



**SNM v MMM (Environment and Land Appeal E026 of 2023)
[2025] KEELC 6122 (KLR) (16 September 2025) (Judgment)**

Neutral citation: [2025] KEELC 6122 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIRONMENT AND LAND APPEAL E026 OF 2023
BM EBOSO, J
SEPTEMBER 16, 2025**

BETWEEN

SNM APPELLANT

AND

MMM RESPONDENT

(An appeal against the Ruling of the Chief Magistrate Court at Maua (Hon. T. Gesora, CM) rendered on 6/9/2023 in Maua Chief Magistrate Court Environment and Land Case No. E026 of 2023)

JUDGMENT

Introduction

1. The two parties to this appeal are husband and wife. The appeal challenges the ruling rendered by the Chief Magistrate Court at Maua (Hon. T. Gesora) on 6/9/2023 in Maua CMC E&L Case No. E055 of 2020. Through the impugned ruling, the Chief Magistrate Court (hereinafter referred to as “the Lower Court”) found the appellant guilty of contempt of the order issued by the court on 18/8/2022. One of the key issues to be determined in this Judgment is whether the respondent proved contempt by the appellant. I will outline a brief background to the appeal before I analyse and dispose the issues that fall for determination in the appeal.

Background

2. The two parties to the appeal are husband and wife. Through a plaint dated 15/7/2020, the respondent instituted Maua CMC E&L Case No. E055 of 2020 against the appellant. Among other reliefs, she sought a declaration that the appellant held 8 parcels of land in trust for her. In addition, she sought an order restraining the appellant against selling, leasing disposing or using the 8 parcels without



her involvement and consent. Among the 8 parcels was a parcel that was described as Antubetwe Kiongo/2986.

3. The respondent's case was that they were husband and wife, having contracted a statutory marriage on 7/10/1984. They established their matrimonial home at Kanuni Village, Antubetwe Kiongo Location, Igembe North Sub County. Their union was blessed with 5 children. She added that she was employed by the Teachers Service Commission as a teacher while the appellant was employed as a Chief in the Area but lost his job in their ninth year of marriage. She contended that during their marriage, they jointly acquired the 8 parcels together with Motor Vehicle KAA 911J. All the eight parcels and the car were registered in the name of the appellant.
4. The respondent further averred that the appellant abandoned the family and relocated to the family's rental premises located on parcel number Antubetwe Kiongo/4178. She added that the appellant was in the process of disposing the 8 parcels.
5. The appellant filed a defence dated 22/7/2022 in which he contested the respondent's claim. He averred that the respondent never contributed to the acquisition of 'any movable properties', adding that he acquired all the itemized properties before he lost his job as a chief. He denied existence of a trust in relation to the parcels, adding that during the union, the respondent acquired her own properties which he itemized in the defence. He denied abandoning the matrimonial home and contended that it was the respondent who 'left her matrimonial bed upon being accosted by' him. He contested the jurisdiction of the lower court, contending that the dispute before court was a matrimonial dispute which had been disguised as a land case. He urged the court to dismiss the claim.
6. Together with the plaint, the respondent filed a notice of motion dated 15/7/2020 seeking interlocutory inhibitory orders relating to the 8 parcels and interlocutory injunctive orders restraining the appellant against evicting her or interfering with her use of Antubetwe Kiongo/2986 which she described as their matrimonial home. On 16/7/2020, the lower court granted the two reliefs on interim basis, pending the inter-parties hearing and determination of the interlocutory application.
7. Subsequently, the appellant and the respondent's advocates executed and filed a consent dated 29/7/2020 settling the dispute in the following verbatim terms:
 1. That the plaintiff shall use miraa exclusively planted in LR Antubetwe Kiongo/2986 for her family needs.
 2. That the above property shall be used properly and shall not be damaged.
 3. That each party to bear its own costs.
 4. The matter be marked as settled.
8. Subsequently, the appellant filed an application dated 2/9/2020 praying for inter alia: (a) an order setting aside the above consent; and (b) an order appointing a panel of elders to mediate between the couple. The lower court allowed the application through a ruling dated 18/3/2021.
9. The mediation did not yield a settlement. Consequently, the appellant was granted leave to file a defence and the matter was listed for pre-trial on 28/7/2022. On 28/7/2022, the court listed the suit for hearing on 16/10/2022.
10. Subsequent to that, the respondent filed an application dated 18/8/2022, seeking the following verbatim orders:
 1. That the application be certified urgent and be heard exparte in the 1st instance.



2. That the honourable court be pleased to reissue restraining orders against the defendant from plucking miraa and or interfering with plaintiff's possession and use of land parcel no. Antubetwe/Kiongo/2986 pending the hearing and determination of this application.
 3. That the honourable court be pleased to reissue restraining orders against the defendant from plucking miraa and or interfering with plaintiff's possession and use of Land Parcel No. Antubetwe/Kiongo/2986 pending the hearing and determination of this suit.
 4. That the honourable court be pleased to reinstate the court order issued on 16/7/2020 by the honourable court.
 5. That the OCS Laare Police Station to ensure compliance herein.
 6. That costs be in cause.
11. On the same day, 18/8/2022, the lower court made the following verbatim orders:
- “In view of the submissions by counsel and the ruling on 18/3/2021 that set aside the consent, it's only fair in my view that the order given on 16/7/2020 be reinstated and is hereby reinstated and the application be heard on merit in order to secure the substratum of the suit. It's not fair to let applicant be evicted from the matrimonial home. Orders to issue in terms of prayer (b) (c) and (d) of the application dated 15/07/2020. Parties to appear before me for direction on 01/09/2020.”
12. On 30/11/2022, the appellant filed a notice of motion dated 28/11/2022 seeking orders staying and varying/discharging/setting aside the above order. As at the point of lodging this appeal, there was no indication that the application dated 28/11/2022 had been prosecuted or disposed.
 13. It is also important to observe that the appellant filed a notice of preliminary objection dated 19/8/2022, inviting the court to strike out the suit in limine on the ground that the suit offended Section 17 of the *Matrimonial Property Act*, Act No. 49 of 2013. Vide a brief ruling dated 8/3/2023, the lower court rejected the said preliminary objection.
 14. On or about 18/5/2023, the respondent filed a notice of motion dated 17/5/2023 seeking an order committing the appellant to civil jail for a period of 6 months or any other period or punishment for disobeying the court order issued on 18/8/2022. In addition, the respondent invited the court to take the evidence of the OCS of Laare Police Station during the hearing of the application.
 15. The application was subsequently canvassed through written submissions. At the hearing of the application, nothing was said about the prayer inviting the court to take the evidence of the OCS. Ultimately, the court rendered the impugned ruling on 6/9/2023 in the absence of the parties. For clarity, the proceedings of 6/9/2023 are reproduced herebelow verbatim:

“Defence counsel has not appeared or availed his client though I clearly ordered that he appears. Counsel has not sent anyone to hold his brief and has therefore failed in his mandate. Ruling is read. Warrant of arrest to issue for the defendant and he be committed to civil jail for 30 days. The order he disobeyed shall continue to be in force until the case is heard and determined. OCS Laare Police Station to execute the warrant. SIGNED 6/9/2023 in open court. Coram as above.”



Appeal

16. Aggrieved by the ruling read on 6/9/2023 and the consequential orders made on the same day, the appellant lodged this appeal, advancing the following five (5) grounds of appeal:
 1. That the Learned Chief Magistrate erred in Law and in fact in disregarding the principles of injunction, the rule of law and *the Constitution* of Kenya 2010 thus arriving at an erroneous finding and decision.
 2. That the Learned Trial Magistrate erred in law and in fact in confirming interim injunction orders and issuing orders to that effect without hearing the said application inter-parties.
 3. That the Learned Trial Magistrate's ruling/order offends the provisions of Order 40 Rule 4(2) & (4) of the Civil Procedure Rules Cap 21 Laws of Kenya.
 4. The entire/order issued on 6th September is against the weight of evidence.
 5. The Learned Trial Magistrate's ruling/order is extremely unfair, unjust and against the tenets of natural justice and the rule of law.
17. The appellant urged this court to allow the appeal and set aside the ruling/order of 6/9/2023. He also prayed for costs of the appeal.

Appellant's Submissions

18. The appellant filed written submissions dated 22/4/2025 through M/s Frank Gitonga & Associates. On the contention that the ruling/order issued by the trial court offended the provisions of Order 40 Rule 4(2) & (4) of the Civil Procedure Rules, counsel contended that the orders which gave rise to the contempt proceedings were issued by the court on 18/8/2022. Counsel submitted that the said interim injunction orders were brought under Order 40, rules 1 & 2 of the Civil Procedure Rules. Counsel further argued that the interim order did not determine with finality the substantive rights and liabilities of the parties in relation to the subject matter and neither did they determine the merits of the case.
19. Counsel submitted that the application dated 18/8/2022 was slated for mention for directions on 1/9/2022 and on the said date, interim orders were extended for the first time on 6/10/2022. Counsel argued that on 6/10/2022, the said orders were not extended. Counsel submitted that the parties digressed from the substantive cause and submitted on a preliminary objection filed on 19/8/2022. Counsel argued that the injunction application and the consequential orders were abandoned at that point.
20. Counsel submitted that the application dated 18/8/2022 and the interim orders were never addressed until 17/5/2023 when the respondent filed the contempt application, which culminated in this appeal. Counsel submitted further that an ex parte interim order is temporary and is conditional and if it is not extended on the date of interpartes hearing, the order automatically lapses. Counsel relied on the case of S.R. Muralidhar Vs Raj Dhani Theatre (AIR 2004 Dheli 186) and Nelifa Holdings Limited Vs Kanee (Civil Appeal No. E026 of 2023). Counsel argued that the orders issued on 18/8/2022 did not exist in the eyes of the law and therefore could not amount to contempt.
21. On the contention that the appellant was in contempt of the interim ex parte orders issued on 18/8/2022, counsel submitted that a party cannot be held in contempt for disobeying an order that has already lapsed. Counsel further submitted that contempt can only be in respect of a valid existing and binding court order.



22. Counsel argued that the appellant kept away from his land in obedience to the court order for 5 months before he resumed plucking miraa. Counsel submitted that it was unclear when the alleged contempt occurred since it was not 22/8/2022. Counsel relied on the case of Kenya Tea Development Agency Ltd v Francis Karau Mbugua & 2 others (2020) eKLR and the case of Shimmers Plaza Limited Vs National Bank of Kenya Limited (2015) eKLR.
23. Counsel submitted that the order dated 18/8/2022 was ambiguous in its wording. Counsel further submitted that the contempt proceedings were in respect of Order 2. Counsel contended that the appellant did not evict the respondent nor interfere with her use of Antubetwe Kiongo/2986 in any way or at all. Counsel argued that the appellant was unjustly punished for contempt of a non-existent order.

Respondent's Submissions

24. The respondent opposed the appeal through written submissions dated 24/4/2025, filed by M/s Mutembei & Kimathi Advocates. Counsel for the respondent submitted that the appellant was fully aware of the existence of the injunction orders because in paragraphs 12 and 13 of his replying affidavit, he admitted having entered the land and plucked miraa after being obedient for five months. Counsel argued that interim orders are usually rendered by the court during the pendency of a suit to ensure that the interests of the parties are safeguarded.
25. Counsel further submitted that the appellant willfully defied the orders of the court by entering the suit land and plucking the miraa that the respondent was supposed to use, which actions were deliberate and in contempt of the existing interim order, adding that the interim order was not ambiguous.
26. Counsel argued that when allegations of contempt are raised, the contemnor must either purge it or be punished for it. Counsel further argued that an order made by a court should be obeyed unless the order is discharged. Counsel relied on the case of New Testament Church of God v Charismata Revival Network & another (2004) eKLR.

Analysis and Determination

27. I have read and considered the original record of the Lower Court; the record filed in this appeal; the grounds of appeal; and the parties' respective submissions. I have also considered the relevant legal frameworks and jurisprudence. The two issues identified by the appellant translate to the single question as to whether the respondent proved contempt on part of the appellant in relation to the order issued by the Lower Court on 18/8/2022.
28. This is a first appeal. The task of a first appellate court was summarized by the Court of Appeal in the case of Susan Munyi v Keshar Shiani (2013) eKLR as follows;

“As a first appellate court our duty of course is to approach the whole of the evidence on record from a fresh perspective and with an open mind. We are to analyze, evaluate, assess, weigh, interrogate and scrutinize all of the evidence and arrive at our own independent conclusions.”
29. The principle was similarly outlined in Abok James Odera t/a A. J Odera & Associates v John Patrick Machira t/a Machira & Co Advocates [2013] eKLR as follows:

“This being a first appeal, we are reminded of our primary role as a first appellate court, namely, to re-evaluate, re-assess and re-analyse the extracts on the record and then determine



whether the conclusions reached by the learned trial judge are to stand or not and give reasons either way.”

30. The order of 18/8/2022 was issued at an ex-parte stage after the lower court considered the respondent’s application of even date. At that ex-parte stage (and without hearing the appellant), the lower court rendered itself as follows:

“In view of the submissions by counsel and the ruling on 18/3/2021 that set aside the consent, it’s only fair in my view that the order given on 16/7/2020 be reinstated and is hereby reinstated as the application be heard on merit in order to secure the substratum of the suit. It’s not fair to let applicant be evicted from the matrimonial home. Orders to issue in terms of prayer (b), (c) and (d) of the application dated 15/07/2020. Parties to appear before me for directions on 01/09/2022.”

31. The respondent’s application dated 18/8/2022 had sought the following verbatim reliefs:

1. That the application herein be certified urgent and be heard ex-parte in the 1st instance.
2. That the honorable court be pleased to reissue restraining orders against the defendant from plucking miraa and or interfering with plaintiff’s possession and use of land parcel no. Antubetwe/Kiongo/2986 pending the hearing and determination of this application.
3. That the honorable court be pleased to reissue restraining orders against the defendant from plucking miraa and or interfering with plaintiff’s possession and use of land parcel no. Antubetwe/Kiongo/2986 pending the hearing and determination of this suit.
4. That the honorable court be pleased to restate the court order issued on 16/7/2020 by the honorable court.
5. That costs be in cause.

32. It is not clear why the lower court did not address itself to the reliefs that were sought in the formal application that was before it. Instead of focusing on the reliefs that were sought in the application dated 18/8/2022, the lower court focused on reliefs that did not exist in the application dated 18/8/2022. Prayers “(b), (c) and (d)” which the lower court granted did not exist in the application dated 18/8/2022. Similarly, prayers “(b), (c), and (d)” did not exist in the preceding application dated 15/7/2020.

33. It is not known where the lower court got prayers “(b), (c) and (d)” from. It is also not known where the lower court extracted the formal order issued on 18/08/2022 from. Even assuming that prayers “(b), (c) and (d)” were to be interpreted as prayers 2, 3 and 4 of the application dated 15/7/2022, prayer (3) was to abide the hearing and disposal of the main suit and not the application. Yet the extracted order makes reference to “the hearing and determination of the application dated 18/8/2022.”

34. Clearly, prayers “(b), (c) and (d)” which the appellant was alleged to have disobeyed did not exist in either of the two applications. Put differently, there was nothing to be formally extracted out of the orders of 18/8/2022 in terms of restraining orders.

35. To establish contempt, the respondent was required to prove existence of a valid and subsisting court order. She was also required to establish disobedience of the court order by the appellant. Prayers “(b), (c) and (d)” which she was granted did not exist in either of the two applications, meaning that she procured nothing in terms of restraining orders.



36. This is not the only misdirection that emerge from the orders of 6/9/2023. The Lower Court, suo motto, decided to extend the order of 18/8/2022 to the time of hearing and determination of the main suit. This was irregular because the application dated 18/8/2022 had not been heard. Effectively, the Application dated 18/8/2022 was being granted without it being set down for interpartes hearing.
37. For the above reasons, this court comes to the finding that the respondent did not prove contempt on part of the appellant in relation to the orders made by the court on 18/8/2022. On costs, the above error was committed by the court. Consequently, parties will bear their respective costs of this appeal.
38. In exercise of its supervisory jurisdiction, the court will make some two observations which do not turn on the already determined issue in this appeal. Article 50 of *the Constitution* required the lower court to direct service of the application dated 18/08/2022 and hear the parties on the application. The lower court dealt with the said application without according the appellant the right to be heard on it. Consequently, the application is yet to be heard interpartes. Similarly, the application dated 15/07/2020 is yet to be heard. Secondly, the case in the lower court is a 2020 dispute. It is important to hear and dispose the main suit without further delay.
39. For the reasons set out above, this appeal succeeds and is disposed in the following terms:
 - a. The ruling of the Lower Court read on 6/9/2023 and the consequential orders made pursuant to the said ruling in Maua CMC E& L Case No. E055 of 2020 are set aside and the application dated 17/5/2023 is marked “dismissed with costs in the cause”.
 - b. The two pending applications dated 15/7/2020 and 18/8/2022 and the main suit shall be disposed forthwith.
 - c. Parties shall bear their respective costs of this appeal.

DATED, SIGNED AND DELIVERED AT MERU THIS 16TH DAY OF SEPTEMBER, 2025.

B M EBOSO [MR]

ELC JUDGE

