



Arithi (Suing as the Administrator of the Estate of Joseph Karanja) v Secretary, National Land Commission (Judicial Review E005 of 2023) [2025] KEELC 3679 (KLR) (8 May 2025) (Ruling)

Neutral citation: [2025] KEELC 3679 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KITUI
JUDICIAL REVIEW E005 OF 2023**

A KANIARU, J

MAY 8, 2025

**IN THE MATTER OF ORDERS EMANATING FROM THE DECREE ISSUED IN THE CHIEF
MAGISTRATE'S COURT AT KITUI ENVIRONMENT AND LAND CASE NO. E33 OF 2023**

IN THE MATTER OF ORDER 53 RULE 1 OF THE CIVIL PROCEDURE RULES, 2010

AND

IN THE MATTER OF THE CONSTITUTION OF KENYA, 2010

AND

IN THE MATTER OF SECTION 13 (7) OF THE ENVIRONMENT AND LAND COURT ACT

BETWEEN

REBECCA KARIMI ARITHI APPLICANT

SUING AS THE ADMINISTRATOR OF THE ESTATE OF JOSEPH KARANJA

AND

THE SECRETARY, NATIONAL LAND COMMISSION RESPONDENT

RULING

1. Before me for determination is a Notice of Motion dated 20/11/2024 and expressed to be brought under Article 159 of *the Constitution* of Kenya, 2010, Section 5 of the *contempt of Court Act*; Section 3A of the *Civil Procedure Act*, (Cap 21), Order 51 Rule 1 of the Civil Procedure Rules, 2010, and all other enabling provisions of the law. It is essentially an application for contempt of court orders and it came with five (5) prayers as follows:



1. That this honourable court be pleased to give an order citing the respondent for contempt of court by their disobedience of the decree and orders given by this honourable court on 8/10/2024.
 2. That the respondent be summoned before this honourable court to show cause why they (sic) should not be committed to civil jail for blatantly failing to comply with the decree and orders given by this honourable court on 8/10/2024.
 3. That on failing to show necessary cause, the respondent be committed to civil jail for a maximum period of six (6) months for contempt/disobedience of orders issued by this honourable court on 8/10/2024.
 4. That a warrant of arrest be issued against the respondent herein, the Secretary, National Land Commission, to be effected by the Officer Commanding Station (OCS) Capitol Hill Police Station.
 5. That costs of this application be provided for.
2. The basis of the application is that this court issued a decree dated 8.10.2024 directing the respondent to pay Kshs. 10,263,750/= and another Kshs. 328,440/= arising from determination of case No. E33 of 2023, which was a land matter in Kitui Chief Magistrates Court. These monies together with accrued and accruing interests were supposed to be paid in full. The applicants' advocates forwarded the decree and the details of the account into which the monies were to be paid. It was stated it is in the interests of justice that the application herein be allowed as the monies were not paid at all.
 3. The application came with a supporting affidavit which, inter alia, made available as annexures, the decree disobeyed, the letter forwarding the decree to the respondent, and an affidavit of service showing service of both the decree and also the letter forwarding the same to the respondent. It is emphasized in the supporting affidavit that the respondent's disobedience is willful and the respondent's continued failure to comply is both emotionally and financially distressing to the applicant.
 4. The respondent did not respond to the application.
 5. The application was canvassed by way of written submissions and in this regard, the applicant filed her submissions on 3.6.2025. It was submitted, inter alia, that the respondent has refused to comply with the court order despite many reminders.
 6. Reference was then made to decided cases with the cases of the Republic –vs- County Chief Officer, Finance & Economic Planning, Nairobi City County, EXPARTE Stanley Muturi [2018] EKR, being the first. In that case, reference was made to yet another – Econet Wireless Kenya Ltd. –vs- Minister for Information & Communication of Kenya & Another [2005] 1 KLR 828 - to emphasize that contempt of court proceedings are necessary to ensure maintenance of the rule of law and to guarantee upholding of the dignity of the courts. It was pointed out that it is the responsibility of every person who is supposed to comply and/or enforce a court order to do so and such responsibility subsists even where such person believes the order to be irregular or void.
 7. The same case was cited to emphasize that where a successful litigant has a decree in his favour and that decree remains unsatisfied, the burden shifts to the person with the responsibility to satisfy it to show that failure to satisfy it is not due to collusion, consent, or connivance on his part or any kind of blame on his part.
 8. I have considered the application and the submissions filed. In applications of this kind, the requirements for proof of contempt are as follows:



- a. The terms of the court order are clear, unambiguous and binding on the contemnor.
 - b. The contemnor has knowledge of or proper notice of the order.
 - c. The contemnor has acted in breach of the order.
 - d. The contemnors act is deliberate and/or wilful.
9. In this matter, the decree of the court is actually made available as an annexure. I have had a look at it. It is clear and has no ambiguity. On it also is a notice of penal consequences. It is also clear that the respondent has been receiving service. Despite all this, the respondent has not complied with the decree and does not seem to have given any proper or satisfactory explanation to the applicant. The disregard of the decree can therefore be said to be intentional, even willful.
10. In *Teachers Service Commission –vs- Kenya National Union of Teachers & 2 others*: [2013] eKLR, the court explained well why it punishes for contempt. It expressed itself thus:
- “The reason why courts will punish for contempt is to safeguard the rule of law which is fundamental in the administration of justice. It has nothing to do with the integrity of the judiciary or the court or even the personal ego of the presiding judge. Neither is it about placating the applicant who moves the court by taking out contempt proceedings. It is about preserving and safeguarding the rule of law.”
11. In *Central Bank of Kenya & Another –vs- Ratal Automobiles Limited & Others*: Civil Application No. Nai 247 of 2006, the Court of Appeal held that Judicial power in Kenya is vested in the courts and the other tribunals established under the Constitution and that it is a fundamental tenet of the rule of law that orders must be obeyed. It is stated that it is not open to any person to choose whether or not to comply with or to ignore such orders as directed to him or them by a court of law.
12. The matter before me is simple and straight forward and this is evidently so because it is not contested. The decree is clear. It has been served. It has been ignored. My finding therefore is that the merits of the application before me have been demonstrated on a standard higher than on a balance of probabilities. I therefore allow the application. I however realize that in the prayers sought, the applicant seeks to summon the respondent (prayer 2) and is also seeking a warrant of arrest (prayer 4). Both of these are means to enforce the orders. For now, prayer 4 is deferred. Let the applicant first try to effect prayer 2. Prayer 4 can only be resorted to later if prayer 2 fails.

RULING DATED, SIGNED AND DELIVERED IN OPEN COURT AT KITUI THIS 8TH DAY OF MAY, 2025.

A. KANIARU

JUDGE- ENVIRONMENT & LAND COURT, KITUI

08/05/2025

In the presence of,

Mwinzi Nzuki for Mwendwa Mwinzi for applicant

No party present

Court Assistant - Musyoki

