



**Saika v Teeka & 2 others (Environment and Land Appeal
4 of 2017) [2025] KEELC 5300 (KLR) (14 July 2025) (Judgment)**

Neutral citation: [2025] KEELC 5300 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAROK
ENVIRONMENT AND LAND APPEAL 4 OF 2017**

MN KULLOW, J

JULY 14, 2025

BETWEEN

JACKSON TOMPOI OLE SAIKA APPELLANT

AND

JOSEPHINE KIRAMATICHO TEEKA 1ST RESPONDENT

VERONICA WANGOI TEEKA 2ND RESPONDENT

MARY NDONAISHI 3RD RESPONDENT

JUDGMENT

1. This interlocutory appeal was commenced vide the memorandum of appeal dated 23rd June 2014. It was triggered by the ruling of Hon. Zainab Abdul (Resident Magistrate) delivered on 11th June 2014 in Civil Suit No.97 of 2013 at the Chief Magistrate's court, Narok.
2. The appellant raised 6 grounds of appeal and sought that the lower court's ruling of 11.6.2014 be set aside with costs of the appeal as well as the lower court.
3. To bring the appeal into perspective, the respondents herein had sued the appellant herein vide a plaint dated 2nd July 2013 accusing him of shifting the boundary to his property known as Cis-Mara/Nkoben /169 and encroaching on a sizeable parcel of their property known as Cis-Mara/Nkoben/14 which they alleged borders the appellant's parcel. They sought a permanent injunction restraining him from interfering with their parcel of land.
4. Simultaneously with the plaint, the Respondents who were the plaintiffs in the lower court filed an application dated 2nd July 2013 seeking an interlocutory injunction restraining the appellant from interfering with their parcel known as Cis-Mara/Nkoben/14. On 10th July 2013, the lower court allowed an interim injunction pending hearing of the Notice of Motion dated 2nd July 2013.



5. Subsequently, a Notice of Motion dated 22nd January 2014 seeking to cite the appellant herein for contempt of court was filed and on 11.6.2014, the lower court found the appellant to be in contempt of its interim orders of 10th July 2014.
6. The appeal was canvassed vide written submissions. In his submissions dated 2.9.2019, the appellant condensed his 6 grounds of appeal to one ground, being that the learned magistrate erred in law and in fact in finding him guilty of contempt of court without sufficient evidence.
7. Relying on the case of *Kiruga v Kiruga & another* [1988] KLR348 as well as the case of *Kamau v Mungai & another* [2006]1 KLR 150, the appellant urged the court to evaluate the evidence at trial afresh.
8. He further submitted that he had outlined in his replying affidavit to the motion seeking to cite him for contempt of court that his parcel, Cis-Mara Nkobon 1/169 shares a boundary with Cis-Mara Nkobon 1/17 hence it does not border the defendant's parcel Cis-Mara Nkobon 1/14 and that the learned magistrate even after conducting a site visit failed to highlight and appreciate discrepancies on the map and on the ground therefore arriving at the wrong conclusion despite observing that the situation on the ground was totally different from the map.
9. It was also argued that the circumstances complained of by the respondent as forming part of the contempt did not have ascertainable duration of existence and that the learned magistrate noted so in her ruling.
10. While the issue of jurisdiction of the of the magistrate's court was not a ground for appeal, the appellant raised the issued during submissions arguing that at the time of the lower court's decision, 11th June 2014, the court had no jurisdiction to punish for contempt save if it was committed on the face of the court.
11. To buttress his arguments, the appellant relied on the case of *Kyoga Hauliers Limited v Long Distance Truck Drivers & Allied Workers Union* [2015] eKLR as well as the case of *Ramadhan Salim v Evans M. Maabi T/a Murphy Auctioneers & another* [2016] eKLR.
12. On their part, the respondents filed submissions dated 17.10.2019 in opposition to the appeal. They contended that the appellant was in contempt of court orders and that the learned magistrate judiciously cited him for contempt having visited the subject parcel of land on 21st March 2014 and established the fact. To this end, they relied on the case of *Econet Wireless Kenya Limited v Minister for Information Communication of Kenya & another* [2005] eKLR as well as the case of *Teachers Service Commission v Kenya National Union of Teachers, Wilson Sossion and Mudzo Nzili, Industrial Court of Kenya Petition Cause No.23 of 2013*.

Issues

- a. Whether the learned magistrate had jurisdiction to cite the Appellant for contempt of court.
- b. whether the learned magistrate cited the appellant for contempt of court without sufficient evidence.

Analysis

13. The court has considered the memorandum of Appeal, submissions filed as well as the record of appeal. This being a first appeal, the court has also re-appraised the evidence presented at the trial court afresh.



14. The question of jurisdiction of the learned magistrate to punish for contempt came up at the submission stage. It is trite that the issue of jurisdiction can be raised at any stage. In *Kenya Ports Authority v Modern Holding [EA] Limited* [2017] eKLR, the Court of Appeal stated;

“We have stressed that jurisdiction is such a fundamental matter that it can be raised at any stage of the proceedings and even on appeal, though it is always prudent to raise it as soon as the occasion arises.”
15. Prior to the enactment of the magistrate’s *Act No. 46 of 2016*, learned magistrates had no jurisdiction to punish for contempt save for acts of contempt on the face of the court or disobedience of orders with regard to grant of temporary injunction under order 40 of the *Civil Procedure Act*. Being that the subject appeal concerns contempt proceedings related to an injunction issued on 10th July 2013, under Order 40, the learned magistrate in Civil Suit No.97 of 2013 was within her jurisdiction when she considered contempt proceedings against the appellant and gave her ruling dated 11th June 2014.
16. On the 2nd issue, it is on record that on 21st March 2014, the learned magistrate went on a site visit to ascertain whether the appellant had committed acts of disobedience of court orders complained of by the respondent being that he had erected a fence, constructed a dam and destroyed vegetation by logging trees and cultivating maize and beans on their land.
17. In her ruling of 11.6.2014, the learned magistrate noted as follows at page 4 paragraph 10; “...surprisingly, the situation on the ground was totally different from the map for reasons best known by the District Land Registrar”... “I enquired from the parties the owner of the dam and the maize plantation. The applicants said they belonged to the respondent who in turn confirmed to the court that it was true.”
18. She further stated as follows at paragraph 20; “...be that as it may, there were activities ongoing by the Respondent on CIS Mara/Nkobon/14 in apparent disobedience of the injunction order.”
19. In my considered view, being that there was a boundary dispute between the appellant and the respondents, the learned magistrate misdirected herself by making a finding that the appellant had encroached on the respondent’s parcel even after observing that the map did not tally with the ground and there was contention as to where the boundary between the appellant’s parcel and the respondents’ parcel fell.
20. In my view, the ascertainment of boundaries was important because the interim orders of 10th July 2014 restrained the appellant from encroaching on the respondents’ parcel so it was important to ascertain that he had. Additionally, the standard of proof in contempt proceedings is higher than that of a balance of probability. In *Mutitika v Baharini Farm Ltd* [1985] eKLR, the Court of Appeal stated,

“...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. We envisage no difficulty in courts determining the suggested standard of proof. The standard of proof beyond reasonable doubt ought to be left where it belongs, to wit, in criminal cases...”
21. Finally, Section 18(2) of the *Land Registration Act* prohibits the court from entertaining disputes on boundaries of registered land unless the boundaries have been determined in accordance with the provision. In the circumstances, the appeal is merited.
22. The court therefore issues orders;



A. That the ruling and orders delivered on 11th June 2014 in Civil Suit No.97 of 2013 at the Chief Magistrate's court, Narok be and are hereby set aside with costs to the Appellant.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 14TH DAY OF JULY, 2025

MOHAMMED A KULLOW

JUDGE

In the presence of:

..... for the Appellant

..... for the Respondents

Philomena W. Court Assistant

