



**Criticos & another v AIC Makutano & 66 others; Henan Highway Engineering Group Company Ltd (Co-Contemnor) (Environment and Land Case 3 of 2024) [2025] KEELC 5040 (KLR) (Environment and Land) (8 July 2025) (Ruling)**

Neutral citation: [2025] KEELC 5040 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT VOI  
ENVIRONMENT AND LAND  
ENVIRONMENT AND LAND CASE 3 OF 2024**

**EK WABWOTO, J**

**JULY 8, 2025**

**BETWEEN**

**BASIL CRITICOS ..... 1<sup>ST</sup> APPLICANT**

**KENYA TRADE AND DEVELOPMENT COMPANY LIMITED 2<sup>ND</sup> APPLICANT**

**AND**

**AIC MAKUTANO ..... 1<sup>ST</sup> DEFENDANT**

**MUBUYUNI PRIMARY SCHOOL ..... 2<sup>ND</sup> DEFENDANT**

**DAVID KIOKO MUTUA ..... 3<sup>RD</sup> DEFENDANT**

**ALPHONCE MWAKA MASIKA ..... 4<sup>TH</sup> DEFENDANT**

**THOMAS MUTANGA ..... 5<sup>TH</sup> DEFENDANT**

**RONALD MUTISO MUTUA ..... 6<sup>TH</sup> DEFENDANT**

**AND**

**RUTH MKUMBULU LELEWU ..... RESPONDENT**

**AND**

**REBECCA NJICHA MTUA ..... 1<sup>ST</sup> DEFENDANT**

**OTHANIEL MNENE ..... 2<sup>ND</sup> DEFENDANT**

**ANDREW JUMAMOSI MASAMO ..... 3<sup>RD</sup> DEFENDANT**

**ATTORNEY GENERAL ..... 4<sup>TH</sup> DEFENDANT**

**ADRIANA SHALI MSAFARI ..... 5<sup>TH</sup> DEFENDANT**



MARION ATIENO MOON .....	6 <sup>TH</sup> DEFENDANT
DUNCAN JACOB MAGHAGHA .....	7 <sup>TH</sup> DEFENDANT
JANE WAITHIRA KAIRO .....	8 <sup>TH</sup> DEFENDANT
JAMES FRED NEWTON WANDERA .....	9 <sup>TH</sup> DEFENDANT
MBUYUNI WOMEN GROUP ORGANISATION .....	10 <sup>TH</sup> DEFENDANT
SABASTIAN LETIMIANE MWACHILA .....	11 <sup>TH</sup> DEFENDANT
PETRO CHIKIRA EDWARD .....	12 <sup>TH</sup> DEFENDANT
EDWARD RASHID MAKORE .....	13 <sup>TH</sup> DEFENDANT
JACKSON MATANO FUNDI .....	14 <sup>TH</sup> DEFENDANT
NZIOKI MUTUA MBULU .....	15 <sup>TH</sup> DEFENDANT
BAHATI KINYOKA .....	16 <sup>TH</sup> DEFENDANT
PROSTUS A. SEBORU .....	17 <sup>TH</sup> DEFENDANT
MUSA SALERI FUNDI .....	18 <sup>TH</sup> DEFENDANT
JOSPEH SALERI FUNDI .....	19 <sup>TH</sup> DEFENDANT
DENNIS MWANGEKA MOMBO .....	20 <sup>TH</sup> DEFENDANT
JANET CHILUMO MBWANA .....	21 <sup>ST</sup> DEFENDANT
PASCAL SIO MTULA .....	22 <sup>ND</sup> DEFENDANT
MARTIN MRAMBA .....	23 <sup>RD</sup> DEFENDANT
NUHU LAYONI ABDULRAHAMAN .....	24 <sup>TH</sup> DEFENDANT
MWANATUMU HAMISI .....	25 <sup>TH</sup> DEFENDANT
JARED ONYANSI NYAUNDI .....	26 <sup>TH</sup> DEFENDANT
CLEMENT LENJO .....	27 <sup>TH</sup> DEFENDANT
ANNABEL RADUMA OJOO .....	28 <sup>TH</sup> DEFENDANT
LIVERSON MARORO .....	29 <sup>TH</sup> DEFENDANT
LINNET NGELE IDAWO .....	30 <sup>TH</sup> DEFENDANT
MWAKULOMBA P. SHETE .....	31 <sup>ST</sup> DEFENDANT
JOSEPH M. MWACHILA .....	32 <sup>ND</sup> DEFENDANT
GODWIN MWITI MUGIRA .....	33 <sup>RD</sup> DEFENDANT
ELINA JOHANA MWACHIA .....	34 <sup>TH</sup> DEFENDANT
CHALLA CHEMICALS INTERNATIONAL LIMITED .....	35 <sup>TH</sup> DEFENDANT
DENIS N. MUNYI .....	36 <sup>TH</sup> DEFENDANT
MICHAEL WISO .....	37 <sup>TH</sup> DEFENDANT



ALFRED ISAACK MNYANYA .....	38 <sup>TH</sup> DEFENDANT
CORNEL KINYILI KONGO .....	39 <sup>TH</sup> DEFENDANT
CAROLINE EDINA ATIENO ADHOLA .....	40 <sup>TH</sup> DEFENDANT
JOHN J. SWAI .....	41 <sup>ST</sup> DEFENDANT
JOHN MUTUA MWANGI .....	42 <sup>ND</sup> DEFENDANT
MARK NGWATI MBITHI .....	43 <sup>RD</sup> DEFENDANT
CHEMOMOBO TECLAH MUKHEBET .....	44 <sup>TH</sup> DEFENDANT
ERASTUS A. MAROO .....	45 <sup>TH</sup> DEFENDANT
PAUL MWASARU MWAZUMBO .....	46 <sup>TH</sup> DEFENDANT
JESMILY WAKESHO MWAZUMBO .....	47 <sup>TH</sup> DEFENDANT
NIORAM HOLDINGS LIMITED .....	48 <sup>TH</sup> DEFENDANT
JAPHET MNDAMBO BASHARI .....	49 <sup>TH</sup> DEFENDANT
TOLOWA RAMAITA .....	50 <sup>TH</sup> DEFENDANT
RENNISON A. MWADIME .....	51 <sup>ST</sup> DEFENDANT
RUTH KAMEME .....	52 <sup>ND</sup> DEFENDANT
JACKSON KIMIRI MSUYA .....	53 <sup>RD</sup> DEFENDANT
MATENGE K. NGAU .....	54 <sup>TH</sup> DEFENDANT
MUTUA MBITHI MBURU .....	55 <sup>TH</sup> DEFENDANT
EPHRAIM NGORIO SIMEON .....	56 <sup>TH</sup> DEFENDANT
BENSON KISOMBE MSULA MBEDE .....	57 <sup>TH</sup> DEFENDANT
LAND SETTLEMENT FUND BOARD OF TRUSTEES (FORMERLY KNOWN AS THE SETTLEMENT FUND TRUSTEES) .....	58 <sup>TH</sup> DEFENDANT
THE CHIEF LAND REGISTRAR .....	59 <sup>TH</sup> DEFENDANT
THE DISTRICT LAND REGISTRAR, TAITA TAVETA .....	60 <sup>TH</sup> DEFENDANT

**AND**

**HENAN HIGHWAY ENGINEERING GROUP COMPANY LTD .... CO-  
CONTEMNOR**

### **RULING**

1. This Ruling is in respect to the Plaintiffs/Applicants application dated 27<sup>th</sup> May 2025 seeking the following reliefs:-
  - i. ....spent.



- ii. The Honourable Court be pleased to issue orders compelling Ruth Mkumbulu Lelewu the 7<sup>th</sup> Defendant/Respondent herein and the Director/Directors of Henan Highway Engineering Group Company Ltd to personally appear in Court and Show Cause why they should not be held in Contempt of Court and punished for failing to comply with and obey the orders of court which were given on 9<sup>th</sup> November 2020.
  - iii. Ruth Mkumbulu Lelewu the 7<sup>th</sup> Defendant/Respondent and Director/Directors of Henan Highway Engineering Group Company Ltd be detained in prison for a term not exceeding six months for blatantly disobeying court orders given on 9<sup>th</sup> November 2020.
  - iv. This Honourable Court be pleased to deny the 7<sup>th</sup> Defendant/Respondent audience in this matter until and unless she purges the contempt of court committed herein.
  - v. The 7<sup>th</sup> Defendant/Respondent and Henan Highway Engineering Group Company Ltd be ordered to pay for the cost of this application immediately and upon determination of the application.
2. The application is premised on the following grounds and also supported by an affidavit sworn by Basil Criticos on 27<sup>th</sup> May 2025; that the 7<sup>th</sup> defendant/respondent and Henan Highway Engineering Group Company Ltd have deliberately and willfully disobeyed clear orders of this court which were granted by on 9<sup>th</sup> November, 2020 in the following terms:
- a. That an order of *status quo* be and is hereby issued to the effect that no new persons shall be allowed to enter the land and or carry out any development herein pending the hearing and determination of the suit.
  - b. That the defendants in this suit who are already on the land to continue with their occupation and the plaintiff is not to interfere with them pending hearing and determination of the suit.
  - c. That the land registrar, Taita Taveta be and is hereby ordered not to issue any new titles in respect of the suit until this case is heard and determine.
  - d. That.... [spent]
  - e. That OCS Taveta police station to assist in the implementation of this order.
3. It was averred that the said court orders of 9<sup>th</sup> November, 2020, and in particular Order No. 1, was clear that an order of *status quo* is issued to the effect that no new person would be allowed to enter the land and or carry out any development thereon pending hearing and determination of the suit yet the 7<sup>th</sup> defendant/respondent has purported to give illegal permission to a new person namely Henan Highway Engineering Group Company Ltd to illegally harvest huge volumes of murrum from the suit property.
4. It was further averred that the purported permission to Henan Highway Engineering Group Company Ltd by the 7<sup>th</sup> defendant/respondent to harvest murrum from the suit property goes against Order No. 1 of the injunctive orders of 9<sup>th</sup> November 2020 which maintained an order of *status quo* forbidding any new person such as Henan Highway Engineering Group Company Ltd from entering the suit property or carrying out any development thereon pending hearing and determination of the suit.
5. The application was also supported on the grounds that the 7<sup>th</sup> defendant/respondent has personal and actual knowledge and is aware of the injunctive orders of this court having been a party to this suit when the orders were issued. She has nevertheless defiantly elected to deliberately and willfully disobey the injunctive orders. The 7<sup>th</sup> defendant/respondent's and Henan Highway Engineering



- Group Company Ltd's disobedience of this Honourable Court's clear injunctive orders is continuing unabated at this very moment despite and even after I issued a formal warning to both the 7th defendant/respondent and Henan Highway Engineering Group Company Ltd to cease and desist their illegal and contemptuous activities on the suit property pending hearing and determination of this suit.
6. Further that the illegal and contemptuous activities on the suit land by the 7<sup>th</sup> defendant/respondent and Henan Highway Engineering Group Company Ltd acting pursuant to purported authority of the 7th defendant/respondent, are causing an irreversible physical deterioration and diminished financial value of the suit property to my detriment and that of the 2<sup>nd</sup> plaintiff/ applicant.
  7. That the 7<sup>th</sup> defendant/respondent and Henan Highway Engineering Group Company Ltd believes that they can willfully disobey orders of this court without suffering any penal consequences notwithstanding that the said orders are meant to preserve the subject matter of this suit pending a just determination of the dispute between parties and that the willful and deliberate election by the 7th defendant/respondent and Henan Highway Engineering Group Company Ltd to disobey the court orders of 9<sup>th</sup> November, 2020 constitute a blatant act of contempt of the court and are specifically designed to defeat the course of justice in this matter and to render the said court orders of no effect.
  8. The application was opposed by the 7<sup>th</sup> Respondent vide a Replying Affidavit sworn by Ruth Mkumbulu Lelewu on 11<sup>th</sup> June 2025. It was deponed that the application is based on unsubstantiated falsehoods and hearsay and cannot form the basis of an application for contempt of court orders, there are no or no valid injunction orders in place as alleged by the 1<sup>st</sup> Plaintiff and if there were any orders issued on 9<sup>th</sup> November 2020 as alleged then the same expired and/or were automatically set aside upon expiry of (12) months and further that the 7<sup>th</sup> Respondent has been on the land since 2001 and cannot be held to have entered the land on 9<sup>th</sup> November 2020.
  9. The 7<sup>th</sup> Respondent also stated that it is within public knowledge that the 1<sup>st</sup> Plaintiff sold a portion of his land measuring over 5000 Acres to his Excellency President William Samoei Ruto, the President of the Republic of Kenya who established Kisima Farm. It is also in the public domain that part of the Agreement between President Ruto and the 1<sup>st</sup> Plaintiff was that the 1<sup>st</sup> Plaintiff was to facilitate the construction of a Fifteen (15) Kilometre Road from Sesi to Mata which road serves the Plaintiff's residence and the President's Farm.
  10. It was also stated that the road contractor has been harvesting Murran for construction of the said road from various parcels along the road under construction and the 1<sup>st</sup> Plaintiff is fully aware that she has no link, association or relation with the Chinese construction firm that is undertaking the road construction and as such she cannot be held liable for their alleged actions.
  11. She also stated that she has no knowledge of the alleged injunction orders neither has the 1<sup>st</sup> Plaintiff attached or exhibited a copy of the alleged injunction orders on his application and she cannot be held liable for what is clearly a Government of Kenya project undertaken by a Government contractor and there were no injunction orders stopping the use of utilization of the land pending the hearing of this suit.
  12. It was also stated that the 1<sup>st</sup> Plaintiff has never been ready or willing to proceed with suit and the application herein is part of the 1<sup>st</sup> Plaintiff's tricks to scuttle the hearing set for 8<sup>th</sup> and 9<sup>th</sup> of July 2025 and she urged this Honourable Court to dismiss the said application.
  13. Pursuant to the directions issued by the court, the said application was canvassed by way of written submissions. The Plaintiff's filed written submissions dated 27<sup>th</sup> June 2025, no written submissions had been filed by the 7<sup>th</sup> Respondent as at the time this court retired to write its Ruling.



14. The Plaintiff's submitted that on the question of whether the court orders given on 9th November 2020 were clear and unequivocal, Order No. 1 of the orders of 9th November, 2020 were clear and unequivocal that no new persons shall be allowed to enter the land and or carry out any development thereon pending the hearing and determination of the suit.
15. The said Order No. 1 of the injunctive orders of 9th November 2020 were therefore clear and unequivocal on what should or should not be done and by whom.
16. Secondly, that the 7<sup>th</sup> Defendant/Respondent and Henan Highway Engineering Group Company Ltd to whom illegal permission has been given by the 7th Defendant/Respondent to harvest murrain and soil from the suit property had personal and actual knowledge of the court orders of 9th November 2020.
17. It was further submitted that Henan Highway Engineering Group Company Ltd who is harvesting soil from the suit property pursuant to permission granted by the 7th Defendant/Respondent has even after being warned to cease its contemptuous activities continued to violate the said orders after being served with this application and also after the court appearance of 5th June, 2025 which proceedings were made known to both the contemnors vide Plaintiffs/Applicants' letter dated 9th June, 2025.
18. It was argued that Henan Highway Engineering Group Company Ltd whom the 7th Defendant/Respondent has purported to give permission to harvest soil from the suit property is one such new person who was enjoined from entering the suit property and or carrying out any development thereon pending the hearing and determination of the suit and is bound by the said order.
19. Further, being an order in rem, Order No. 1 of the court orders of 9th November, 2020, as couched, bind the whole world rather than just the parties involved in the case. Reliance on the Court of Appeal decision in *Kenya Urban Roads Authority & Another v Belgo Holdings Limited* (Civil Appeal E011 Of 2021) [2025] KECA 764 (KLR) (9 May 2025) (Judgment) where it was stated:
  - “ 51. At paragraph 366, a distinction is made between judgments in rem and judgments in personam or inter partes as follows as:

“judgments inter partes are only binding between the parties thereto and those who are privy to them. The judgment in rem of a court of competent jurisdiction is as regards... property situate within the jurisdiction of the court pronouncing the judgment, conclusive against all the world in whatever it settles as to the status of the property, or as to the right or title to the property, as to whatever disposition it makes of the property itself”
20. It was further submitted that the nature of contempt committed by the 7th Defendant/Respondent and Henan Highway Engineering Group Company Ltd consist of harvesting of murrain and soil from the suit property. The 7<sup>th</sup> Defendant/Respondent has conceded that she is in possession of the suit property as from 29th January, 2001 at paragraph 7 of her replying affidavit. The 7<sup>th</sup> Defendant/Respondent has also not denied that Henan Highway Engineering Group Company Ltd is harvesting soil and murrain from the suit property which the 7th Defendant/Respondent claims to be in possession of. To the contrary, she alleges that there are no injunction orders stopping the use or utilization of the suit property pending hearing of this suit.
21. On the question of whether the contemnors have intentionally, deliberately and willfully disobeyed the injunctive orders of 9th November, 2020, it was submitted that the Plaintiffs/Applicants have annexed



- letters which they sent to the contemnors demanding that they cease and desist from harvesting soil from the suit property to no avail.
22. It was further submitted that the said orders given on 9<sup>th</sup> November 2020 contained a penal notice and the same had not been varied nor set aside.
  23. The court was urged to allow the application as prayed.
  24. Having considered the said application, the written submission filed by the Plaintiffs and rival affidavits, the main issue for consideration is whether the Applicants have made out a case for grant of the orders sought.
  25. An applicant seeking to cite another for contempt is held to very high standards of proof, higher than in civil cases. He or she must prove the following;
    - a. That there is in existence of an order/ judgement that is clear unambiguous and binding.
    - b. That the Defendant/Respondent has knowledge of the said order/ Judgement.
    - c. That the Defendant/Respondent has acted in breach of the said orders.
    - d. That the Defendant/Respondent's conduct is deliberate.
  26. It therefore follows that to succeed in 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. See [\*Micheal Sistu Mwaura Kamau v Director of Public Prosecutions & 4 others\*](#) [2018] eKLR.
  27. An allegation of contempt of court is a serious matter since it puts the liberty and or property of the 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 [\*Mutitika v Babarini Farm Limited\*](#) [1985] KLR 229 and [\*Fred Matiang'i the Cabinet Secretary, Ministry of Interior and Co-ordination of National Government v Miguna Miguna & 4 others\*](#) [2018] eKLR.
  28. Similarly, contempt of Court is in the nature of criminal proceedings and, therefore, proof of a case against a contemnor is higher than that of the balance of probability. This is because liberty of a person is usually at stake and the applicant must prove wilful and deliberate disobedience of the court order, if he is to succeed. This was aptly stated in [\*Gatharia K. Mutikika v Babarini Farm Limited\*](#) [1985] KLR 227.
  29. 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.
  30. The Court opined that recourse should not be had to contempt of court in aid of a civil remedy where there is another 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...”

31. From the trial of documentation, annexures and photos availed to this court, it is indeed evident that there are some activities being undertaken on the suit property by Henan Highway Engineering Group Co. Ltd. The said activity as described by the Plaintiff are illegal quarrying of murrum and other construction material on the suit land.
32. The 7<sup>th</sup> Respondent in response to the activities being undertaken has maintained that there is no valid order of injunction in place as alleged by the 1<sup>st</sup> Plaintiff and if there were any orders issued then the same expired and/or were automatically set aside upon expiry of twelve (12) months. It was also her position that the said contractor has been harvesting murrum for construction of the 15 kilometre road from Sesi to Mata and the 1<sup>st</sup> Plaintiff is fully aware that she has no link to the said construction firm undertaking the road construction and as such she cannot be held liable.
33. It is not in doubt that this court differently constituted issued orders on 9<sup>th</sup> November 2020 which have been restated in the earlier part of this ruling. According to the Applicant there has been a breach of the said order to the effect that the new person is Henan Highway Engineering Group Company Limited who have been permitted by the 7<sup>th</sup> Respondent to undertake the illegal quarrying of murrum being used for the construction of the road.
34. In view of the foregoing, the question then that this court has to consider is whether the 7<sup>th</sup> Respondent permitted the new entity to undertake the said activity.
35. Contempt of court is an act of personal responsibility and the position in law is that a contemnor must have personal knowledge of the terms of the order and must have deliberately and wilfully disobeyed the order. Having carefully perused the evidence on record, it has not been clearly demonstrated with certainty that the 7<sup>th</sup> Respondent permitted Henan Highway Engineering Group Company Ltd to enter into the land and undertake the said activities. Considering the nature of the orders sought herein, this court is unable to accede to the Applicants ‘request that indeed the 7<sup>th</sup> Respondent has permitted the construction company to undertake the quarry activities on the said land. Equally the court is unable to a certain whether the conduct of the 7<sup>th</sup> Respondent and Henan Highway Engineering Group who was not present when the said orders was issued is wilful and deliberate which is one of the essential ingredients that ought to be demonstrated by a party seeking contempt of court orders from the court.
36. For a party to be adjudged to be in contempt, the applicant must demonstrate that there was wilful disobedience of that order. In this regard, the Supreme Court of India held in *Indian Airports Employees Union v Ranjan Catterjee & Another* [AIR 1999 SC 880: 1999(2) SCC:537, that;  

“in order to amount to “civil contempt” disobedience must be willful. If disobedience is based on the interpretation of court’s order, notification and other relevant documents, it does not amount to willful disobedience.”
37. The emphasis in the available jurisprudence is that there must be “wilful and deliberate disobedience of court orders.” There cannot be deliberate and wilful disobedience unless the contemnor had knowledge of the existence and terms of the order. And because contempt is of a criminal nature, it is always important that breach of the order be proved to the required standard; first, that the order was directed to the contemnor; that the contemnor was aware of the order having been served or having personal knowledge of it, and that he/she deliberately and wilfully disobeyed it.



38. The fact of knowledge and wilful disobedience was restated in *Kristen Carla Burchell v Barry Grant Burchell* [2005] ZAECHC 35 thus:

“(5) In order to succeed in civil contempt proceedings the applicant had to prove the terms of the order, knowledge of these terms by the respondent, and a failure by the respondent to comply with the terms of the order. Upon proof of these requirements the presence of wilfulness 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.”

39. Cromwell J, writing for the Supreme of Canada in *Carey v Laiken*, 2015 SCC 17 (16th April 2015), expounded that the party alleged to be in breach must have intentionally done the act that the order prohibits or intentionally failed to do the act that the order compels. It is also worth noting that Henan Highway Engineering Group who is listed in the application as a co-contemnor as a juristic person is incapable of disobeying the order, only its directors could or employees could and the Applicants have not listed them.

40. Considering the circumstances of this case and the material placed before this court, this court is not satisfied that the Applicants have met the threshold for grant of the orders sought and in the circumstances the application is hereby dismissed with no orders as to costs.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT VOI THIS 8<sup>TH</sup> DAY OF JULY 2025.**

**E. K. WABWOTO**

**JUDGE**

In the presence of:-

Prof. Mumma S.C and Mr. Obok for the Plaintiffs/Applicants.

Mr. Nyange h/b for Mr. Mutubia for the 7<sup>th</sup> Defendant/Respondent.

N/A for Henan Highway Engineering Group Company Limited Co-Contemnor.

Court Assistant: Mary Ngoira.

