



**Raphael & another v Righa (Environment and Land Appeal E007 of 2023)  
[2025] KEELC 5270 (KLR) (Environment and Land) (15 July 2025) (Ruling)**

Neutral citation: [2025] KEELC 5270 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT VOI  
ENVIRONMENT AND LAND  
ENVIRONMENT AND LAND APPEAL E007 OF 2023  
EK WABWOTO, J  
JULY 15, 2025**

**BETWEEN**

**MATILDA JUMWA RAPHAEL ..... 1<sup>ST</sup> APPELLANT**

**MARRIAM MWENDA KIRERI ..... 2<sup>ND</sup> APPELLANT**

**AND**

**PAULINE WAKIO RIGHA ..... RESPONDENT**

**RULING**

1. This Ruling is in respect to the Appellants application dated 15<sup>th</sup> April 2025 which seeks the following orders:-
  - i. Spent...
  - ii. That an order of contempt of court do issue against the Respondent.
  - iii. That this honourable court be pleased to make an Order for the arrest and committal to civil jail and/or payment of a fine against the Respondent for disobeying this honourable court Orders issued on 22<sup>nd</sup> November 2024.
  - iv. That the Officer Commanding Station (O.C.S) Voi Police Station be authorized to execute and/or ensure compliance of the court orders herein.
  - v. That the court be pleased to make any other orders as meets the ends of justice.
2. The application is based on the provisions of Section 29 of the *Environment and Land Court Act*, Order 40 Rule 3 of the Civil Procedure Rules, 2010 and Sections 1A, 1B, 3A and 63 of the *Civil Procedure Act* as well as Section 5 of the *Judicature Act*.



3. The Respondent upon being served, filed a Replying Affidavit on 16<sup>th</sup> May 2025 in opposition to the application.
4. The Appellants/Applicants filed a Further Affidavit sworn on 19<sup>th</sup> May 2025 in response to the averments contained in the Respondent's Replying Affidavit.
5. It was contended that this honourable court made orders of injunction against the Respondent on the 22<sup>nd</sup> day of November 2024 restraining her from trespassing on the Appellants' land and from carrying on any activities thereon.
6. It was further contended that the Respondent who has all through been aware of the existence of the said orders, intentionally, wilfully and in utter contravention of the said court order, by herself and/or agents has since continuously interfered with the suit property herein by entering and engaging in farming activities thereon.
7. It was averred that the Respondent is fully aware of the said orders as she was present in court when the orders were issued and was subsequently served with the decree dated 22<sup>nd</sup> November 2024 and as such she had knowledge of the impugned orders.
8. It was also averred that the Respondent's wilful and deliberate actions are an affront to the dignity of the court as well as the rule of law and as such, there is need to have her cited for contempt to protect that dignity and rule of law.
9. The Respondent averred that the Applicant is seeking orders against her for contempt and that she has not in any way disobeyed court orders as given. That the portion of 50ft by 100ft portion of the said property has not ascertained.
10. It was also averred that the Applicants have destroyed and demolished his structures on the subject property.
11. She also averred that she has not in any way interfered with the property since the specific portion has not been ascertained.
12. She also averred that she has since lodged an appeal in this matter and that notwithstanding she has not in any way interfered with any activities on the suit property save for where her house is.
13. The Appellant also filed written submissions in support of the application which the court has considered.
14. The main issue for consideration herein is whether the application is merited and deserving the grant of the orders sought.
15. With regards to the issue of contempt, I have considered the case of *Sam Nyamweya & Others v Kenya Premier League Ltd and Others* [2015] eKLR where it was stated as follows:

“Contempt of court is constituted by conduct that denotes willful defiance of or disrespect towards the court or that willfully challenges or affronts the authority of the court or the supremacy of the law, whether in civil or criminal proceedings.”[Emphasis mine]
16. In *North Tetu Farmers Co. Ltd v Joseph Nderitu Wanjohi* [2016] eKLR, the Court discussed the threshold that would constitute contempt as follows:

“There are essentially four elements that must be proved to make the case for civil contempt. The applicant must prove to the required standard (in civil contempt cases which is higher



than civil cases) 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." [Emphasis mine]

17. In the instant application, knowledge and existence of the orders issued by the court have been admitted save for the fact that the portion measuring 50ft x 100 ft of the said parcel was not ascertained and as such she can't be cited for contempt.
18. In the instant application, the court is not satisfied that there was wilful and deliberate disobedience of the orders issued by the court considering that the exact location of the portion measuring 50ft by 100ft has not been ascertained by both parties a position which was also conceded by the Appellant and as such it is the finding of this court that the application does not meet the threshold for grant of the reliefs sought and the prayers sought are declined.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT VOI THIS 15<sup>TH</sup> DAY OF JULY 2025.**

**E. K. WABWOTO**

**JUDGE**

**In the presence of:-**

**Mr. Mutinda for the Appellant/Applicants.**

**Mr. Mosioma for the Respondent.**

**Court Assistant: Mary Ngoira.**

