



County Government of Kwale v Building Fire Consultants Co. Limited (Environment and Land Case 56 of 2021) [2025] KEELC 5837 (KLR) (9 July 2025) (Ruling)

Neutral citation: [2025] KEELC 5837 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KWALE
ENVIRONMENT AND LAND CASE 56 OF 2021**

LL NAIKUNI, J

JULY 9, 2025

BETWEEN

COUNTY GOVERNMENT OF KWALE PLAINTIFF

AND

BUILDING FIRE CONSULTANTS CO. LIMITED DEFENDANT

RULING

I. Introduction

1. This Honourable Court is called to make a determination to the Notice of Motion application dated 6th February, 2025 filed by Building Fire Consultants Co. Limited, the Defendant/Applicant. The Application was brought under the dint of Article 159 of *the Constitution* of Kenya 2010, and all other enabling provisions.

II. The Defendant/Applicant's case

2. The Defendant/Applicant sought for the following orders: -
 - a. That this Honourable Court do issue summons to appear in person to the Plaintiff/ Respondent's County Attorney and or the Plaintiff/ Respondent's County Executive Committee Member for Lands (CEC), requiring them to appear before this court to explain their disobedience of the court orders issued on the 3rd February 2025.
 - b. That an arrest warrant do issue against the Plaintiff/ Respondent's County Attorney and or the Plaintiff/ Respondent's County Executive Committee Member for Lands (CEC) in the event of failure to comply with summons.
 - c. That the Plaintiff/Respondent's County Attorney and or the Plaintiff/Respondent's County Executive Committee Member for Lands (CEC) be held in contempt of court in the event of failure to honour summons.



- d. That warrants of arrest do issue against the Plaintiff/Respondent's County Attorney and or the Plaintiff/Respondent's County Executive Committee Member for Lands (CEC) if they fail to appear in court as summoned.
 - e. That upon finding the Plaintiff/Respondent's County Attorney and or the Plaintiff/Respondent's County Executive Committee Member for Lands (CEC) guilty of contempt of court, this Honourable court do commit them to civil jail for a period not exceeding six (6) months or impose any other penalty as the court deems fit.
 - f. That the Officer Commanding Diani Police Station (OCS Diani) be directed to assist in the enforcement and compliance of the orders issued on 3rd February 2025.
3. The application by the Applicant was premised on the grounds, testimonial facts and the averments made out under the 13 Paragraphed annexed affidavit of JANE NGATIA, the Defendant herein. The Deponent averred that:
- a. The Defendant was the registered owner and proprietor of Plot numbers: Kwale/Diani Complex/721, Kwale/Diani Complex/784, Kwale/Diani Complex/785 and Kwale/ Diani Complex/786.
 - b. On 3rd February 2025, this Honourable court issued temporary injunctive orders restraining Plaintiff/Respondent from interfering with or undertaking any activities on the aforementioned suit properties. Annexed in the affidavit and Marked as "JN – 001" was a copy of the court order.
 - c. The said orders were served upon the Plaintiff/Respondent thus fully aware of their existence, terms and effect. Annexed in the affidavit and Marked as "JN – 002" was a copy of the Letter addressed to the Respondent and Affidavit of Service evidencing service.
 - d. Despite being fully aware of the orders, the Plaintiff/Respondent had willfully and maliciously violated the same by trespassing onto the suit properties and continued with the further construction of the fence and a gate. Annexed in the affidavit were photos depicting the Plaintiff/Respondent Continued construction the suit properties and Certificate of Electronic Evidence.
 - e. The Plaintiff/Respondent's continuous trespass and construction activities on the suit properties constitute willful disobedience of court orders.
 - f. The rule of law and the authority of the Honourable Court stood to be undermined if disobedient parties like the Plaintiff/Respondent were allowed to flout court orders with impunity.
 - g. The Plaintiff/Respondent and its officials specifically the County Attorney and/or County Executive Committee Member Lands were summoned to explain their blatant disobedience and, if necessary, committed to civil jail, the Plaintiff/Respondent would continue to act with contempt for due process of law.
 - h. It was in the interest of justice that the application herein be allowed with the prayers sought.
 - i. The Defendant/Applicant prayed that the Honourable Court do grant the orders herein ex-parte.



III. Submissions

4. While all the parties were present in Court, they were directed to have the Notice of Motion application dated 6th February, 2025 be disposed of by way of written submissions and all the parties complied. Unfortunately, by the time of penning down the Ruling, the Honourable Court had not been in apposition to access any submission from neither the Judiciary CTS Portal nor the ELC Registry. Pursuant to that, the Honourable Court proceeded to deliver its ruling on its own merit accordingly.

IV. Analysis and Determination

5. I have carefully read and considered the pleadings herein and the relevant provisions from *the Constitution* of Kenya, 2010 and statutes. In order to arrive at an informed, reasonable and fair decision, the Honorable Court has framed the following four (4) issues for its determination. These were:-
 - a. Whether there are clear and unambiguous orders capable of being obeyed.
 - b. Whether the contemptors were aware of the court order and whether service was effected on them.
 - c. Whether the Plaintiff/Respondent's County Executive Committee Member for Lands (CEC) are in contempt of the orders the Court made on 3rd February, 2025?
 - d. Who will bear the Costs of Notice of Motion application 6th February, 2025.

ISSUE No. A). Whether there are clear and unambiguous orders capable of being obeyed.

6. Under this sub – title, taking the seriousness of the substratum in this case, it is imperative that the Honourable Court extrapolates a brief background of this case. From the proceedings and the record of the Court, the Defendant/Applicant is the registered owner and proprietor of Plot numbers: Kwale/Diani Complex/721, Kwale/Diani Complex/784, Kwale/Diani Complex/785 and Kwale/Diani Complex/786 respectively. On 3rd February 2025, this Honourable Court issued temporary injunctive orders restraining Respondent from interfering with or undertaking any activities on the aforementioned suit properties.
7. It is the afore stated order that the Defendant/Applicant alleges has been disobeyed by the Plaintiff/Respondent. It asks the Court to punish the Plaintiff/Respondent's County Executive Committee Member for Lands (CEC) in contempt of its said order. Court order are not issued in vain. They are not cosmetic nor a formality. They must be obeyed at all cost. It is imperative that every person against whom or in respect of whom an order is made by a Court of competent jurisdiction has an obligation to obey it unless and until the order is discharged. This obligation is uncompromising and it applies even where one believes the order to be irregular or void. Should any one feel aggrieved by any Court order or part of it, the only available remedy is to move Court seeking for its review, varying or setting aside. Consequently, courts do not condone deliberate disobedience of orders and will deal firmly with proved contemptors. Courts possess inherent power to enforce compliance with their lawful orders and impose sanctions through contempt of court. The power to punish for contempt is meant to ensure that court processes are not abused and the authority and dignity of the courts is upheld at all times because contempt of court by its very nature demeans the integrity and authority of Courts and disparages the rule of law.



8. The Black's Law Dictionary (11th Edition) defines contempt of court as:-

“Conduct that defies the authority or dignity of a court or legislature. Because such conduct interferes with the administration of justice, it is punishable usually by fine or imprisonment.”

9. The instructive provision on contempt of court is founded under Section 5 (1) of the Judicature Act, Cap. 8. It grants the High Court and the Court of Appeal the power to punish for contempt. Additionally, for this court the provision of Section 29 of the Environment and Land Court Act, No. 19 of 2011 provides 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.”

10. Analytically, in my view, the sentencing regime would fall under the provisions of Section 63 (c) of the Civil Procedure Act, Cap 21 of the Laws of Kenya; Order 40 Rule 3 of the Civil Procedure Rules, 2010 and Section 29 of the Environment and Land Court Act, No 19 of 2011. Specifically, they provide as follows :-

Section 63(c) of the Civil Procedure Act, 2010 :-

“In order to prevent the ends of justice from being defeated, the court may, if it is so prescribed grant a temporary injunction and in case of disobedience commit the person guilty thereof to prison and order that his property be attached and sold”.

11. Order 40 Rule 3(1) of the Civil Procedure Rules, 2010:-

“ 3

(1) In case of disobedience or breach of any such terms, the court granting an injunction may order the property of the person guilty of such disobedience or breach to be attached and may also order such person to be detained in prison for a term not exceeding six months unless in the meantime the court directs his release”

12. Section 29 Environment and Land Court Act: -

“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. Therefore, this Court, has been vested with inherent powers under the afore stated statutes herein. Ideally, the jurisdiction of the superior courts to punish litigants for contempt of court upon their



failure, breach or refusal to obey express court orders is aimed at protecting the dignity and legitimacy of the courts. The test applicable in an application for contempt, was well set out in the case of:-

“Samuel M. N. Mweru & Others – Versus - National Land Commission & 2 others [2020] eKLR” where the court held that:-

“ 40. It is an established principle of law 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, but the Respondent could rebut this inference by contrary proof on a balance of probabilities. Perhaps the most comprehensive of the elements of civil contempt was stated by the learned authors of the book Contempt in Modern New Zealand who succinctly stated:-

‘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) that:-

- (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’.”

14. It follows therefore, that the first question to be determined with regard to contempt of court, is whether there is a valid order capable of being obeyed. This limb also requires that the order is within the knowledge of the contemtor, must be clear and unambiguous. On 3rd February, 2025, the Court pronounced itself on the Defendant/Applicant’s application. The order is clear and unambiguous. There has been no complaint from the Plaintiff/Respondent that it was ambiguous or confusing in



any way. For this reason, this court finds that there were in existence clear and unambiguous orders capable of being executed and/or obeyed by the Plaintiff/Respondent.

ISSUE No. B). Whether the contemnors were aware of the court order and whether service was effected on them.

15. Under this sub - title, it is a requirement that the party alleged to have breached the order must have had actual knowledge of it. The Defendant/Applicant has stated that the Plaintiff/Respondent was duly served with the order as evidenced by the Defendant/Applicant's annexure marked as "JN – 002" was a copy of the Letter addressed to the Plaintiff/Respondent and Affidavit of Service pursuant to the provision of Order 5 Rule 15 of the Civil Procedure Rules, 2010 evidencing service. In order to prove that the Plaintiff/Respondent's willfully and/or deliberately disobeyed the Court order, it has to be shown that the Plaintiff/Respondent were aware of the order to begin with.
16. Previously, courts were of the opinion that this awareness of the order was proved by establishing personal service of the subject order and the attendant penal notice upon the alleged contemnor (see in the case of "Nyamogo & Another – Versus - Kenya Posts and Telecommunications Corporation (1994) KLR 141"). However, there has been paradigm shift of this position in recent years. The courts have held that it is sufficient for the applicant to demonstrate awareness and/or knowledge by the alleged contemnor of the orders. Hence, as the law stands right now, personal service of the order upon the contemnor is not necessary where knowledge of the order is proved.
17. As a matter of laid - down great emphasis, this Honourable Court is alive to and ascribes to the changes in the jurisprudence in this area of law to the effect that knowledge of an order supersedes personal service. In the case of:- "Kenya Tea Growers Association – Versus - Francis Atwoli & Others (2012) eKLR", the Respondents claimed that they were unaware of the Court Order until they saw it in a newspaper over a month after it was issued and that they were not served with the Court orders and therefore they could not be said to be in contempt. Despite of this argument, the court held that:-

“On this issue, our Courts seem to have moved steadily towards the position that although Order 52 Rules 3 and 4 of the Supreme Court Practice Rules of England would point towards personal service as a factor in determining contempt, in fact knowledge of an order is higher than service. It is common ground that neither of the alleged contemnors was ever directly served and that leaves the issue whether they had knowledge of the order prior to 18th October 2010. On that issue, I have the evidence of Isaac Kiprotich Maswai, Philip Kibii Cheruiyot and Emmanuel Ng'etich before me. They all stated, on oath, that they heard Francis Atwoli uttering words whose import was to confirm that not only was he aware and had knowledge of the Order but he also challenged it as having been given without jurisdiction. Cheruiyot went further to produce a transcription of words that he recorded as having been uttered by Atwoli and which I have reproduced above.”

18. Further, in the case of "Kenya Tea Growers Association – Versus - Francis Atwoli (supra)" Lenaola J went on to find that he was satisfied that the alleged contemnors had knowledge of the Court Order. The rationale behind this change appears to be the need to protect the integrity and dignity of Court orders. To excuse a contemnor who has knowledge of a Court order simply because he has not been personally served is to open up Court orders and process to deliberate, willful, contemptuous and cynical disobedience. To say the least, being in total abuse of the due process. This position has been



endorsed repeatedly by the Court of Appeal. For instance in the case of:- “Shimmers Plaza Limited – Versus - National Bank of Kenya [2015] eKLR”, the Court held that:-

“We now revisit the issue of service. Was there service of the order said to have been disobeyed on the respondent? There is no dispute that no formal order was extracted and personally served on the Respondent and an affidavit of service filed to that effect.”

19. Kenya's growing jurisprudence right from the High court has reiterated that knowledge of a court order suffices to prove service and dispense with personal service for the purposes of contempt proceedings. For instance, Lenaola J in the case of “Basil Criticos – Versus - Attorney General and 8 Others [2012] eKLR” pronounced himself as follows:-

“.....the law has changed and as it stands today knowledge supersedes personal service..... where a party clearly acts and shows that he had knowledge of a Court Order; the strict requirement that personal service must be proved is rendered unnecessary”

20. Similarly, the Court of Appeal pronounced itself in the case of:- “Woburn Estate Limited – Versus - Margaret Bashforth [2016] eKLR” citing the decision in “Refrigeration and Kitchen Utensils Limited – Versus - Gulabchand Popatlal Shah & Another, Nairobi Civil Application No.39 of 1990”, where it was observed that:-

“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.”

21. In a nutshell, the above provisions of the statutes and case law takes cognizance of the fact that personal service may not be achieved in some circumstances. For these reasons, this court will not hesitate to hold that where a party has knowledge of a court order, personal service is not mandatory. But all said and done, in this particular case, I find that service was effected properly on the Plaintiff/Respondent. By all means, they were aware of the orders. For this reason, therefore, the Plaintiff/Respondent and its agents cannot be said not to have known or been aware of the existence of the order as the record shows they had full knowledge of it. They are fully liable so to speak.

ISSUE No. c). Whether the Plaintiff/ Respondent’s County Executive Committee Member for Lands (CEC) are in contempt of the orders the Court made on 3rd February, 2025.

22. Under this sub title, it is important to note that it is trite that a court order must be obeyed whether a party agrees with its contents or not, and as long as the order still subsists, then it remains a valid court order that must be adhered to. I emphasize and as already graphically stated above, the adherence to the court order is not optional even if a party has applied for review, variation or appeal of the said order. In the case of “Kenya Tea Growers Association – Versus - Francis Atwoli and 5 Others (supra)” Lenaola J cited with approval the case of “Clarke and Others – Versus - Chadburn & Others [1985] 1All E.R (PC), 211” in which the court observed that: -

“I need not cite authority for the proposition that it is of high importance that orders of the courts should be obeyed, willful disobedience to an order of the court is punishable as a contempt of court, and I feel no doubt that such disobedience may properly be described



as being illegal.....even if the Defendants thought that the injunction was improperly obtained or too wide in its terms, that provides no excuse for disobeying it. The remedy is to vary or discharge it.”

23. I need not belabor the point herein. The Court has already found that the Plaintiff/Respondent had knowledge of the orders of this Court. There is no doubt that the orders have been in force since they were issued and have neither been discharged, varied or set aside. The court granted the injunction on a temporary basis pending the hearing and determination of the suit herein. The question now is whether the Plaintiff/Respondent has contravened the order of court restraining them from any dealings on the suit property as well as whether this contravention was deliberate.
24. Among the prayers sought in the instant Application is committal to civil jail, Certainly, this will result in denying the Plaintiff/Respondent agent’s fundamental liberty. It is for this reason that the standard of proof in contempt matters is higher than that of ordinary civil matters. In the case of:- “Mutitika – Versus - Baharini Farm Limited [1985] KLR 229, 234” the Court of Appeal held that: -
- “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...The standard of proof beyond reasonable doubt ought to be left where it belongs, to wit, in criminal cases. It is not safe to extend it to an offence which can be said to be quasi-criminal in nature. The rationale for this standard is that if cited for contempt, and the prayer sought is for committal to jail, the liberty of the contemnor will be affected. As such, the standard of proof is higher than the standard in civil cases. This 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.”
25. What this means then is that the violation that the Plaintiff/Respondent’s agents were accused of must be proved to a standard which though not as high as proof beyond reasonable doubt, must be higher than proof on a balance of probabilities. The threshold is quite high as it involves possible deprivation of a person’s liberty. Therefore, it is important that the court satisfies itself that first, the acts complained of actually happened. Secondly, that the person alleged to be in contempt committed the acts complained of and lastly, he did so with full knowledge of the existence of the order of the court forbidding it. It needs no mention that the burden of proving that the Plaintiff/Respondent’s agents did disobey the court order lays squarely on Defendant/Applicant herein.
26. According to the Defendant/Applicant, despite being fully aware of the orders, the Plaintiff/Respondent had willfully and maliciously violated the same by trespassing onto the suit properties and continued with the further construction of the fence and a gate to boot. It could not be worse than that. Indeed, the Plaintiff/Respondent’s continuous trespass and construction activities on the suit properties constitute willful disobedience of court orders. The rule of law and the authority of the Honourable Court stood to be undermined if disobedient parties like the Plaintiff/Respondent were allowed to flout court orders with glaring impunity. The Plaintiff/Respondent and its officials specifically the County Attorney and/ or County Executive Committee Member Lands (whom I assume, apart from being Senior officers are well trained and competent on matters of Law) were summoned to explain their blatant disobedience and, if necessary, committed to civil jail, the Plaintiff/Respondent would continue to act with contempt for due process of law.
27. In saying so, I borrow the reasoning from the case of:- “Heelmore – Versus - Smith 2 (1886) L.R 35”, Lord Bowen L. J held that the rationale was the object of the discipline enforced by the court in case



of contempt as not to vindicate the dignity of the court or the person of the judge but to prevent undue influence with the administration of justice. It is to safeguard the rule of law and its supremacy. It has nothing to do with the integrity of the judiciary or the court or even the personal ego of the presiding judge. It is not about placating the applicant who moves the court by taking out the contempt proceedings. It is about assuring a party who walks through the justice door with a court order in his hands that the order will be obeyed by those to whom it is directed.

28. I think by providing for a heavy penalty as provided under Section 29 of the [Environment and Land Court Act](#), No. 19 of 2011, Kenyans were making it clear that they detest and abhor a violation of an order that touches on property rights, and were making a huge pronouncement that any person who contravenes an order of the court in relation to proprietary rights ought to be made to suffer a very heavy penalty for the same. I am not surprised by the seriousness in which Kenyans take the protection of proprietary rights given the difficult history over land, and the struggle that ordinary Kenyans go through every day, in order to protect their proprietary rights. In as much as land is not only sensitive, emotive but has a special place for Kenyans. It is deemed to be a source of livelihood. It is imperative that any order issued in relation to land be obeyed. I cannot overemphasize that need for the fact that it has been seen that lives being lost because people do not wish to obey court orders over land. A failure to obey an order of court in relation to property only goes to compound the problem. We have enough problems as matters stand when it comes to land in Kenya. We do not need to make matters any more complicated than they already are.
29. I reiterate that it is essential for the maintenance of the rule of law and order that the authority and the dignity of our courts are upheld at all times. The court will not condone deliberate disobedience of its orders and will not shy away from its responsibility to deal firmly with proved contemnors. It is the plain and unqualified obligation of every person against whom an order is made by court of competent jurisdiction, to obey it unless and until the 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 the order believes it to be irregular or void. The Plaintiff/Respondent are not an exception to this rule.
30. In the case of: “T. N. Gadavarman Thiru Mulpad – Versus - Ashok Khot and anor [2006] 5 SCC”, the Supreme Court of India also emphasized on the dangers of disobeying Court orders, thus: -
- “Disobedience of this court's order strikes at the very root of the rule of law on which the judicial system rests. The rule of law is the foundation of a democratic society. Judiciary is the guardian of the rule of law. Hence, it is not only the third pillar but also the central pillar of the democratic State. If the judiciary is to perform its duties and functions effectively and remain true to the spirit with which they are sacredly entrusted to it, the dignity and authority of the courts have to be respected and protected at all costs. Otherwise, the very corner stone of our constitutional scheme will give way and with it will disappear the rule of law and the civilized life in the society. That is why it is imperative and invariable that court's orders are to be followed and complied with.”
31. Contempt proceedings are coercive and or punitive yet very important in the administration of justice. Ultimately, I am satisfied that the Plaintiff/Respondent's agent was in contempt of court orders and hereby find the Defendant/Applicant's application be and is hereby found to have merit and the same is allowed.

ISSUE No. D). Who will bear the Costs of Notice of Motion application 6th February, 2025.

32. It is now well established that the issue of Costs is at the discretion of the Court. Costs meant the award that is granted to a party at the conclusion of the legal action, and proceedings in any litigation. The



Proviso of Section 27 (1) of the Civil Procedure Rules Cap. 21 Laws of Kenya holds that Costs follow the events. By the event, it means outcome or result of any legal action. This principle encourages responsible litigation and motivates parties to pursue valid claims. See the cases of “Harun Mutwiri – Versus - Nairobi City County Government [2018] eKLR and “Kenya Union of Commercial, Food and Allied Workers – Versus - Bidco Africa Limited & Another [2015] eKLR, the court reaffirmed that the successful party is typically entitled to costs, unless there are compelling reasons for the court to decide otherwise.

33. I have well stated in previous precedence and most especially in “Sagalla Lodge Limited – Versus - Samwuel Mazera Mwamunga & another (Suing as the Executors of Eliud Timothy Mwamunga – Deceased) [2022] eKLR”, that:

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“ 58. The Black Law Dictionary defines “Cost” to means, “the expenses of litigation, prosecution or other legal transaction especially those allowed in favour of one party against the other”.

The provisions of Section 27 (1) of the *Civil Procedure Act*, Cap. 21 holds that Costs follow events. The issue of Costs is the discretion of Courts. From this provision of the law, it means the whole circumstances and the results of the case where a party has won the case. The events in this case is that the Notice of Motion application dated 7th December, 2021 by the Plaintiff has succeeded and hence they are entitled to costs of the application and that of the Defendants dated 21st December, 2021.”

34. The provision of Section 27 (1) of the *Civil Procedure Act*, Cap. 21 holds that costs follow the events. In the case of “Hussein Muhumed Sirat – Versus - Attorney General & Another [2017] eKLR, the court stated that costs follow the event as a well-established legal principle, and the successful party is entitled to costs unless there are other exceptional circumstances.
35. In the present case, the Honourable Court elects to expressly award the Defendant/Applicant costs of the Notice of Motion application dated 6th February, 2025.

V. Conclusion and Disposition

36. In long analysis, the Honorable Court has carefully considered and weighed the conflicting parties’ interest as regards to the principles of Preponderance of Probabilities and balance of convenience. Clearly, the Defendant/Applicant has a case against the Plaintiff/Respondent.
37. Having said that much, there will be need to preserve the suit land in the meantime. For avoidance of doubt, I proceed to order the following:-
- a. That the Notice of Motion application dated 6th February, 2025 be and is hereby found to have merit and is allowed in its entirety.
 - b. That this Honourable Court do and hereby issues summons to the Plaintiff/Respondent's County Attorney and the Plaintiff/Respondent’s County Executive Committee Member for Lands (CEC), requiring them to personally appear before this Honourable Court on 17th July, 2025 to clearly explain their disobedience of the court orders issued on the 3rd February 2025 and purge the contempt.



- c. That in the event of failure to comply with summons, an arrest warrant do and is hereby issued against the Plaintiff/ Respondent's Current County Attorney and or the Plaintiff/ Respondent's County Executive Committee Member for Lands (CEC) in contempt of court.
- d. That the costs of the Application awarded to the Defendant/Applicant to be borne by the Plaintiff/ Respondent personally.

It is so ordered accordingly.

RULING DELIVERED THROUGH MICROSOFT TEAM VIRTUAL, SIGNED AND DATED AT KWALE THIS 9TH DAY OF JULY, 2025.

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HON. MR. JUSTICE L. L. NAIKUNI

ENVIRONMENT AND LAND COURT AT KWALE

Ruling delivered in the presence of:

- a. Mr. Daniel Disii, the Court Assistant.
- b. Mr. Amakobe Advocate for the Plaintiff/Respondent.
- c. Mr. Mureithi Advocate holding brief for Mr. Mugaka Advocate the Defendant/Applicant

