



**Kimani & another v Nine Sisters Limited & 2 others; Mwangi  
(Interested Party) (Environment & Land Case E050 of 2024)  
[2025] KEELC 4974 (KLR) (Environment and Land) (3 July 2025) (Ruling)**

Neutral citation: [2025] KEELC 4974 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIVASHA  
ENVIRONMENT AND LAND  
ENVIRONMENT & LAND CASE E050 OF 2024**

**MC OUNDO, J**

**JULY 3, 2025**

**BETWEEN**

**SAMUEL MACHARIA KIMANI ..... 1<sup>ST</sup> PLAINTIFF**

**JUDY NJERI THUO ..... 2<sup>ND</sup> PLAINTIFF**

**AND**

**NINE SISTERS LIMITED ..... 1<sup>ST</sup> DEFENDANT**

**CHIEF LAND REGISTRAR ..... 2<sup>ND</sup> DEFENDANT**

**ATTORNEY GENERAL ..... 3<sup>RD</sup> DEFENDANT**

**AND**

**SAMUEL RITHO MWANGI ..... INTERESTED PARTY**

**RULING**

1. By a Notice of Motion dated 24<sup>th</sup> September, 2024 brought under the provisions of Section 3 (1), (2) & (3) and 29 of the *Environment and Land Court Act*, Section 1A and 3A of the Civil Procedure Rules, 2010 and all enabling provisions of law, the 2<sup>nd</sup> Plaintiff/Applicant herein sought for the following orders:
  - i. Spent
  - ii. That the 1<sup>st</sup> Respondent's Director, Mary Wambui Wanjigi together with the Land Registrar, Naivasha be summoned before the Honourable Court to Show Cause why they should not be cited for being in contempt of the Honourable Court's order of 21<sup>st</sup> March 2024 and be



sanctioned in accordance with the provisions of Section 29 of the *Environment and Land Court Act*;

- iii. That on failing to show the necessary cause, the said 1<sup>st</sup> Respondent's official and the Land Registrar, Naivasha be condemned to pay a fine not exceeding Kshs.20,000,000/=or to imprisonment for a term not exceeding 2 years or both;
  - iv. That the 1<sup>st</sup> Respondent be barred from addressing the Honourable Court in the instant matter unless and until they have purged themselves of the contempt.
  - v. That the Honourable Court be pleased to issue a declaration that any and all dealings since 21<sup>st</sup> March 2024 by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents over land Title Numbers Miti Mingi/Mbaruk Block 8/1354 (Kianjoya 'D'), Miti Mingi/Mbaruk Block 8/1353 (Kianjoya 'D'), Miti Mingi/Mbaruk Block 8/1356 (Kianjoya 'D'), Miti Mingi/Mbaruk Block 8/1357 (Kianjoya 'D'), Miti Mingi/Mbaruk Block 8/1361 (Kianjoya 'D'), Miti Mingi/Mbaruk Block 8/1358 (Kianjoya 'D'), Miti Mingi/Mbaruk Block 8/1359 (Kianjoya 'D') and Miti Mingi/Mbaruk Block 8/1360 (Kianjoya 'D') are malafides and illegal ab initio.
  - vi. That the Honourable Court be at liberty to issue any other or further orders geared towards protecting the dignity and authority of the Court.
  - vii. That costs of and occasioned by the Motion herein be paid by the Respondents.
2. The said application was supported by the grounds therein as well as the supporting Affidavit of an even date, sworn by Judy Njeri Thuo, the 2<sup>nd</sup> Plaintiff/Applicant herein.
  3. In summary, the Applicant's basis for seeking the above captioned orders was that vide a ruling of 14<sup>th</sup> March 2024, the court had issued interim orders of injunction forbidding the Respondents, either by themselves, their servants, employees and/or agents from dealing whatsoever with the above captioned parcels of land, pending hearing and determination of the suit. The extracted orders dated the 21<sup>st</sup> March 2024, had been duly served upon the Respondents on 27<sup>th</sup> March 2024. The said order had also been registered as a Caution on the mother title for the suit properties on the same day.
  4. That this notwithstanding, on or about July, 2024 the 1<sup>st</sup> Defendant/Respondent in consort with the Land Registrar, Naivasha proceeded to sub-divide, sell, alienate and/or register third party interests over the suit properties, in brazen and blatant contempt of the Honorable Court's orders.
  5. That efforts to carry out official searches to verify how many of the suit properties had been sold to unwitting members of the public were thwarted by the Land Registrar, Naivasha together with the employees in her office who failed and/or refused to issue her with the current Certificates of Official Search.
  6. That it was in the interest of justice that the Respondents be cited for contempt of court and appropriate sanctions be imposed to uphold the dignity and authority of the Honorable Court.
  7. In opposition to the Application, the Director of the 1<sup>st</sup> Defendant/Respondent Maina Wanjigi (now deceased) vide his Replying Affidavits dated 30<sup>th</sup> January 2024 (sic) and 22<sup>nd</sup> March 2024 (sic) deponed that they were law-abiding citizens fully cognizant of what was required of them with regards to court orders and would never willfully disobey any court orders and/or directions.
  8. That they had not been aware of the court's order because their previous Advocate on record had not advised them of the existence of any such orders and neither had they been aware that the 1<sup>st</sup> Defendant/Respondent had been sued and/or that there had been dispute with regard to the suit properties herein. That further, they did not authorize the amalgamation or sale of the suit properties and neither had



they been aware of any dealings with the suit properties during the pendency of the suit that was seeking to determine the legal proprietorship of the properties.

9. He had however confirmed that the 1<sup>st</sup> Defendant/Respondent, through its then Managing Director, had appointed their previous Advocates on record M/S Vivian Kinyanjui Advocates to undertake conveyances on the sale of various properties within the area known as Kianjoya Block where the suit properties were situated for which she would notify the 1<sup>st</sup> Defendant of any intended sale in order for it to ratify the sale and give express instructions. This was not done and hence the said Counsel had not acted as an agent of the 1<sup>st</sup> Defendant/Respondent.
10. That contrary to the allegations by the Applicant, the 1<sup>st</sup> Defendant and/or any of the Directors had never been in communication and/or contacted the Land Registrar Naivasha.
11. That the 1<sup>st</sup> Defendant only become aware of the existence of contempt proceedings against it when they had appointed new Advocates to represent them in the instant suit who had then informed them that despite the contempt of court proceedings expressly mentioning one of the 1<sup>st</sup> Defendant's Directors, the previous Advocate on record had filed a Replying Affidavit to the contempt application which affidavit had been sworn by a farm manager employed by the 1<sup>st</sup> Defendant.
12. That through their investigation, they had sought from their previous Advocates all documentation with regards to all the conveyances she had undertaken on behalf of the 1<sup>st</sup> Defendant/Respondent as well as the documents with regard to all the suits that were pending before court where the 1<sup>st</sup> Defendant had been sued which request had gone unanswered.
13. That they had also requested from the land Registrar, official searches and copies of the Green and White cards in relation on with the properties Wherein despite payment having been done on 5<sup>th</sup> November 2024 and receipts delivered to the land registry, their letters and reminders had gone unanswered.
14. That since they had been left in the dark it was only the Land Registrar and their previous counsel on record who could give the specific details of any disobedience of the court orders and/or explain why transactions had been made on the suit properties despite the existence of court orders. They thus also beseeched the Court to issue summons to both the Land Registrar and their previous Counsel, to attend court and explain why they had allowed dealings on the suit property despite the existence of the court orders thus putting the 1<sup>st</sup> Defendant's Director's liberty at jeopardy.
15. That in proving the innocence of the 1<sup>st</sup> Defendant and its Directors, the court to order their previous Advocate on record M/S Vivian Kinyanjui Advocates to produce in court the following documents:
  - i. The copy of an application for mutation of the suit properties.
  - ii. The payment slips made for the mutation of the suit properties.
  - iii. All the consents from the relevant bodies for the mutation of the suit properties.
  - iv. The authority from Nine Sister Ltd allowing the advocate to conduct the mutation/subdivision /amalgamation of the suit properties.
  - v. Copies of sale agreements for the suit properties if the suit property was disposed of to third parties.
  - vi. Copies of transfer forms duly executed by the directors of Nine Sisters Ltd.
  - vii. Copies of titles of the suit properties.



16. That further, the Honourable Court order the summoned Land Registrar from the Naivasha Land Registry to come accompanied with the following documents and/or files in court to assist the court in the hearing of the contempt application:
  - i. The duly registered mutation form from the survey department.
  - ii. All the official communication on the mutation of the suit parcels that resulted to the creation of new parcel number either by amalgamation and/or subdivision.
  - iii. Copies of the green and white cards of the suit properties.
  - iv. The receipt evidencing payment of stamp duty over the suit properties upon their transfer if there were any transfers.
  - v. Copies of the green card of the newly created parcels of land that were as a result of the mutation plans.
  - vi. Copies of all transfer forms that were surrendered to their offices involving the suit properties.
17. That in any case, during the period of the alleged transactions, the Managing Director/C.E.O of the 1<sup>st</sup> Defendant had been ill and had not been actively involved in the affairs of the 1<sup>st</sup> Defendant. That further, the production of the said documents would assist the court in fairly adjudicating on the application and citation for contempt as against one of the Directors of the 1<sup>st</sup> Defendant, one Mary Wambui Wanjigi.
18. That from the foregoing, it was evident that the Directors of the 1<sup>st</sup> Defendant should not be cited for contempt as they were not in any way culpable of disobedience of the Court's order.
19. The 3<sup>rd</sup> Defendant/Respondent in response and in opposition to the application also filed a Replying Affidavit dated 5<sup>th</sup> February, 2025 sworn by Roussos Ritho Mwangi, the Land Registrar at the Naivasha District Land Registry who deponed that since the year 1996, the 1<sup>st</sup> Defendant/Respondent was the owner of the suit properties known as Miti Mingi/Mbaruk Block 8/1354 (Kianjoya 'D'), Miti Mingi/Mbaruk Block 8/1353 (Kianjoya 'D'), Miti Mingi/Mbaruk Block 8/1356 (Kianjoya 'D'), Miti Mingi/Mbaruk Block 8/1357 (Kianjoya 'D'), Miti Mingi/Mbaruk Block 8/1361 (Kianjoya 'D'), Miti Mingi/Mbaruk Block 8/1358 (Kianjoya 'D'), Miti Mingi/Mbaruk Block 8/1359 (Kianjoya 'D') and Miti Mingi/Mbaruk Block 8/1360 (Kianjoya 'D') as could be seen from the annexed members' register from the Naivasha District Lands Registry.
20. That on or about 4<sup>th</sup> September 2023, before commencement of this suit, and delivery of the impugned ruling, the 1<sup>st</sup> Defendant transferred the suit properties to third parties through an agreement for sale wherein the subsequent amalgamation and sub-division of the said suit properties was done by the current owner namely Samuel Ritho Mwangi and not the 1<sup>st</sup> Defendant /Respondent herein.
21. That subsequently, the 3<sup>rd</sup> Defendant/Respondent did not act in contempt of court because the Ruling of the Court had been delivered after the property had already been transferred from the 1<sup>st</sup> Defendant/Respondent to a third party.
22. In rejoinder, the Applicant vide her Further Affidavit dated 29<sup>th</sup> March, 2025 deponed that the instant proceedings over the ownership of the suit properties had been instituted on 30<sup>th</sup> August 2023 and which proceedings had been served upon the 1<sup>st</sup> Defendant's former Advocates on record. That however, despite being aware of the instant proceedings, the 1<sup>st</sup> Defendant's former Advocate on record and the 2<sup>nd</sup> Respondent herein proceeded to effect the transfer of the suit properties to one Samuel



- Ritho Mwangi on 4<sup>th</sup> September 2023 with the suit properties being amalgamated into one parcel being Miti Mingi/Mbaruk Block 8/2891 on 16<sup>th</sup> November 2023.
23. That indeed, a caveat emptor had been published in the local dailies decrying all dealings that had been conducted by the 1<sup>st</sup> Respondent's Advocate between the year 2021 and 2025. That she was aware that when the court orders were issued on the 21<sup>st</sup> March 2024, the same had been registered against the amalgamated title, Miti Mingi/Mbaruk Block 8/2891.
  24. That nonetheless, she had since established that the suit properties were subsequently subdivided into Miti Mingi/Mbaruk Block 8/2954, 2955, 2956, 2957, 2958, 2958, 2960, 2961, 2962, 2963, 2964, 2965, 2966, 2967, 2968, 2969, 2970, 2971, 2972, 2973, 2974, 2975, 2976, 2977, 2978, 2979, 2980, 2981, 2982, 2983, 2984, 2985 and 2986 (Kianjoya 'D'). That the sub-divided titles were currently being advertised for sale and being actively sold despite the subsistence of the court orders restraining the Respondents from advertising for sale, offering for sale, selling, transferring, sub-dividing and/or registering any subdivision.
  25. That further, she had established that on 23<sup>rd</sup> May, 2024, the 2<sup>nd</sup> Respondent had registered a transfer of one of the subdivided parcels being Miti Mingi/Mbaruk Block 8/2959 (Kianjoya 'D') long after the court order had been issued restraining the 2<sup>nd</sup> Respondent from registering any transfers over the suit properties. That she had attempted to verify the status of the other parcels but the Land Registrar, Naivasha together with the employees in his office had frustrated her efforts to acquire current Certificate of Official Search.
  26. She thus deponed that it was in the interest of justice that the 1<sup>st</sup> Respondent's former Advocate on record, M/S Vivian Kinyanjui, the former Land Registrar, Naivasha, Catherine Wacuka and the current Land Registrar, Naivasha be summoned before the honorable court to show cause why they should not be cited for contempt. That thereafter, appropriate sanctions be imposed upon the court establishing that the Respondents' had disobeyed its orders.
  27. Vide an unopposed Notice of Motion Application dated 24<sup>th</sup> March 2025 which was allowed on the 1<sup>st</sup> April 2025, Samuel Ritho Mwangi was joined to the instant proceedings as an interested party wherein vide his Replying Affidavit dated 23<sup>rd</sup> April 2025, he had deponed that the Applicant's Application was devoid of merit, misconceived, incompetent, and bad in law. That whereas the 1<sup>st</sup> Plaintiff was deceased, the 2<sup>nd</sup> Plaintiff/Applicant had no authority to act on his behalf and or the estate and secondly that no evidence that had been placed on record depicting any of the Defendants to have been in contempt of the orders of the court dated 21<sup>st</sup> March 2024.
  28. That he was the registered owner of all those parcels of land known as Miti Mingi/Mbaruk Block 8/1353, 1354, 1355, 1356, 1357, 1358, 1359, 1360 and 1361 (Kianjoya D) which properties he had purchased from the 1<sup>st</sup> Defendant herein vide an agreement dated 19<sup>th</sup> July 2023 and which Agreement had been drawn by Vivian Kinyanjui Advocates and Commercial Conveyancer Limited. That before purchasing the aforementioned properties, they had belonged to the 1<sup>st</sup> Defendant who had title deeds to the same.
  29. That pursuant to clause 4 of the said agreement, he had been required to pay the purchase price of Kshs. 36,000,000/= in two instalments of Kshs. 20,000,000/= and Kshs. 16,000,000/= through Vivian Kinyanjui Advocates and Commercial Conveyancer Limited which firm had the authority to receive the said amount on behalf of the Nine Sisters Limited (the 1<sup>st</sup> Defendant herein). That subsequently, he had deposited the said amount with the firm of Vivian Kinyanjui Advocates and Commercial Conveyancer Limited on 19<sup>th</sup> July, 2023.



30. He deponed that prior to purchasing the said properties he had conducted searches on the same wherein he had noted that there was a restriction registered on the title deed by the 1<sup>st</sup> Defendant, however, upon inquiry, he had been advised that the same would be removed to enable the transfer of the suit properties in his favour. That thereafter, he and the 1<sup>st</sup> Defendant had executed the necessary documents to effect the transfer in his favour wherein he had been issued with the title deeds to the same in September 2023.
31. That afterwards, on 12<sup>th</sup> October 2023, he had caused the parcels of land known as Miti Mingi/Mbaruk Block 8/1353, 1354, 1355, 1356, 1357, 1358, 1359 and 1360 (Kianjoya D) to be consolidated into one parcel of land known Miti Mingi/Mbaruk Block 8/2891 (Kianjoya D) which property he had been in possession of from the time of purchase to date and had subdivided the said consolidated parcel of land into 33 plots. That further, on 8<sup>th</sup> January 2024, he had caused the parcel number Miti Mingi/Mbaruk Block 8/1361 to be divided into 5 portions.
32. He explained that all the aforementioned transactions were done before the order dated 21<sup>st</sup> March 2024. That indeed, by the time the Court's order of 21<sup>st</sup> March 2024 was being issued, the parcels of land known as Miti Mingi/Mbaruk Block 8/1353, 1354, 1355, 1356, 1357, 1358, 1359 and 1360 (Kianjoya D) had ceased to exist the same having been consolidated into one parcel known as Miti Mingi/Mbaruk Block 8/2891 (Kianjoya D). Additionally, land parcel number Miti Mingi/Mbaruk Block 8/1361 had also ceased to exist having been subdivided into 5 portions.
33. That in any case, the Applicant had not demonstrated that there were other entries that had been made after the orders of the court to warrant issuance of the orders being sought by the Applicant in the Application herein. That further, the Annexure JNT-004 in the Application dated 5<sup>th</sup> September 2024 could not form the basis for the granting of the orders being sought as the Land Registrar, Naivasha was not a party to the proceedings before the court directly and that there was no evidence that he had been served and or made aware of the orders of the court. That in any case, the properties referred to herein had ceased to exist at the time.
34. The Application dated 24<sup>th</sup> September 2024 was disposed of by way of written submissions wherein the Applicant vide her submissions dated 24<sup>th</sup> March 2025 summarized the factual background of the matter and then framed one issue for determination to wit; whether the Respondents should be summoned to show cause why they should not be cited for contempt.
35. She placed reliance on the provisions of Section 3 and 29 of the Environment and Land Act and the Blacks's Law Dictionary (Ninth Edition), on the definition of Contempt of Court, and lastly on the decided case of Samuel M. N. Mweru & Others v National Land Commission & 2 others [2020] KEHC 9233 (KLR) to submit that she had demonstrated that the Respondents had duly been served with the court order of 21<sup>st</sup> March 2025.
36. That indeed, the explanation given by the 1<sup>st</sup> Respondent in response to her application was sufficient cause to summon the said Advocate M/S Viviane Kinyanjui, who was an officer of the Court to attend court and explain their actions.
37. That despite the allegations by the 2<sup>nd</sup> and the 3<sup>rd</sup> Respondents that the court proceedings herein had been instituted after the suit properties had been transferred to a third party, she had demonstrated that the suit had been filed prior to the completion of the changes in ownership and which changes had been done without the 1<sup>st</sup> Respondent's acquiescence as supported by their (1<sup>st</sup> Respondent's) Replying Affidavit and caveat.



38. That the court orders of 21<sup>st</sup> March 2024 had been registered against the amalgamated title for which the Land Registrar Naivasha had facilitated and/or assisted in their subdivision and transfer of the resultant subdivided titles thus frustrating her efforts to conduct searches on the resultant suit properties contrary to the provisions of Section 34 of the *Land Registration Act*.
39. She submitted that the conduct on the part of the Land Registrar, Naivasha had been deliberate and was meant to subvert the orders of the court. That indeed she and the 1<sup>st</sup> Respondent, had presented sufficient cause for the 1<sup>st</sup> Respondent's former Advocate M/S Viviane Kinyanjui, and the Land Registrar Naivasha to be summoned before the Court to show cause why they should not be cited for contempt of court.
40. The 2<sup>nd</sup> and 3<sup>rd</sup> Respondents framed one issue for determination in their submissions dated the 13<sup>th</sup> May 2025, to wit; whether the 2<sup>nd</sup> Respondent should be cited for being in contempt of court's order dated 21<sup>st</sup> March 2024. They placed reliance in the decided case of Kristen Caria Burchell v Barry Grant Burchel, Eastern Cape Division Case No. 364 of 2005 to submit that it was an established principle of law that in order to succeed in Civil Contempt proceedings, the Applicant has to prove:
- i. The term of the order;
  - ii. Knowledge of those terms by the Respondent;
  - iii. Failure by the Respondent to comply with the terms of the order.
41. They then proceeded to place reliance in the decided case of North Tetu Farmers Co. Ltd v Joseph Nderitu Wanjohi [2016] eKLR on the four elements that must be proved to make a case for civil contempt to submit that the Applicant had not proven the said elements. That in any case, they were not personally served with the said order as the same may have been served upon a staff of the 2<sup>nd</sup> Respondent who had no knowledge of the order. That they had only come to know of the order after the Applicant's Counsel sent the 3<sup>rd</sup> Respondent a letter dated 5<sup>th</sup> September 2024, herein annexed as 'JNT-004' informing them of the orders. Reliance was on the decided case of Republic v Mwaura & 12 others; Obura & another (Ex parte) (Application 126 of 2020) [2024] KEHC 44 (KLR) (Judicial Review) (15 January 2024) (Ruling).
42. That further, they did not willfully disobey the court order of the 21<sup>st</sup> March 2024 since the said orders were issued after the transfer of the suit properties from the 1<sup>st</sup> Respondent to a third party had occurred on 4<sup>th</sup> September 2023 as could be seen from the Green cards annexed as "RRM2" and the current owner had already done the amalgamations and subdivision. That the said current owner was neither a party to the proceedings herein nor were the orders herein directed to him. That subsequently, the application dated 10<sup>th</sup> January 2024 had already been overtaken by events.
43. Reliance was placed in the decided case of Sang v Keter & 5 others (Environment & Land Case E010 of 2023) [2024] KEELC 14136 (KLR) (1 October 2024) (Ruling), where the court had dismissed the application for contempt because the applicant had failed to prove that the acts of contempt had taken place after the issuance of the injunctive orders, to urge the court to dismiss the instant Application as the Applicant had failed to establish a case to warrant the Respondents being punished for contempt.
44. The Interested Party on the other hand vide his submissions dated 6<sup>th</sup> May 2025, placed his reliance on the provisions of Section 5 of the *Judicature Act* on the power of this court to hear issues touching on contempt of court as well as the decided case of Mutikika v Baharini Farm Ltd [1985] KLR 227 to the effect that contempt proceedings were quasi-criminal and since a person's liberty was at stake, the standard of proof was higher than in civil cases, as well as on the decided case of Koilel *& 2 others v Koilel*



*See another (Civil Appeal E002 of 2021)* [2022] KEHC 10288 (KLR) (30 June 2022) (Judgment) where the court had cited the case of Kristen Carla Burchell vs Barry Grant Burchell, Eastern Cape Division Case No. 364 of 2005 to submit that the impugned orders on 21<sup>st</sup> March 2024 were issued after the suit properties had already been sold to the Interested Party by the 1<sup>st</sup> Defendant herein through a sale agreement dated 19<sup>th</sup> July 2023 and which agreement had been drawn by Vivian Kinyanjui Advocates and Commercial Conveyancer Limited wherein title deeds had been issued to him in September 2023.

45. That subsequently in October 2023, he had caused the parcels of land known as Miti Mingi/Mbaruk Block 8/1353, 1354, 1355, 1356, 1357, 1358, 1359, and 1360 (Kianjoya D) to be consolidated into one parcel of land known as Mingi/Mbaruk Block 8/2891 and which land had since been sub-divided into 33 plots. That in January 2024, parcel No. Miti Mingi/Mbaruk Block 8/1361 Kianjoya D was subdivided into 5 portions as confirmed by the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants. That the suit properties herein ceased to exist between the years 2023 and 2024. That subsequently, the orders being complained about herein had been issued on properties that were no longer in existence.
46. That in any case, the annexure “JNT-004” in the application dated 24<sup>th</sup> September 2024 was proof that the Land Registrar, Naivasha was not a party to the proceedings and there had been no evidence that he was served and or was made aware of the orders of the court. That indeed there had been no evidence of any acts of contempt committed by the Respondents herein at the time the instant suit was filed for which the application dated 24<sup>th</sup> September 2024 was devoid of merit and that the same ought to be dismissed with costs.

#### **Determination.**

47. I have considered the application dated the 24<sup>th</sup> September 2024, the response in opposition there to, the authorities cited and the applicable law. It is clear that this matter stems from an application filed by the 2<sup>nd</sup> Applicant dated the 24<sup>th</sup> September 2024 which seeks to have 1<sup>st</sup> Respondent’s Director, one Mary Wambui Wanjigi and the Land Registrar, Naivasha summoned before the Court to Show Cause why they should not be cited for contempt of Court’s order of 21<sup>st</sup> March 2024 and be sanctioned in accordance with the provisions of Section 29 of the *Environment and Land Court Act*.
48. The said application was opposed by the 1<sup>st</sup> Respondent, the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents as well as the interested party herein through their respective Replying Affidavits, wherein they had challenged Knowledge of the said order by the Directors of the 1<sup>st</sup>, Respondent, service of the order upon the Land Registrar Naivasha, and whether the said suit properties, which were a subject of the said application were in existence at the time that the said order was allegedly disobeyed.
49. It is not in dispute that vide a ruling of 14<sup>th</sup> March 2024 the court sitting in Nakuru issued the following order.

“I do grant orders that pending the hearing and determination of this suit this honorable court to be pleased to issue a temporary injunction forbidding the Respondents, either by themselves, their servants, employees and/or agents from advertising for sale, offering for sale, selling, transferring, sub-dividing and/or registering any subdivision over Miti Mingi/Mbaruk Block 8/1354 (Kianjoya ‘D’), Miti Mingi/Mbaruk Block 8/1353 (Kianjoya ‘D’), Miti Mingi/Mbaruk Block 8/1356 (Kianjoya ‘D’), Miti Mingi/Mbaruk Block 8/1357 (Kianjoya ‘D’), Miti Mingi/Mbaruk Block 8/1361 (Kianjoya ‘D’), Miti Mingi/Mbaruk Block 8/1358 (Kianjoya ‘D’), Miti Mingi/Mbaruk Block 8/1359 (Kianjoya ‘D’) and Miti Mingi/Mbaruk Block 8/1360 (Kianjoya ‘D’)



The costs herein be in cause”

50. This Ruling was transmuted into an order dated 21<sup>st</sup> March 2024 wherein the 2<sup>nd</sup> Plaintiff/Applicant now alleges, through her application that after service of the same, the 1<sup>st</sup> Respondent’s Director, one Mary Wambui Wanjigi and the Land Registrar, Naivasha allegedly in consort with each other proceeded to sub-divide, sell, alienate and/or register interests over the said parcels of land, in disobedience of the said order.
51. The Black’s Law Dictionary (Ninth Edition) defines contempt of court as:-
- “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.”
52. Section 29 of the *Environment and Land Court Act* is clear to the effect 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.”
53. It was further an established principle of law as was held in the case of Kristen Carla Burchell vs Barry Grant Burchell, Eastern Cape Division Case No. 364 of 2005, 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.
54. Before I proceed to the issues arising for determination, I wish to point out the following anomalies arising from the pleadings herein:
55. In the Notice of Motion dated 10<sup>th</sup> January 2024 which gave rise to the Ruling of 14<sup>th</sup> March 2025, neither the Director of the 1<sup>st</sup> Respondent, one Mary Wambui Wanjigi nor the Land Registrar, Naivasha were parties thereto and neither had they been sued or joined therein in their personal capacity. Indeed, the pleadings herein are apparent that the 2<sup>nd</sup> Plaintiff/Applicant had sued Nine Sisters Limited and the Chief Land Registrar as the 1<sup>st</sup> and 2<sup>nd</sup> Defendants/Respondents respectively.
56. Secondly I have also looked at the Plaint dated 26<sup>th</sup> July 2023 herein filed at the Nakuru Environment and Land Court and more specifically at paragraph 8 which states as follows;
- “The 2<sup>nd</sup> Plaintiff acquired ownership and possession of Miti Mingi/Mbaruk Block 8/1361 (Kianjoya ‘D’), Miti Mingi/Mbaruk Block 8/1358 (Kianjoya ‘D’), Miti Mingi/Mbaruk Block 8/1359 (Kianjoya ‘D’) and Miti Mingi/Mbaruk Block 8/1360 (Kianjoya ‘D’) from the estate of Francis Githii (deceased) her late father upon devolution to the estate upon his demise.”
57. I have painstakingly gone through the court pleadings and note that there is nothing to show that the 2<sup>nd</sup> Plaintiff/Applicant herein had the locus standi to file the Application on behalf of the 1<sup>st</sup> Plaintiff who according to the above captioned Plaint at paragraph 7 was the alleged Proprietor of;
- ‘Miti Mingi/Mbaruk Block 8/1354 (Kianjoya ‘D’), Miti Mingi/Mbaruk Block 8/1353 (Kianjoya ‘D’), Miti Mingi/Mbaruk Block 8/1356 (Kianjoya ‘D’), Miti Mingi/Mbaruk Block 8/1357 (Kianjoya ‘D’)



Having acquired the same from the estate of Daniel Kimani (deceased) his late father upon devolution to the estate upon his demise.’

58. Having said that, from the sworn affidavit, annexures, submissions by the Plaintiff/Applicant’s Counsel, the applicable law and the decided cases, the following issues stand out for determination: -
- i. Whether the 1<sup>st</sup> Respondent’s Director one Mary Wambui Wanjigi and the Land Registrar Naivasha herein were served with or were made aware of the orders issued on 21<sup>st</sup> March 2024
  - ii. Whether the 1<sup>st</sup> Respondent’s Director one Mary Wambui Wanjigi and the Land Registrar Naivasha herein are guilty of contempt of Court orders issued on 21<sup>st</sup> March 2024.
59. The Court of Appeal in the *Shimmers Plaza Limited v National Bank of Kenya Limited* [2015] eKLR had posed the question whether knowledge of a Court order or Judgment by an Advocate of the alleged contemnor would be sufficient for purpose of contempt proceedings and answered the question in the affirmative stating: -
- “ We hold the view that it does. This is more so in a case as this one where the advocate was in Court representing the alleged contemnor and the orders were made in his presence. There is an assumption which is not unfounded, and which in our view is irrefutable to the effect that when an advocate appears in Court on instructions of a party, then it behooves him to report back to the client all that transpired in Court that has a bearing on the clients’ case...”
60. From the proceedings of the 14<sup>th</sup> March 2024, the Coram of the court on that day showed that one Nyasheth for the 1<sup>st</sup> Defendant/ Respondent herein was present when the impugned ruling was delivered and therefore going by the linear Court of Appeal’s holding herein above captioned, it can safely be said that the 1<sup>st</sup> Defendant/Respondent had knowledge of the Court’s orders and therefore personal service was unnecessary.
61. However, it later turned out through the sworn affidavit of the 1<sup>st</sup> Respondent’s Director Maina Wanjigi (now Deceased) that the firm of its former advocates on record, Vivian Kinyanjui Advocates had left the company in the dark on the happenings affecting the said parcels of land. That the 1<sup>st</sup> Defendant/Respondent was not aware that it had been sued and/or that there had been dispute with regard to the suit properties herein and neither was it aware of the impugned court’s order.
62. Indeed, vide her further Affidavit, the Applicant admitted to having served the court’s order of 21<sup>st</sup> March 2024 upon the 1<sup>st</sup> Defendant/Respondent’s former advocate on record who had connived with the 2<sup>nd</sup> Respondent to transfer the suit properties herein to the Interested Party without the consent and/or authority of the 1<sup>st</sup> Defendant/Respondent.
63. Lastly, the Affidavit of Service dated 28<sup>th</sup> March 2024 attached to the Applicant’s Application had indicated that it was ‘a staff at the Naivasha Land Registry’ who had received and acknowledged receipt of the said Courts Order. To me service that was improperly made without serving the person to be affected by it who had a statutory right to be served was improper.
64. The Court of Appeal in *Nyamodi Ochieng Nyamogo & another v Kenya Posts & Telecommunications Corporation (Civil Application 264 of 1993)* [1994] KECA 114 (KLR) (13 January 1994) (Ruling) had observed as follows;

“ Where the order is made against a company, the order may only be enforced against an officer of the company if this particular officer has been served personally with a copy of the order ...”



65. From the pleadings herein, I find that there is nothing in the affidavit of service to show that service was effected upon either the 1<sup>st</sup> Respondent's Director one Mary Wambui Wanjigi or the Land Registrar Naivasha of the impugned order nor is there any return of service to show that 1<sup>st</sup> Respondent's Director one Mary Wambui Wanjigi or the Land Registrar Naivasha were served with the order. I therefore find that both the 1<sup>st</sup> Respondent's Director one Mary Wambui Wanjigi and the Land Registrar Naivasha herein were not made aware of the orders issued on 21<sup>st</sup> March 2024 prior to the filing of the application for contempt.
66. On the second issue for determination as to whether the 1<sup>st</sup> Respondent's Director one Mary Wambui Wanjigi and the Land Registrar Naivasha herein brazenly disobeyed the orders of the Court and are guilty of contempt of Court order issued on 21<sup>st</sup> March 2024, I have anxiously considered the response to the Application by both the land Registrar and the interested party as well as the annexures to their respective responses and what comes out clearly was that the 1<sup>st</sup> Defendant/Respondent who was the Proprietor of the suit parcels of land herein allegedly sold the same to the Interested Party vide a sale agreement dated 19<sup>th</sup> July 2023 drawn by Vivian Kinyanjui Advocates and Commercial Conveyancer Limited wherein title deeds had been issued to him on 4<sup>th</sup> September 2023. That subsequently in October 2023, the parcels of land known as Miti Mingi/Mbaruk Block 8/1353, 1354, 1355, 1356, 1357, 1358, 1359, and 1360 (Kianjoya D) had been consolidated into one parcel of land whereupon, the titles therein had been closed on 16<sup>th</sup> November, 2023. The amalgamated land known as Mingi/Mbaruk Block 8/2891 had since been sub-divided into 33 plots. That subsequently in January 2024, parcel No. Miti Mingi/Mbaruk Block 8/1361 Kianjoya D was subdivided into 5 portions.
67. That contrary to the Applicant's allegations, the subsequent amalgamation and sub-division of the said suit properties had been done by the Interested Party herein and not the 1<sup>st</sup> Defendant /Respondent. Accordingly, by the time the impugned order of 24<sup>th</sup> March 2024 was issued, the aforementioned suit properties had ceased to exist wherein the legality of the said transaction is a matter that can only be determined at a full hearing and not in the instant Application for Contempt.
68. In an interesting turn of events, however, the Applicant in her Further Affidavit now seems to have shifted the blame to the former Advocate on record for the 1<sup>st</sup> Defendant and the former and current Land Registrars Naivasha urging the court to summon them to show cause why they should not be cited for contempt. This in my view are new issues seeking to amend pleading through the back door in contravention of the guiding principle in applications for leave to amend.
69. Whereas the standard of proof in cases of contempt of Court is well established as was held by the Court of Appeal in the case of Mutitika vs Baharini Farm Limited [1985] KLR 229, 234 where it 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.”
70. The Supreme Court of Kenya on the other hand in Republic v Ahmad Abolfathi Mohammed & Another [2018] eKLR held that;
- “The 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.”



71. There having been no proper service effected upon the alleged contemnors who were not even parties to the suit, the impugned orders having been made in reference to non-existent parcels of land, and the 2<sup>nd</sup> Plaintiff having no locus standi to file suit on behalf of the 1<sup>st</sup> Plaintiff, I find no merit in the application dated the 24<sup>th</sup> September 2024, and I accordingly dismiss it with costs.

**DATED AND DELIVERED VIA TEAMS MICROSOFT AT NAIVASHA THIS 3<sup>RD</sup> DAY OF JULY 2025.**

**M.C. OUNDO**

**ENVIRONMENT & LAND – JUDGE**

