



REPUBLIC OF KENYA



**M'Liria v Land Adjudication Officer, Amungenti "A" Ajudication & Settlement Section & 2 others
(Constitutional Petition E003 of 2021) [2022] KEELC 13522 (KLR) (5 October 2022) (Ruling)**

Neutral citation: [2022] KEELC 13522 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
CONSTITUTIONAL PETITION E003 OF 2021**

CK NZILI, J

OCTOBER 5, 2022

BETWEEN

DAVID MUINDI M'LIRIA PETITIONER

AND

**LAND ADJUDICATION OFFICER, AMUNGENTI "A" AJUDICATION &
SETTLEMENT SECTION 1ST RESPONDENT**

CHIEF KABULINE LOCATION 2ND RESPONDENT

HON. ATTORNEY GENERAL 3RD RESPONDENT

RULING

1. This court by a ruling dated April 27, 2022 found the 2nd and 3rd respondents (hereinafter the citees) guilty of contempt of court and directed them to mitigate before the sentencing. Both citees filed mitigating statements under oath sworn on May 6, 2022.
2. Further to this, Mr Kieti the senior litigation counsel on record for the respondents orally submitted and adopted the mitigation statements whose gist was that the citees were remorseful for the unbecoming conduct, are civil servants with families who depend on them and above all, were first offenders willing to reform and or comply with the court orders.
3. Mr Kiruai counsel on record for the applicant submitted that even though damage was done to the suit property, despite the mitigation, his client had received no apology from the citees, the access road continues to be used and the only remedy under the circumstances was to have the access road closed to revert to its original position. Further, it was submitted that no offer for the compensation for the damage had been made to the petitioner as the petition has still pending determination.
4. In *Woburn Estate Ltd v Margaret Bashforth* (2016) eKLR the court held that under sections 29 of the *Environment and Land Court Act* 35 and 36 the *High Court (Organization and Administration) Act*



as read together with section 63 (e) of the Civil Procedure Act and section 5 of the Judicature Act and order 40 rule 3 of the Civil Procedure Rules, the court has powers to punish for contempt of court.

5. The consequences of finding a party in contempt of court is either to impose a fine, give a custodial sentence or both. The court has also the discretion to direct that the contemnors to take a positive action to purge the contempt. See Miguna v ODPP cite and 2 others (2018) eKLR and in Eliud Muturi Mwangi (P/a Muturi & Co advocates) v LSG Butbansa services Europa Africa GMBH & another (2015) eKLR.
6. Applying the above principles and given the circumstances of this petition, I order that the contemnors do purge the contempt of court by refixing the access road in line with the demarcation maps to its designated position and to the satisfaction of the petitioner. Costs for the restoration of the fence shall be met by the contemnors upon assessment by a qualified expert.

Orders accordingly.

DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT THIS 5TH DAY OF OCTOBER, 2022.

In presence of:

C/A: Kananu

Kieti for 1st & 2nd contemnors

Mr. Muthomi Njeru for petitioners

HON. C.K. NZILI

ELC JUDGE

