



Nanga Kihoto Naivasha Ltd v Registrar of Companies; Samuel Mwaganu Thuku, Robert Magana Muiruri, Amos Ngugi Njoroge, Francis Kaburu Kagunya, Kahinga Gakere & Pharis Mburu Ngugi & another (Interested Parties); Mukunya & 3 others (Proposed Interested Parties) (Judicial Review Miscellaneous Application 54 of 2013) [2025] KEHC 1839 (KLR) (20 February 2025) (Ruling)

Neutral citation: [2025] KEHC 1839 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
JUDICIAL REVIEW MISCELLANEOUS APPLICATION 54 OF 2013**

HI ONG'UDI, J

FEBRUARY 20, 2025

BETWEEN

NANGA KIHOTO NAIVASHA LTD APPLICANT

AND

THE REGISTRAR OF COMPANIES RESPONDENT

AND

SAMUEL MWAGANU THUKU, ROBERT MAGANA MUIRURI, AMOS NGUGI NJOROGE, FRANCIS KABURU KAGUNYA, KAHINGA GAKERE & PHARIS MBURU NGUGI INTERESTED PARTY

DANSON KARANJA KAMAU, RUTH WAITHIRA GITAU, ISAAC MAINA MBARIA, FRANCIS MUNGAI KURIA , ROSEMARIEN WAIRIMU WANYOIKE, NICHOLAS NJENGA , MARGARET WAIRIMU, JOSEPH WAINAINA NGURUMI, FREDRICK WAMWEA NGUGI & OTHERS INTERESTED PARTY

AND

BENSON MUGO MUKUNYA PROPOSED INTERESTED PARTY

DANIEL MWANGI KANGETHE PROPOSED INTERESTED PARTY

HARON KIMANI NJOROGE PROPOSED INTERESTED PARTY

KAMAU KARIUKI PROPOSED INTERESTED PARTY



RULING

1. This ruling is in respect of six (6) applications, namely Notices of motion dated 27th February 2018, 2nd March 2018, 30th May 2022, 27th July 2022, 15th March, 2023 and the preliminary objection dated 18th April 2023.
2. The first application dated 27th February 2018 seeks for the following orders;
 - i. Spent.
 - ii. That this honourable court be pleased to enjoin Benson Mugo Mukunya as the second interested in this suit.
 - iii. That this honourable court be pleased to issue orders restraining the following persons;
 - a. Samuel Monyo Njoroge
 - b. Gabriel Kaburu Kagunya
 - c. Robert Magana Muiruri
 - d. Francis Kariuki Muheria
 - e. Haron Kahinga Gakere
 - f. Amos Ngugi Njoroge
 - g. Maryanne Wanjiru Kagongonafrom carrying themselves and/or conducting themselves as directors of Nanga Kihoto Naivasha Limited pending the hearing and determination.
 - iv. That this honorable Court be pleased to find that the participation in the election of Nganga Kihoto Naivasha Limited held on, 2nd February 2018 by the persons named in paragraph 3 hereinabove as irregular, null and void since these persons did not comply with the Court Order dated, 20th December 2017.
 - v. That this honorable Court be pleased to find that the purported election of the company secretary was irregular, null and void since the person purportedly elected were not shareholders and/or did not comply with the law and articles of association of Nanga Kihoto Naivasha Limited.
 - vi. That this honorable Court be pleased to find that the following persons who participated in the said elections and who complied with the law and Articles of Association of Nanga Kihoto Naivasha Limited as ordered by the Court on, 20th December 2017 were properly and duly elected as directors of Nanga Kihoto Naivasha Limited.
 - a. Pharis Mburu Ngugi.
 - b. James Mugo Mwangi.
 - c. James Ruitha Gathua.
 - d. Samuel Waithaka Mwangi



- e. Monicah Njeri Ngamau.
 - f. Ndungu Githiga.
 - g. Zabron Mwangi Waihenya.
 - h. Benson Mugo Mukunya.
- vii. That this honorable Court be pleased to issue Orders directing the Registrar of Companies to register the persons named in paragraph 6 hereinabove as directors and company secretary and issue them with a C.R 12.
- viii. That the costs of this application be borne by the first interested parties.
3. The said application is premised on the grounds on its face as well as the affidavit of the 1st proposed interested party. He deponed that he was aware of the directions issued by the court on 20th December 2017. That elections were conducted on 2nd February 2018 as ordered by the court but the same did not comply with the law and articles of association of Nanga Kihoto Naivasha Limited. Further, that the presiding officer appointed by this court submitted a report that indicated that certain persons participated in the elections irregularly.
4. In response to the application, Samuel Monyo Njoroge filed a replying affidavit dated 29th March 2018. He averred that he is one of directors of Nanga Kihoto Limited and an interested party herein. That he had the authority of his co-directors to swear the affidavit on their behalf. He further averred that the said application was mischievous, brought in bad faith and defective in substance and form.
5. He averred that the elections were as a result of the court's directive after the company became dysfunctional through warring factions in its leadership. Thus, it was important to ascertain the will of the people so that they are not tied down by company documents crafted by an individual member to suit his ambitions. He urged the court to dismiss the said application with costs.
6. In the second application dated 2nd March 2018 the applicants are seeking the following orders;
- i. Spent.
 - ii. That this honourable be pleased to grant leave to Daniel Mwangi Kangethe, Haron Kimani Njoroge and Kamau Kariuki to be joined as interested parties herein.
 - iii. Spent.
 - iv. That the elections held on the 2nd February 2018 be hereby declared irregular, null and void for contravening the law and articles of association of the company Nanga Kihoto Naivasha Limited and a fresh election be held within a specified date to be issued by this honourable court.
 - v. That the intended interested parties be allowed to contest for any position they would so wish in the next election to be carried out after the court's directions.
 - vi. Spent.
 - vii. That the costs of this Application be provided for.
7. The said application is premised on the grounds on its face as well as the affidavit of the 2nd proposed interested party. He deponed that he is a director of the company Nanga Kihoto Naivasha Limited serving at the current board. Further, that court orders were issued on 20th December 2017 that a general meeting be held in accordance with the law and articles of association of Nanga Kihoto



Naivasha Limited on 2nd February 2018. The principle agenda was to elect new directors. However, the elections were not conducted in a proper manner as required under the articles of association of the company.

8. He further deponed that actions of the presiding officer were discriminatory and totally unfair for the reasons that he did not even indicate or write to notify them why they were excluded from the nomination for election despite having received their notification as is required. With the advice of his advocates he believed that their right of participating in the said elections could not be taken away and since they did not take part in the elections the court had jurisdiction to nullify the said elections.
9. The interested parties filed a replying affidavit dated 12th March 2018 where they reiterated the contents of their replying affidavit dated 29th March 2018.
10. The 2nd proposed interested party filed a further affidavit on 10th April 2013. He denied the contents of the said replying affidavit, reiterated the averments in the affidavit in support of the application and urged the court to allow their application as prayed.
11. In response, the 4th interested parties filed a replying affidavit sworn by the Francis Kariuki Muheria on 20th November 2023. He averred that the application had no merit and the same was fatally defective. That the application cited one of the 1st interested parties one Pharis Mburu Ngugi yet he was not the one who conducted the elections and therefore no orders could be directed to him.
12. In the third application dated 30th May 2022 the applicants are seeking the following orders;
 - i. Spent.
 - ii. That the same is coming up for direction on 6th June 2022, the applicants herein desire to be enjoined as interested parties, time being of essence.
 - iii. That the shareholders herein be enjoined as interested parties.
 - iv. That there be a call, for shareholders meeting by the Naivasha Sub County Deputy County Commissioners, and the OCS Naivasha Police Station to provide Security the Agenda thereof being;
 - a. Notice to the current tenant to terminate his lease.
 - b. The current tenant to account for the rent since 2013 when the suit herein commenced and the rent arrears.
 - c. Subdivision of land.
 - d. Issuance of titles to shareholders.
 - e. Winding up the company
 - f. Any other issue that relates to the company.
 - v. That the current tenant Live Wire Company in particular Mr. Gordon Miller to be enjoined as an interested party too as the shareholders pursue the winding up of the company and getting their personal shares in the same
 - vi. That the shareholders have not received their dividends for years now and do pray that the tenant does give account of rent arrears and any other dues owed to the Company.
 - vii. That the said dues to be utilized to sub-divide and issue title deeds to the shareholders.



- viii. That the former directors in particular one Pharis Mburu and Mugo Mukunya and the others officials who were in the office together with them, to disclose and avail the original title deeds for sub-division of the land and issuance of title deeds to all the Shareholders.
 - ix. That the sub division of land and issuance of the title deeds to the shareholders be overseen by the Naivasha Sub-county Deputy County Commissioner and OCS Naivasha Police Station to provide security until the land is fully sub-divided and shareholders obtain their personal title deeds.
 - x. That upon sub division and issuance of title deeds to shareholders the company to be wound up and issues that relate to the company in issue to be concluded fully.
 - xi. That all the parties herein to bear their own legal fees.
13. The said application is premised on the grounds on its face as well as the affidavit of Rosemary Wairimu Wanyoike, Nicholas Njoroge Njenga and Danson Karanja Kamau who are shareholders in the subject company. They deponed that there were suits relating to leadership, including this particular suit and the shareholders are not interested in leadership wrangles. That they preferred to have their shares distributed to them by sub diving the land owned by the company and each shareholder obtains a title deed in their favour.
14. In response the 4th interested parties filed a replying affidavit sworn by Francis Kariuki Muheria on 20th November 2023. He averred that the said application was spent since it was filed before the court pronounced itself on whether the company had validly elected directors.
15. In the fourth application dated 27th July 2022 the applicants are seeking the following orders;
- i. Spent.
 - ii. That the 4th interested parties/respondent, their agents, servants and/or persons claiming under them be restrained from entering invading, cultivating, alienating, surveying, subdividing and or dealing in any way with land parcel LR No. 5658/1 Naivasha and LR. No, 10423/2 Naivasha which are in the names of Nanga Kihoto (Naivasha) Company Limited (hereinafter called the company land) until the application herein as well as the other application pending this Court dated 07.04.2022 are heard and determined.
 - iii. That the 4th interested parties/respondents, their agents, servants and/or persons claiming under them be restrained from dealing and/or interfering with the company's register of shareholders, and from effecting any transfer of the company shares with the registrar of companies at sheria house.
 - iv. That the orders of the Court issued in (2) above be enforced by the County Commander Nakuru and the OCS Naivasha Police Station and that the two of them file reports to the Court of their due compliance.
 - v. That an order of censure be issued against the OCPD Naivasha Division, Samuel Waweru and the Chief Karate Location by the name Samuel Nganga Kinyanjui for aiding the Respondent in invading the company's land LR No. 5658/1 Naivasha and LR. Na. 10423/2 Naivasha.
 - vi. That the 4th Interested Parties/Respondents be condemned to pay the costs of this application.
16. The said application is premised on the grounds on its face as well as the affidavit of the Gabriel Kaburu Kagunya one of the interested parties. He deponed among other things that the entire dispute was



anchored on leadership wrangles of the company. He urged the court to make a determination of the application dated 7th April 2022 to enable the various disputes come to an end.

17. In the fifth application dated 15th March 2023 the ex-parte applicant seeks the following orders;
 - i. That this honourable court be pleased to issue warrants of arrest against Danson Karanja Kamau, Ruth Waithira Gitau, Stephen Maina, Isaac Maina Mbaria, Francis Mungai Kuria, Rosemarien Wairimu Wanyoike, Nicholas Njenga, Margaret Wairimu, Joseph Wainaina Ngurumi And Fredrick Wamwea Ngugi the 4th group of interested parties /Respondents herein to be brought before this honourable Court to show cause why they ought not be punished for contempt, disobedience, and breach of this honourable Court's orders issued by Hon. Justice (prof) Joel Ngugi on the 28th July, 2022, and accordingly be committed to civil jail for a term not exceeding six (6) months and/or a fine as the honourable Court may deem fit and just in the circumstances. The said warrants of arrest be effected by the Nakuru County Police Commander.
 - ii. That Samuel Waweru (OCPD Naivasha Police Division), Kisilu Mutua (Deputy County Commissioner Naivasha), and Samuel Ng'ang'a Kinyanjui (Chief Karati Location Naivasha) be summoned by this Honourable Court to show cause why they should not be punished for aiding and abetting the contemnors herein-above cited, and this honourable Court to take such measures against them as Public Officers as this honourable Court deems fit. The said summons be effected by the Nakuru County Police Commander.
 - iii. That the 4th group of interested parties /respondents be condemned to pay the costs of this application.
18. The said application is premised on the grounds on its face as well as the affidavit of Gabriel Kaburu Kagunya. He deponed that Justice Joel Ngugi on 28th July, 2022 ordered that the status quo orders issued on 6th June 2022 to remain in place. That the said order buttressed a previous order issued by Justice R. Korir which prohibited any person(s) from dealing in any manner with the subject land being; L.R. No. 10423/2 Naivasha and L.R. No. 5658/1 Naivasha pending the disposal of the matter.
19. He further deponed that the respondents had sought audience of this court in their application dated 30th May 2022 to be joined as interested parties. That on 6th June 2022 when the matter was last in court they were joined as 4th interested parties. He added that the respondents had been masquerading as shareholders of Nanga Kihoto (Naivasha) limited and selling out fake shareholders certificates to unsuspecting members of public.
20. He deponed that the respondents were seeking to unlawfully alienate the company's land unto themselves with the assistance of the police and the local administrators. Thus, unless this court punished them accordingly, its authority to ensure compliance with its orders, the Rule of law and the public confidence in the Rule of law would be at grave jeopardy.
21. Samuel Waweru, the OCPD Naivasha Police Division filed a replying affidavit dated 23rd March 2023. He averred that sometime back in 2018, there was the intrusion of the farm by some purported members of the ex-parte applicant. Further, that in the year 2021, the area chief received another distress call that there were some building materials that had been found on site on the farm for purposes of doing constructions but he managed to stop the said construction. That it had been an uphill task to know the bonafide office bearers of the applicant since the year 2014.
22. The sixth application is a preliminary objection dated 18th April 2023 in relation to the applications dated 27th July 2022 and 15th March 2023 for the following reasons;



- i. That the said Gabriel Kaburu Kagunya and Kahinga Gakere be barred from taking any responsibility or duties that relate to Nanga Kihoto limited as per the court orders dated 14th August 2008. Thus any act by them is instantly to be held in contempt of valid court orders and they should be punished accordingly. Attached was a copy of the court order dated 14 August 2008.
 - ii. That as a company they had never had a meeting either special or general appointing the said law firm to represent the company. That even as individuals they had not instructed any advocates to represent them.
 - iii. That they were the former directors and custodian of the current register and had not handed it over so far.
 - iv. That the application dated 15th March, 2023 by the said law firm is misleading and dishonest as the contemnors being alleged are known members of Nanga Kihoto thus issuing warrants of arrest against them would be very and is very misleading.
 - v. That in support of this objection they filed: -
 - a. The company register (which they were authorized by court to do and we did vide a Court Order dated 3rd February, 2010, herein attached).
 - b. The register was initially hand written and typed based on the manual register. Both the hand written and the typed register were attached displaying all the 4 interested parties as members of Nanga Kihoto.
 - c. They confirmed that some old members were tired of the Company wrangles and none payment of dividends and so decided to sell their shares thus most members who appear as 4th interested parties bought shares from the old shareholders who were not willing to continue as so.
 - d. The 4th interested parties have been on the land farming thus the application is malicious and based on lies. The 4th interested parties are shareholders and members of Nanga Kihoto so the application is an abuse of the court process, malicious and defaming.
23. In support of the preliminary objection the 4th interested parties filed a replying affidavit dated 12th June 2023, in support.
 24. The 1st interested parties filed a replying affidavit sworn by Pharis Mburu Ngugi on 20th June 2023. He denied all the averments in the replying affidavit dated 12th June 2023 and stated that the same contained misleading facts of the issues surrounding the company.
 25. The 2nd proposed interested party filed a further affidavit sworn on 22nd June 2023. He deponed that they were not privy to the consents annexed to the replying affidavit filed by the 4th interested parties and the averment that the said consents were a culmination of all the parties' consensus. Further, that they irregularly concluded consents in total abuse of the court process, whereof the resultant actions have been challenged in court.
 26. He further deponed that they had no personal interest to delay the subdivision of the land and neither are Kimani Njoroge and Kamau Kariuki. All that they were keen on was justice for all the parties and justice can only be attained if all the parties are given an opportunity to be heard.
 27. All the applications were canvassed by way of written submissions.



The applicant's submissions

28. The said submissions were filed F.N Njanja & company advocates and are dated 25th October, 2024. Counsel gave a brief background of the case and submitted that the applications dated 27th February 2018 and 30th May 2022 sought for the court's intervention on issues appertaining to the running of the company and the elected directors. That the Court confirmed that there were duly elected directors of the company as per its ruling dated 16th March, 2023. He urged the court to dismiss the said applications as they were not merited.

1st Interested parties' submissions

29. The said submissions were filed Kipyator Kibet & Associates advocates and are dated 12th February, 2024. Counsel submitted that the court issued injunctive orders dated 14th August 2008, restraining the defendants therein from convening, holding and/ or calling for any meetings on behalf of Nanga Kihoto Naivasha Limited. That the said court orders had not been vacated, reviewed, discharged or appealed against. He urged the court to find Gabriel Kaburu Kagunya and Kahinga Gakere to be in contempt of the said orders. He further urged the court to find that the firm of F.N Njanja and Co. Advocates was not validly appointed to represent the ex-parte applicant and all the documents filed by it should be struck out.

The 4th interested parties' submissions

30. The said submissions were filed Nyambura Munyua & company advocates and are dated 12th February, 2024. Counsel gave brief facts of the case and submitted that the the applications dated 15th March, 2023 and 27th July, 2023, were meant to misdirect the court. Further, that there existed an order since 6th June 2022 that status quo be maintained. She added that the matter had been in court since 2013 and it was about leadership wrangles which never involved the shareholders.
31. She further submitted that the preliminary objection dated 18th April 2023 confirmed that the 4th interested parties had been on the subject land farming thus the applications by the 1st interested party were malicious and based on lies. She added that it would be fair for all to share the company asset and wound up the company. That the main company's asset was the land known as LR No. 10423/21 and if the members could share the same as per the shares one owned it would be fair and just.

Analysis and determination

32. I have considered all applications, affidavits and rivalry submissions by the parties. In my view the issue for determination by this court is whether all the applications or either of them is merited.
33. I will first deal with the preliminary objection dated 18th April 2023 raised against the applications dated 27th July 2022 and 15th March 2023.
34. It is trite law that for a preliminary objection to be valid; firstly, it must raise a pure point of law. Secondly, the objection is argued on the assumption that all the facts pleaded by the party against whom it is raised are correct. Lastly, an objection cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion. In *Mukisa Biscuit Manufacturing Co. Ltd vs West End Distributors Ltd* [1969] EA 696, Law JA stated as follows:

“So far as I'm aware, a preliminary objection consists of a point of law which has been pleaded, or which arises by clear implication out of pleadings, and which if argued as a preliminary point may dispose of the suit. Examples are an objection to the jurisdiction of the court, or



a plea of limitation, or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration.”

35. The Court will also take into account that a preliminary objection must stem from the pleadings and raise a pure point of law, and should not deal with disputed facts nor should it derive its foundation from factual information. See the case of *Oraro v Mbaja* [2005] 1KLR 141, where it was held that: -

“Anything that purports to be a Preliminary Objection must not deal with disputed facts and it must not derive its foundation from factual information which stands to be tested by rules of evidence”.

36. Further, in the case of *Lucy Njoki Kamanja V Ezekiel Muenja Ngure* [2017] eKLR, the court stated that;

“There are so many facts that need to be ascertained. The preliminary objection as drawn does not raise a pure point of law which requires no ascertainment of facts. All matters raised would require prove through evidence. The preliminary objection must dramatically fail.”

37. Having carefully considered the said preliminary objection herein plus submissions, I note that the same raises disputed facts. For this Court to be able to ascertain whether the said facts are true it will have to engage in the probing of evidence. The clear position in law as stated in the above decisions is that a preliminary objection cannot be raised on disputed facts which stand to be tested by rules of evidence. Therefore, it is this court’s view that what has been raised in the preliminary objection herein does not amount to a preliminary objection and the same must fail.

38. Moving to the other applications, I will deal with the application dated 27th February 2018 and 2nd March 2018 together since they seek similar orders. Both applications challenge the election of the company directors who were elected on 2nd February 2022. Upon perusal of the court record, I note that on 16th March 2023, Justice Chemitei confirmed that the said elections had complied with the orders issued earlier on. Orders to that effect were issued.

39. Further, that the elected directors were as per the filed report. Chemitei J ordered the Registrar of Companies to proceed to effect the changes accordingly save for one of the directors who was deceased. No evidence of an Appeal, Review or Setting aside of those orders has been placed before this court. For the said reason, I find both applications to have been overtaken by events.

40. In the application dated 30th May 2022, the applicants seek among other orders to be enjoined as interested parties together with other shareholders.

41. In addressing this issue, this court is guided by Order 1 Rule 10 (2) of the Civil Procedure Rules which provides: -

“The court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all questions involved in the suit, be added.”



42. The Supreme Court distilled the following guidelines for determining whether an applicant qualifies for admission as an interested party in *Communications Commission of Kenya & 4 others v Royal Media Services Limited & 7 others* [2014] eKLR where it stated: -

“(22) In determining whether the applicant should be admitted into these proceedings as an Interested Party we are guided by this Court’s Ruling in the *Mumo Matemo* case where the Court (at paragraphs 14 and 18) held: “[An] interested party is one who has a stake in the proceedings, though he or she was not party to the cause ab initio. He or she is one who will be affected by the decision of the Court when it is made, either way. Such a person feels that his or her interest will not be well articulated unless he himself or she herself appears in the proceedings, and champions his or her cause...”

(23) Similarly, in the case of *Meme v. Republic*, [2004] 1 EA 124, the High Court observed that a party could be enjoined in a matter for the reasons that:

- (i) Joinder of a person because his presence will result in the complete settlement of all the questions involved in the proceedings;
- (ii) joinder to provide protection for the rights of a party who would otherwise be adversely affected in law;
- (iii) joinder to prevent a likely course of proliferated litigation.

(24) We ask ourselves the following questions:

- (a) what is the intended interested party’s stake and relevance in the proceedings? and
- (b) will the intended interested party suffer any prejudice if denied joinder?”

43. In the instant application the proposed interested parties argue that they are shareholders of the subject company and therefore have interest in the outcome of this case. That they desire to have the company wound up and the company’s main asset being the land known as L.R No. 10423/21 to be divided amongst the shareholders according to their shares. What is before this court is a Judicial Review application seeking orders of certiorari to be issued against the Registrar of Companies for a notice it published in the daily nation on 12th November 2013.

44. Having analysed the facts and the law as set out above, it is my considered opinion that the proposed interested parties herein have failed to demonstrate how their presence before this court will assist the court to effectually and completely adjudicate upon and settle all questions involved in this judicial review application. Further, the proposed interested parties have also not demonstrated how they will be affected by the decision of the court when it is made since no evidence confirming them as shareholders of the subject company was attached to their application. What is attached therein is not sufficient proof.

45. In view of the foregoing reasons, I am not persuaded that the intended interested parties/applicants have met the criteria for joinder as an interested party. I therefore find the application dated 30th May 2022 to be devoid of merit and the same is dismissed with no order as to costs.



46. Lastly, on the application dated 15th March 2023 the applicant seeks for the 4th interested parties be held in contempt of court orders issued on 28th July 2022.
47. Contempt of court definition according to the Black's Law Dictionary is as follows;
- “Contempt is a disregard of, disobedience to, the rules or orders of a legislative or judicial body, or an interruption of its proceedings by disorderly behavior or insolvent language, in its presence or so near thereto as to disturb the proceedings or to impair the respect due to such a body”
48. The High Court in the case of Samuel M. N. Mweru & Others v National Land Commission & 2 others [2020] eKLR discussed the applicable law on contempt of court as follows: -
- “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.”
49. The court in the aforementioned case proceeded to quote with approval the learned authors of the book; Contempt in Modern New Zealand 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: -
- The terms of the order (or injunction or undertaking) were clear and unambiguous and were binding on the defendant;
 - The defendant had knowledge of or proper notice of the terms of the order;
 - The defendant has acted in breach of the terms of the order;
 - The defendant's conduct was deliberate.”
50. These four elements must be proved to make a case for civil contempt. Although where the proceedings are civil in nature, it is well established that the degree of proof is almost that of beyond reasonable doubt but definitely higher than on balance of probability. This was discussed in the locus classicus of Mutitika vs Baharini Farm, Civil Application No. NAI 24 of 1985 (1985) eKLR.
51. In the instant suit, this court on 28th July 2022, regarding this application issued among others, an order that the status quo as existed on 6th July 2022 be maintained. The applicant argued that the 4th interested parties were seeking to unlawfully alienate the company's land to themselves with the assistance of the police and the local administrators. Further, that the 4th interested parties were masquerading as the company's shareholders and were selling out fake shareholder certificates to unsuspecting members of public.
52. Counsel for the 4th interested parties denied the allegations raised in the said application and argued that the same were meant to mislead the court.



53. Having perused the court record, I note that the orders said to have been disobeyed were served on the 4th interested parties' advocates on 3rd August 2022. They did not adduce any evidence to the contrary. Considering the four elements set out hereinabove, it is my view that the terms of the order were clear, the 4th respondents had knowledge of the order, but instead went ahead and invaded the company's land LR No. 5658/1 and 10423/2 in Naivasha which were the subject of the orders issued by this court on 28th July 2022. They thus, acted in breach of the terms of the said order and their conduct was deliberate. This was also confirmed by the then OCPD Naivasha one Samuel Nganga in his affidavit filed in response to this application. I therefore find the 4th interested parties guilty of contempt of court orders. No evidence was adduced by the applicant to show that the OCPD aided the actions of the 4th interested parties.
54. The application for contempt is intertwined with the one dated 27th July 2022. There is sufficient material to show that there has been an interference with the company's land L.R No. 5658 and 10423/2 in Naivasha. The court or the police will however not take over the day to day running of the exparte applicant's land.
55. In *Safina Properties Ltd. V Migui Macharia Mungai & Another* [2010] KEHC 1808 (KLR) the court held as follows;
- “ To borrow a leaf from the words of Scrutton L.J. in the case of *Shuttleworth V. Cox Brothers & Co. Ltd.* [1927] 2 K.B. 9 at page 22 –
- “... to adopt that view would be to make the Court the manager of the affairs of innumerable companies instead of the shareholders themselves ...”
- It would be wise and advisable for the company to exercise its appropriate powers through the appropriate organ to clean up its house. Appointment of the company's Advocates is a domestic affair for a company and a company's Board of Directors would be abdicating its duty to the company by failing to exercise that power. And when they fail to exercise that power either due to wrangling and squabbling, the company's affairs are bound to come to a stand still which itself is a potential recipe for the company to be wound up.”
56. The exparte applicant needs to organise itself and put its house in order. It is its duty to report to the security forces any illegal and unlawful activities on its property. It is not for the police and security officers to be their watchmen and guardians. For that reason, I do not find reason to issue the orders sought in the application dated 27th July 2022. I disallow it.
57. For avoidance of doubt my findings above are as follows;
- i. Application dated by 27th February 2018 is overtaken by events and hence disallowed.
 - ii. Application dated by 2nd March 2018 is overtaken by events and hence disallowed.
 - iii. Application dated 30th May 2022 is dismissed.
 - iv. Application dated by 27th July 2022 is dismissed.
 - v. Application dated 15th March 2023 is allowed.
 - vi. The preliminary objection dated 18th April 2023 is dismissed.
 - vii. Each party to bear its own costs.
58. Orders accordingly



**DELIVERED, VIRTUALLY DATED AND SIGNED THIS 20TH DAY OF FEBRUARY, 2025 IN
OPEN COURT AT NAKURU**

H. I. ONG'UDI

JUDGE

