Orders issued were not obvious on restoration of the Register to what it was before



3<sup>rd</sup> May 2024, or after 30 days from 4<sup>th</sup> August 2023. This court is not certain that cancellation was not done effected after 30days from 4<sup>th</sup> August 2023, and that it was done on 14<sup>th</sup> January 2025.

55. For the above reasons, this court finds that the orders were not very clear on what could be the effect of such orders in the event modification had already occurred as the orders were issued long after the date of the expected action.
56. Further, it is clear that if there was a modification to the register, or any alteration, the 1<sup>st</sup> and 2<sup>nd</sup> Respondents would not have been involved. They do not work in the lands Registry and there was no evidence that they ever participated in the said cancellation. If there was failure to obey the said court orders of 3<sup>rd</sup> May 2024, then it was not by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents, but by the 6<sup>th</sup> and 7<sup>th</sup> Respondents.
57. However, this court is not certain that cancellation had not been done by the time this Petition was filed in February 2024, given that the effects of the Kenya Gazette Notice were to take place after 30 days from 4<sup>th</sup> August 2023.
58. As stated above, prove of contempt of court is on a higher standard than on a balance of probabilities , and since there is uncertainty on whether the Register was cancelled after expiry of 30 days from 4<sup>th</sup> August 2023, and thus by 3<sup>rd</sup> May 2024, the event had already occurred, or whether the date signed on the Green Card is when the cancellation took place, this court finds that there is no sufficient evidence to prove that the Respondents are in disobedience of the court order, and thus contempt of court.
59. Having now carefully considered the instant application dated 1<sup>st</sup> February 2025, and the annexures thereto, and the court record in general, the court finds it not merited and the same is dismissed entirely with costs to the 1<sup>st</sup> and 2<sup>nd</sup> Respondents.
60. The court urges the parties to prepare the main suit for hearing and refrain from filing so many interlocutory applications, so that the contested issues can be resolved once and for all

It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAROK THIS 5<sup>TH</sup> DAY OF JUNE 2025.**

**L. GACHERU**

**JUDGE**

In the presence of:

Elijah Meyoki – Court Assistant

Dr. Gibson Kamau Kuria for Petitioner/Applicant

Kipele holding brief for Mr. Kamwaro for 1st and 2nd Respondent

N/A for others

