



REPUBLIC OF KENYA



**KENYA LAW**  
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**Ogutu v Ngoyani (Environment and Land Miscellaneous Application  
36 of 2017) [2025] KEELC 4636 (KLR) (11 June 2025) (Ruling)**

Neutral citation: [2025] KEELC 4636 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA  
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION 36 OF 2017  
A NYUKURI, J  
JUNE 11, 2025**

**BETWEEN**

**ABDUL KWEYU OGUTU ..... APPLICANT**

**AND**

**JARED SAKWA NGOYANI ..... RESPONDENT**

**RULING**

**Introduction**

1. Before court is a notice of motion dated 26<sup>th</sup> June, 2014 filed by the applicant seeking the following orders:
  - a. That the Honorable Court be pleased to grant leave to the firm of Consilatah Masakhwe & Company advocates to come on record for the applicant herein,
  - b. That the Honorable Court be pleased to issue an order citing the Respondent for contempt of court by his disobedience of the court order issued in this matter on the 19<sup>th</sup> July, 2018.
  - c. That the Honorable Court be pleased to issue an order committing the Respondent to civil jail for a term of six (6) months and/or until he purges his contempt by surrendering to the Applicant one (1) acre of land out of Land Parcel No. East Wanga/Isongo/365 as was ordered by the court herein.
  - d. That the court be pleased to issue an order for the executive officer Kakamega court to execute all transfer documents in respect to the transfer of one acre of land from Land Parcel No. East Wanga/Isongo/365 to the Applicant.
2. The application is supported by the affidavit sworn by Abdul Kweyu Ogutu, the applicant. The applicant's case is that on 19.07.2018 this court ordered that a portion of Parcel No. EAsT Wanga/ Isongo / 365 be transferred to him by the Respondent and that it was now six years since the order was



issued, but that the Respondent had refused to transfer the parcel to him applicant as ordered by the court. He stated that when he purchased the suit property, it was registered in the respondent's late father's name and that he had completed succession vide Mumias CMC P&A Cause No. 22 of 2019 respect to his late father's estate, but refused to transfer the suit property to the applicant. He attached a copy of the order and Certificate of Confirmation dated 07.02.2022.

3. The application is opposed. Jared Sakwa Ngoyani, the respondent, filed a replying affidavit sworn on 18.09.2024 opposing the application. He stated that the application was misplaced, lacked merit and had falsehoods as the applicant had not sought leave to re-open the suit which was closed six years ago. Further, that after the ruling herein, he invited the applicant, curved and surrendered his share to him. He stated that the applicant utilized his share for some time and disappeared and that his whereabouts are unknown to the respondent.
4. The respondent maintained that he was ambushed by the instant application. He stated that the applicant curved a portion of the land to third parties without his consent.
5. The application was canvassed by way of written submissions. On record are the respondent's submissions dated 31.12.2024 which the court has duly considered.

### **Analysis and Determination.**

6. The court has carefully considered the application, response and submissions. The issue for the court's determination is whether the application is merited.
7. The firm of Consilatah Masakhwe seeks to come on record for the applicant in this case. Order 9 Rule 9 of the [Civil procedure Rules](#) provides that where a party intends to change their advocates or appear in person after entry of judgment in a matter, they ought to do so with leave of court. Legal representation by counsel of one's choice is a constitutional right and there being no grounds opposing the prayer that the firm of Consilatah Masakhwe to come on record for the applicant, the applicant's prayer in that regard is allowed.
8. The legal framework on contempt is founded on the [Judicature Act](#) particularly under section 5 of the [Act](#). That section confers jurisdiction on the superior courts to punish for contempt and uphold the dignity and authority of subordinate courts. Contempt of court is essentially defiance of the authority of the court. The [Black's Law Dictionary](#) (9<sup>th</sup> Edition), defines contempt of Court to mean:

“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.”

9. In *Gulabchand Popatlal Shah & Another* Civil Application No. 39 of 1990, (unreported), the Court of Appeal said:-

“..... It is essential for the maintenance of the Rule of Law and good order that the authority and dignity of our courts are upheld at all times. This court will not condone deliberate disobedience of its orders and will not shy away from its responsibility to deal firmly with proved contemnors .....”



10. The obligation to obey court orders by every person against whom a court order is made, was aptly captured in the case of *Hadkinson v Hadkinson* (1952) 2 All ER. 567, it was held that:

“It is plain and unqualified obligation of every person against or in respect of, who an order is made by a court of competent jurisdiction to obey it unless and until that 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 an order believes it to be irregular or even void.”
11. Therefore, it is the duty of every person against whom a court order is issued, as long as the same is in force, to comply with the terms of the order, whether he agrees with the same or not and whether he has challenged it or not.
12. For an alleged contemnor to be punished for contempt, it is trite that the applicant must show that there exists a court order with clear terms and that the respondent was aware of those clear terms, but that he or she wilfully disobeyed the same.
13. In the instant case, the applicant has averred that on 19<sup>th</sup> July 2018, this court ordered that a portion of parcel No. E.Wanga/Isongo/365 be transferred to him by the respondent but that the latter had refused to comply with the orders of the court. He further alleged that the suit property had been in the name of the respondent’s late father but that the succession process was completed by the applicant vide a certificate of confirmation dated 7<sup>th</sup> February 2022. In response, the respondent denied violating the court order and stated that he invited the applicant, curved out his portion and surrendered the same to him but that the applicant disappeared after sometime to unknown place.
14. The court has considered the orders dated 19<sup>th</sup> July 2018 which are alleged to have been disobeyed. The same stated that the respondent was directed to surrender back to the applicant one acre of land out of land parcel No. E. Wanga/Isongo/365. It is trite that the process of surrendering and or transferring land requires several steps to be taken including execution of transfer documents by both the transferee and transferor as well as obtaining consent of the Land Control Board where the land is agricultural land. Besides, stamp duty and other levies are paid to effect the transfer. Having looked at the averments made in the applicant’s supporting affidavit, the applicant has not stated what constituted refusal by the respondent to comply with the orders stated. He did not allege to have availed to the respondent for his execution, transfer documents or made an application for consent of the land control board or taken any step upon which the respondent failed to do his part. In view of the fact that the respondent stated that he curved out the land to the applicant which averment was not challenged, I am not convinced that the respondent failed to comply with the court order herein. I do not think that contempt proceedings can be a substitute for execution proceedings. Contempt proceedings are unique proceedings which are quasi criminal in nature and which should not be casually invoked at the whims of a decree holder. If a decree holder wishes to execute the decree, there is a known procedure which they can pursue as provided for under Order 22 of the *Civil Procedure Rules*. Therefore, the court will not permit the abuse of contempt proceedings. In the premises, I hold and find that the applicant has not proved contempt as against the respondent.
15. Regarding the prayer for an order for the executive officer to execute transfer documents, this court having considered the record notes that a similar prayer was made by the applicant vide his application dated 20<sup>th</sup> September 2018, but which application was never prosecuted. Indeed, the record shows that the last time the applicant was in court was on 25<sup>th</sup> February 2019. Thereafter, the matter came up on four other occasions with no attendance on the part of the applicant. The applicant has not explained to court why he failed to prosecute his application dated 20<sup>th</sup> September 2018. Therefore, the prayer



for the executive officer to execute transfer documents is an abuse of the court process and the same is declined.

16. In the premises, save for the order that the firm of Consilatah Masakhwe has been granted leave to come on record the applicant in this matter, I find no merit in the application dated 26<sup>th</sup> June 2024, which I dismiss with costs to the respondent.

17. It is so ordered.

**DATED, SIGNED AND DELIVERED AT KAKAMEGA IN OPEN COURT/VIRTUALLY THROUGH MICROSOFT TEAMS VIDEO CONFERENCING PLATFORM THIS 11<sup>TH</sup> DAY OF JUNE, 2025**

**A. NYUKURI**

**JUDGE**

In the presence of;

Ms Masakhwe for the applicant

Mr. Jared Sakwa Ngoyani the respondent in person

Court Assistant: M. Nguyai

