



James & 13 others (On behalf of themselves and 396 Persons) v B2 Yatta Ranching Co-operative Society Limited & 7 others (Environment & Land Petition 12 of 2021) [2023] KEELC 16228 (KLR) (7 March 2023) (Ruling)

Neutral citation: [2023] KEELC 16228 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KITUI
ENVIRONMENT & LAND PETITION 12 OF 2021**

LG KIMANI, J

MARCH 7, 2023

IN THE MATTER OF FUNDAMENTAL RIGHTS AND FREEDOMS OF INDIVIDUALS UNDER ARTICLES 2, 10, 26, 27, 28, 29, 40, 43 AND 47 OF THE CONSTITUTION AND IN THE MATTER OF RIGHTS TO USE AND OCCUPY L.R NUMBERS 11802 AND 12010

BETWEEN

**STEPHEN M. JAMES 1ST PETITIONER
FRANCIS MUSYIMI MASYUKI 2ND PETITIONER
PHILIP MUSYOKA KITHIKII 3RD PETITIONER
BENSON MATOI KINYENZE 4TH PETITIONER
SHADRACK KYALO KAMENDE 5TH PETITIONER
GEORGE ITHANZU MWENDWA 6TH PETITIONER
PATRICK MAKAU SIMON 7TH PETITIONER
JOSEPHAT MAINGI MATITI 8TH PETITIONER
SIMON KILONZI 9TH PETITIONER
JAMES MBETI NZELU 10TH PETITIONER
ALEXANDER MWANIA MUSYA 11TH PETITIONER
MESHACK KYALO KAVULU 12TH PETITIONER
VUNDI MUTUA 13TH PETITIONER
MAURICE EMMANUEL KAVITI 14TH PETITIONER
ON BEHALF OF THEMSELVES AND 396 PERSONS**

AND



**B2 YATTA RANCHING CO-OPERATIVE SOCIETY LIMITED 1ST
RESPONDENT**

THE COUNTY GOVERNMENT OF KITUI 2ND RESPONDENT

**KATOTENI NGUAMUKA FARMERS ENVIRONMENTAL
CONSERVATION 3RD RESPONDENT**

MWENE MUUNDA WELFARE ASSOCIATION 4TH RESPONDENT

**THE COUNTY COMMANDER, NATIONAL POLICE SERVICE MACHAKOS
COUNTY 5TH RESPONDENT**

**THE COUNTY COMMANDER, NATIONAL POLICE SERVICE KITUI
COUNTY 6TH RESPONDENT**

THE COUNTY COMMISSIONER, MACHAKOS COUNTY .. 7TH RESPONDENT

THE COUNTY COMMISSIONER, KITUI COUNTY 8TH RESPONDENT

RULING

1. The application subject matter of this ruling is the Notice of Motion under Certificate of urgency dated February 24, 2022 where the Petitioners seek orders:
 1. Spent.
 2. That this court do issue summons directed to the following persons to attend court and show cause why contempt of court proceedings should not be taken against them.
 - a. The chairman of B2 Yatta Co-operative Society Limited;
 - b. The chairman of Katoteni Nguamuka Farmers Environmental Conservation;
 - c. The County Commander of Police, Kitui County;
 - d. The officer in charge of Kanyonyoo police post;
 - e. Officer in charge of Kwa Vonza Police Station;
 - f. The officer in charge of Kyusani Police station; and
 - g. Wycliffe Oguk.
 3. That the following persons be cited for contempt and sentenced to six months in jail and/or fined such amount as this court may deem fit or both for disobeying this court's orders dated August 27, 2020 and extended from time to time.
 - a. The Chairman of B2 Yatta Ranching Cooperative Society Limited;
 - b. The Chairman of Katoteni Ngamuka Farmers Environmental Conservation;
 - c. The County Commander of Police, Kitui County;
 - d. The officer on charge of Kanyonyoo Police post;
 - e. Officer in charge of Kwa Vonza Police station;



- f. The officer in charge Kyusyani Police Station; and
 - g. Wycliffe Oguk.
2. The grounds relied upon are that there exists a court order issued by the court on the August 27, 2020 restraining the respondents and any person acting under them from evicting the petitioners from the suit properties Land Parcels LR 12010 and 11802 but that the respondents have persistently sustained actions against the Petitioners, technically forcing the petitioners to vacate the lands in dispute.
 3. The application is supported by the affidavit of Francis Musyimi Masyuki, the 1st Petitioner who stated that the 2nd, 3rd, 4th and 6th made efforts of evicting the Petitioners from the suit lands by bringing down their houses, stealing their livestock, assaulting their members, threatening to arrest them and actually arresting some of the petitioners.
 4. The 1st Petitioner named some incidents that occurred on November 11, 2020, November 21, 2020 and December 11, 2020 where police officers under the command of the 6th Respondent allegedly harassed the Petitioners and detained some of them. He also alleged that on November 30, 2020, the head of station at Kyusyani Police Station charged three of their members with a made-up offence of preparation to commit a felony.
 5. Following these incidences, the 1st Petitioner averred that they instructed their advocates to write a letter to the 6th Respondent, which was done and served upon them on 12-12-2020. He alleges that the police officers were acting in favour of and at the behest of the 2nd, 3rd and 4th Respondents who occupy parts of the lands in disputes, but have never been touched or even threatened by police officers. The police officers seemingly abstained from the said acts after service of the demand letter until mid-2021 when the 2nd defendant assaulted two of their members as they were grazing their livestock within their abodes and the incident was reported but the petitioners state that they were only threatened with arrests and their complaints have never been recorded or given any consideration.
 6. Further, the 1st Petitioner deposed that one Ngovi Mainga was arrested on January 8, 2022 and one Sammy Kiilu on January 15, 2022 summoned by Wycliffe Oguk, an officer of Lower Yatta Sub-county DCI offices and they were repeatedly told to leave the land or the trend of arrests and intimidation will continue if the so not. He also alleges that in the diverse dates of January 12, 2022, January 15, 2022 and February 16, 2022, police officers from Kanyonyoo police station invaded their homes, beat them mercilessly and chased them away from their farms and homes.
 7. According to the 1st Petitioner, the 2nd, 3rd and 4th Respondents are settlers just like them and have no papers on the suit lands. He deposes that their aim is to evict the petitioners from the suit lands so that they can have a head start on the Petition. He therefore prays that the respondents be found in contempt of court and punished accordingly.

Applicant's submissions

8. Counsel for the Petitioners submitted that in dealing with the question of contempt, the court underscored the importance of obeying court orders in the quoted case of *Econet Wireless Kenya Ltd v Minister for Information and Communication of Kenya & another* (2005) KLR 828. He also submitted that contempt of court is in the nature of criminal proceedings and therefore, the standard of proof is higher than that of a balance of probability, citing the case of *Gatharia K Mutikika v Baharini Farm Limited* (1985) KLR 227 as well as the cases of *Peter K Yego & others v Paulie Wekesa Kode* and *Katsuri Limited v Kapurchand Depot Shah* (2016) eKLR where the courts held that this contempt must be proven.



9. The Petitioners reiterated the various incidences deposed in the supporting affidavit of being harassed by police officers and detained and stated that it is clear from these incidences that the respondents are determined to evict the petitioners when there is a valid court order which the respondents are aware of, to their selfish interest. In their view, they have demonstrated that the Respondents are in contempt of court orders and should be punished accordingly.

1st Respondent's case

10. The 1st Respondent filed Grounds of Opposition dated July 21, 2022 opposing the present application on the following grounds:
1. The application as filed is fatally defective as it is founded on the wrong provisions of law.
 2. The 1st Respondent is not and has no connection whatsoever with the people/institutions named on the face of the said application.
 3. No evidence has been shown to prove that the 1st Respondent is in contempt of any court order if at all.
 4. The Application is a hopeless attempt to delay the trial and determination of this matter.
11. Counsel for the 1st Respondent indicated to the court on September 28, 2022 that he believes that all his issues have been addressed by the grounds of opposition and can act as submissions.

2nd Respondent's Case

12. Kimanzi Vundi, the chairman of the 2nd Respondent swore a replying affidavit deposing that the application is frivolous, vexatious and an abuse of the court process stating that the 2nd Respondent, an amalgamation of B2 Yatta Kanyonyooni Ranching Co-operative society and Katoteni Ranching Co-operative society is the proprietor of the parcels of land LR 12010 and LR 11802 and is entitled to enjoy the rights and privileges including rights of occupation and user to the exclusion of any other person and also that they have been paying land rates
13. The 2nd Respondent deposes that the Petitioners are not known to them and are not members of their society contrary to their allegations and are strangers who have encroached on the society's land who are not deserving of protection from the court. He instead deposed that it is the Petitioners who are in contempt of the court order and that the Applicants have not demonstrated to the Court how he has disobeyed the court order.

The 2nd Respondent's Submissions

14. The 2nd Respondent reiterated their position that B2 Yatta Ranching Co-operative Society Ltd is an amalgamation of B2 Yatta Kanyonyooni Ranching Co-operative society and Katoteni Ranching Co-operative society and that on or about January 10, 1967, vide gazette notice numbers 183 and 184 and in exercise of powers conferred upon it by Part IV of the Trust Land Act, Chapter 288 of the laws of Kenya 1st Defendant set apart 2 respective blocks of trust land and leased LR 12010 to Katoteni Ranching Co-operative Society Limited and LR 11802 leased to B2 Yatta Kanyonyooni Ranching Co-operative Society Limited respectively. The two societies merged on 12th September, 1974 and all the assets and liabilities of the two are now vested in B2 Yatta Ranching Co-operative Society Limited.
15. The 2nd Respondent submitted that it has made a number of investments to the society such as offices and a cattle dip and stands to lose the same should excision happen. They also submitted that the



society has not been mismanaged or run down and that it is not insolvent or broke as alleged, but is still operating and carrying on business as usual and has active members.

16. It is the 2nd Respondent's submission that an order for adverse possession cannot issue to the Petitioners against a county council, while relying on the holding in the case of *Mwene Munda Welfare Association v Kitui County Government & 2 others* (2019) eKLR.
17. The 2nd Respondent therefore submits that Sections 41, 37 and 38 of the *Limitation of Action Act* do not apply because county councils are protected from being sued for claims of adverse possession.
18. Further, the 2nd Respondent reiterates that the Petitioners are strangers who have encroached on the society's land and are not deserving of protection from the court as they have been unlawfully entering, grazing, cultivating and dealing on the subject land against the status quo order issued in August 28, 2020 and that it is the Petitioners who are in contempt of court. The 2nd Respondent prays that the application be dismissed with costs.

The 5th-8th Respondents' Case

19. Leah K Ngutu, the Officer Commanding Kitui County swore a replying affidavit in response and opposition to the application at hand and deposed that none of the alleged contemnors have violated the orders issued herein in any manner or at all. It was her statement that the functions of the National Police Service are maintenance of law and order within the jurisdiction of their duty and any action which has been cited was in pursuit of maintenance of law and order.
20. That as per the order of September 28, 2020, the court did not prohibit the alleged contemnors from maintaining law and order but only directed that the respondents maintain status quo. She denied that the status quo order has been disobeyed at all and that the arrested suspects Alex Julius Kilingwa, Robert Ngunga Kayaki and David Kimoli Ngau were arrested for the offences of being armed with dangerous weapons with intent to commit a felony, hence the function of maintaining law and order did not amount to eviction or interference of the court orders at all.
21. In relation to the summons by Police Constable Wycliffe Oguk, she deposed that the issuance of summons was not an eviction but an investigation in the possible or likely occurrence of crime which does not amount to violation of the court order issued in August 28, 2020.
22. Further, the Officer Commanding Kitui County stated that the petitioners have not proved personal service of the said court order upon the cited officers. She stated that the application for contempt of court is frivolous, vexatious and an abuse of the court process.

The 5th-8th Respondents' submissions

23. Senior State Counsel from the office of the Attorney General submitted that the courts have established elements that an Applicant must establish to prove that any cited contemnor is in contempt of court citing the case of *Trusted Society of Human Rights Alliance v Cabinet Secretary for Devolution and Planning & 3 others* (2017) eKLR and the case of *Sheila Cassatt Issenberg v Antony Machatha Kinyanjui* (2021) eKLR which stated the elements that must be established in contempt of court.
24. Submitting that the order did not bar the security officers from maintaining law and order and did not grant the Petitioners a right to commit criminal offences and not be held liable, state counsel stated that the alleged contemnors did not violate this court's orders issued on the 28th of August 2020.
25. On the second element of whether the contemnor had knowledge of the order, senior state counsel submitted that the Petitioners did not produce any evidence to demonstrate that the officers cited



for contempt were served personally with the court order while relying on the case of *Sheila Cassat Issenberg & another v Antony Macatha Knyanjui* (2021) eKLR and the case of *Republic v Principal Secretary, Ministry of Defence Ex parte Gorge Kariuki Waitihaka* (2019) eKLR and stated that the Petitioners have not demonstrated the elements of civil contempt of court on the part of the cited officers and therefore pray that the application for contempt of court be dismissed with costs.

Analysis and determination

26. I have considered the Petitioners' application dated February 24, 2023, the replying affidavits and grounds of opposition filed in reply, submissions by Counsel and the legal authorities cited. In the application several individuals are cited to be held in contempt of court due to disobedience of this court's orders issued on the August 28, 2020 but were extended at various times. The order issued by Angote J reads as follows:

“That the prevailing status quo be maintained until September 23, 2020, when the Application will be heard interpartes.”

27. The present application is stated to be brought under Section 28 of the *Contempt of Court Act*, Order 1 Rule 10, Order 8 Rule 3, Order 40 Rule 2 (a) of the *Civil Procedure Rules*. In *Kenya Human Rights Commission v Attorney General & Another* [2018] eKLR the Hon Justice Chacha Mwita on 9th day of November 2018 declared the entire *Contempt of Court Act* unconstitutional. The effect of an unconstitutional statute was stated in *Carr v. State* (1890) 127 IND 204, 26 NE 778; 11 LRA 370 the court held:-

“An act which violates the Constitution has no power and can, of course, neither build up nor tear down. It can neither create new rights nor destroy existing ones. It is an empty legislative declaration without force or vitality.”

28. Following the declaration of the *Contempt of Court Act* as unconstitutional the applicable law reverted to the law applicable prior to the enactment of the nullified Act which is section 5 of the *Judicature Act* Cap 8 Laws of Kenya. Section 5 of the *Judicature Act* Cap 8 Laws of Kenya provides:

- (1) The High Court and the Court of Appeal shall have the same power to punish for contempt of court as is for the time being possessed by the High Court of Justice in England, and that power shall extend to upholding the authority and dignity of subordinate courts.
- (2) An order of the High Court made by way of punishment for contempt of court shall be appealable as if it were a conviction and sentence made in the exercise of the ordinary original criminal jurisdiction of the High Court.

29. Therefore, the law that governs contempt of court proceedings is the English law applicable in England at the time the contempt was committed. Under Rule 81.4 of the English *Civil Procedure Rules (Amendment No 3) Rules, 2020* provides for the requirements of a contempt application and provides that:

- “(1) Unless and to the extent that the court directs otherwise, every contempt application must be supported by written evidence given by affidavit or affirmation.



- (2) A contempt application must include statements of all the following, unless (in the case of (b) to (g)) wholly inapplicable—
- (a) the nature of the alleged contempt (for example, breach of an order or undertaking or contempt in the face of the court);
 - (b) the date and terms of any order allegedly breached or disobeyed;
 - (c) confirmation that any such order was personally served, and the date it was served, unless the court or the parties dispensed with personal service;
 - (d) if the court dispensed with personal service, the terms and date of the court's order dispensing with personal service;
 - (e) confirmation that any order allegedly breached or disobeyed included a penal notice;
 - (f) the date and terms of any undertaking allegedly breached;
 - (g) confirmation of the claimant's belief that the person who gave any undertaking understood its terms and the consequences of failure to comply with it;
 - (h) a brief summary of the facts alleged to constitute the contempt, set out numerically in chronological order;
 - (i) that the defendant has the right to be legally represented in the contempt proceedings;
 - (j) that the defendant is entitled to a reasonable opportunity to obtain legal representation and to apply for legal aid which may be available without any means test;
 - (k) that the defendant may be entitled to the services of an interpreter;
 - (l) that the defendant is entitled to a reasonable time to prepare for the hearing;
 - (m) that the defendant is entitled but not obliged to give written and oral evidence in their defence;
 - (n) that the defendant has the right to remain silent and to decline to answer any question the answer to which may incriminate the defendant;
 - (o) that the court may proceed in the defendant's absence if they do not attend but (whether or not they attend) will only find the defendant in contempt if satisfied beyond reasonable doubt of the facts constituting contempt and that they do constitute contempt;
 - (p) that if the court is satisfied that the defendant has committed a contempt, the court may punish the defendant by a fine,



imprisonment, confiscation of assets or other punishment under the law;

- (q) that if the defendant admits the contempt and wishes to apologise to the court, that is likely to reduce the seriousness of any punishment by the court;
- (r) that the court's findings will be provided in writing as soon as practicable after the hearing; and
- (s) that the court will sit in public, unless and to the extent that the court orders otherwise, and that its findings will be made public.”

30. Contempt of a court order is a serious offence and is in the nature of criminal proceedings and, therefore, proof of a case against a contemnor is higher than that of balance of probability. This is because liberty of the subject is usually at stake and the applicant must prove wilful and deliberate disobedience of the court order, if he were to succeed. This was aptly stated by the court in the case of *Sheila Cassatt Issenberg & another v Antony Machatha Kinyanjui* [2021] eKLR relied on by state counsel for the 5th - 8th Respondents where the court cited with approval the case of *Gatharia K Mutikika v Baharini Farm Limited* [1985] KLR 227 also cited by the Petitioners that:

“A 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... Recourse ought not to be had to process of contempt of court in aid of a civil remedy where there is any other 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 party 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... applying the test that the standard of proof should be consistent with the gravity of the alleged contempt... it is competent for the court where contempt is alleged to or has been committed, and on an application to commit, to take the lenient course of granting an injunction instead of making an order for committal or sequestration, whether the offender is a party to the proceedings or not.”

31. In the case of *Sheila Cassatt Issenberg & another v Antony Machatha Kinyanjui* [2021] eKLR the court quoted as follows:

The Cromwell J, writing for the Supreme of Canada in *Carey v Laiken*, 2015 SCC 17 (16th April 2015), expounded on the three elements of civil contempt of court which must be established to the satisfaction of the court, thus:

- i) The order alleged to have been breached “must state clearly and unequivocally what should and should not be done.” This ensures that a party will not be found in contempt where an order is unclear. An order may be found to be unclear if, for example, it is missing an essential detail about where, when



or to whom it applies; if it incorporates overly broad language; or if external circumstances have obscured its meaning.

- ii) The party alleged to have breached the order must have had actual knowledge of it. It may be possible to infer knowledge in the circumstances, or an alleged contemnor may attract liability on the basis of the willful blindness doctrine.
- iii) 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. (emphasis)

32. Similarly, In *Samuel MN Mweru & Others v National Land Commission & 2 others* [2020] eKLR the Court held that:

“It is an established principle of law 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.

Upon proof of these requirements the presence of willfulness 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.”

33. In the present case the terms of the order issued on August 27, 2021 are clear that the status quo prevailing at the time the order was issued was to be maintained. Black’s Law Dictionary, Butter Worths 11th Edition, defines *Status Quo* as a Latin word which means “the situation as it currently exists.”

34. In Msa Misc Appln (JR) No 26 of 2010 The Chairman Business Premises Tribunal at Mombasa Exparte Baobab BeachResort (Mbsa) Ltd (UR), it was held: -

“In my view, an order for status quo to be maintained is different from an order of injunction both in terms of the principles for grant and the practical effect of each. While the latter is a substantive equitable remedy granted upon establishment of a right, or at interlocutory stage, a prima facie case, among other principles to be considered, the former is simply an ancillary order for the preservation of the situation as it exists in relation to pending proceedings before the hearing and determination thereof.

It does not depend on proof of right or prima facie case. In its effect, an injunction may compel the doing or restrain the doing of a certain act, such as, respectively, the reinstatement of an evicted tenant or the eviction of the tenant in possession. An order for status quo merely leaves the situation or things as they stand pending the hearing of the reference or complaint. In its negative form, however, an injunction may have the same effect as an order for status quo.”



35. It was observed by the court in *Thugi River Estate Limited & another v Naitonal Bank of Kenya Limited & 3 others* [2015] eKLR that a status quo order must be specific and clear to the parties. The court observed as follows:

“Status quo” in this respect, as maintained by an injunctive or conservatory or stay order, is the then existing state of affairs. Often the order is very specific and descriptive in such instances and parties are expected, nay bound, to observe the order. The order will often be issued after a balance of all the factors and circumstances. As was stated by Lord Diplock in *American Cyanid Co v Ethicon* [1975] 1 All ER 504 at 511 “where factors appear to be evenly balanced, it is a counsel of prudence to take such measures as are calculated to preserve the status quo.....” The second or alternative order for status quo is the one issued by the court as a case management strategy. It is issued to provide assistance to the case. It also maintains a particular state of affairs or set of facts. Unlike a conservatory order or injunctive order it is not descriptive. It is originated either by the court or by the consent of the parties. Often the court would not have been moved by either party. The court then expects an existing state of affairs or facts be preserved until a particular occurrence or until the courts’ further orders. It is intended to also freeze the state of affairs. State of affairs however do not always remain static, so it is always crucial for the court to be very specific and neat in its description of what state of affairs is to be preserved. Ordinarily where it is the court that has prompted a status quo order or has prompted the parties to it, it is more appropriate and exceedingly relevant to describe clearly the state of affairs at the time the order for status quo is issued. It is undesirable to simply make an order of status quo to be maintained without clearly describing the state of affairs then existing and being preserved. Assistance of the counsel should always be sought in such instances otherwise each party may walk away with its own state of affairs in mind.”

36. In the present case the order issued on August 27, 2020 did not specifically give a description of the situation as it existed at the time the order was issued. The order did not state the particular state of affairs or set of facts that were to be maintained and/or preserved.
37. The Petitioners in their application state that they were issued an order restraining the Respondents or any persons acting under them from evicting them from the suit properties. The Petitioners claim that the 2nd 3rd 4th and 6th Respondents have made sustained actions to evict them from the suit land and they have given instances of the said acts they say are calculated at obtaining their eviction to include bringing down their houses, stealing their livestock, assaulting their members and threatening to arrest some of the petitioners. The Petitioners have listed instances of arrest and detention and criminal charges being preferred in court against some of their members. They claim that the said acts amount to contempt of the court order issued on August 27, 2020.
38. On the other hand, the 2nd respondent claims that the applicants have been unlawfully entering, grazing, cultivating and dealing on the subject land in contempt of the same court orders issued on August 27, 2020. That they have also carryout out acts of wanton destruction of property on the land. The 2nd respondent has stated that they are still operating and carrying on business on the land and that it has members.
39. The Attorney General appearing for the 5th - 8th respondents filed a replying affidavit and stated that none of the respondents have violated the court order for maintenance of the *status quo*. That the acts they are accused of doing were done in carrying out their function and duty of maintenance of law and order and the same do not amount to evicting the petitioners. They claim that the order did not prohibit them from maintaining law and order.



40. Reading the entire application and the supporting affidavit, the Applicants position seems to presume that the court in issuing the orders subject matter of these proceedings found and confirmed that they were in possession and occupation of the suit land and that the status quo to be maintained was that they should remain in such possession and not be evicted. The applicants further presume that the court issued a restraining order against the respondents. In my view this is a presumption that is not supported by the order itself since the status quo to be maintained was not specified or described in such sufficient terms as would enable the court determine what acts amount to contempt. Further, the parties understood the prevailing status quo differently since the Respondents have stated that the Applicants are actually the ones who are in contempt of the same court order. As was emphasized in the case of *Thugi River Estate Limited & another v Naitonal Bank of Kenya Limited & 3 others* it is important to get the assistance of counsel and parties in a case when making an order of status quo in order to get a clear description of the state of affairs to be preserved since “otherwise each party may walk away with its own state of affairs in mind.” This is indeed what happened in the present case.
41. I therefore find that the order alleged to have been breached did not state clearly and unequivocally what should and should not be done. It is thus not possible to say that the acts complained of by the Applicants against the Respondents, even if proved to have been true, amount to contempt of the court order. Based on the test in the cases of *Sheila Cassatt Issenberg & another v Antony Machatha Kinyanjui* (supra) and *Samuel MN Mweru & Others v National Land Commission & 2 others* (supra) the application herein fails the test of what amounts to proof of contempt of court.
42. The final orders of the court are that the application dated February 24, 2022 is hereby dismissed. Parties to bear their own costs.

DELIVERED, DATED AND SIGNED AT KITUI THIS 7TH DAY OF MARCH, 2023.

HON. L. G. KIMANI

ENVIRONMENT AND LAND COURT JUDGE

Ruling read in open court in the presence of-

Musyoki Court Assistant

B. M. Musyoki for the Applicants

Musyoki Kimanthi for the 1st Respondent

Odhiambo Odhim for the 2nd Respondent

Motari appearing with M/S Kerubo for the 5th to 8th Respondents

