



**Lorkoyo & another v Lorkoyo (Environment and Land Appeal
E002 of 2024) [2025] KEELC 4835 (KLR) (26 June 2025) (Judgment)**

Neutral citation: [2025] KEELC 4835 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAROK
ENVIRONMENT AND LAND APPEAL E002 OF 2024
LN GACHERU, J
JUNE 26, 2025**

BETWEEN

RAKETA OLE LORKOYO 1ST APPELLANT

MUSANA OLE LORKOYO 2ND APPELLANT

AND

JACKSON OLE LORKOYO RESPONDENT

JUDGMENT

1. The Appellants herein are the Defendants/Respondents in the Narok CMC ELC No 109 of 2019, wherein vide a Ruling of the trial court dated 16th February 2024, they were held to be in contempt of court, and were fined ksh. 30,000/= each in default to serve 6 months imprisonment. Further, the Appellants herein as Respondents thereon were ordered to purge the said contempt forthwith or be denied audience of the court.
2. The Appellants were aggrieved by the said Ruling of the trial court, and vide a Memorandum of Appeal dated 11th March 2024, they filed the instant Appeal wherein they sought for the Appeal to be allowed with costs, and the Court proceeds to set aside and or upset the said Ruling of the trial court, and that the District Surveyor be ordered to amend the RIM as per the recommendations of the District Land Registrar dated 16th December 2020.
3. The Appeal is premised on various grounds set out in the Memo of Appeal as follows:-
 1. That the learned trial magistrate erred in law and in fact in finding that the Appellants are in disobedience of court orders issued on 17th August, 2023.
 2. That the learned trial magistrate erred in law and in fact in failing to dismiss the application by the Respondent for being fatally defective.



3. That the learned trial magistrate erred in law and in fact in failing to hold the burden of proof at beyond reasonable doubt given that the liberty of the Appellant was at stake
 4. That the learned trial magistrate erred in law and in fact in failing to consider the submissions by the Appellants.
 5. That the learned trial magistrate erred in law and in fact in failing to find that no affidavit of service was filed and the date when the orders were served upon the Appellants and that no personal service had not been effected on the Appellants.
 6. That the learned trial magistrate erred in law and in fact in failing to regard prevalent precedent authorities set in contempt proceedings.
 7. That the learned trial magistrate erred in law and in fact in considering and/or finding as sufficient evidence minimal and/or negligible proof alleged contempt.
 8. That the learned trial magistrate erred in law and in fact in failing to find that the order that allegedly bore fruit to the contempt proceedings had expired as at the time of the alleged contempt. The order was served upon the Appellants' advocates on 22nd August, 2023.
 9. That the learned trial magistrate erred in law and in fact in failing to appreciate that there are two parcels in dispute such that proof of contempt could be proved by a site visit and not photos at an "unknown location" that could not be confirmed as parcel No. Cismara/ Empatipat/555 and that there was no certificate of electronic evidence in support of the photographs annexed to the Respondent's application dated 3rd May, 2023.
 10. That the learned trial magistrate erred in law and in fact in finding that the Respondent had proved beyond reasonable doubt that the Appellants were guilty of contempt of court; and
 11. That the ruling of the learned trial magistrate was against the law and weight of evidence on record.
4. Simultaneously, the Appellants filed a Notice of Motion Application even dated, wherein they sought for various prayers; among them that the court do grant them leave to file this Appeal against the Ruling and consequential orders of the trial court dated 16th February 2024.
 5. The said Application was opposed vide the Replying Affidavit of the Respondent herein Jackson Ole Lorkoyo dated 31st May 2024. After inter-parties hearing, this court constituted differently delivered its Ruling dated 24th July 2024, and dismissed the prayers for stay of proceedings before the trial court, but granted leave to file the instant Appeal.
 6. In opposition to the Application and Appeal, the Respondent averred in his Replying Affidavit that the orders citing the Appellants for contempt was properly obtained, extracted and duly served upon the contemnor on 19th February 2024, which service they accepted as is evident from the Affidavit of Service dated 19th February 2024.
 7. He further averred that the District Land Registrar's Report dated 16th December 2020, which the Appellants are relying on does nor negates the fact that they have violated the court's orders by occupying his land. Further, that the said report recommended adjustment to RIM, but did not authorize the Appellants to occupy his parcel of land, and this report can only be used as exhibit in the main hearing, and not the Appeal.



8. He also claimed that the orders issued by the trial court were clear, and the Appellants were made aware of them, but they acted in breach, and encroached on his parcel of land Cis Mara/ Empatipat/ 555. Further, that the Appellants actions were deliberate, and in contempt, which actions undermined the rule of law, and eroded the public confidence of the court.
9. The Respondent further averred that the Appeal herein is overwhelming tenuous, and unsubstantiated and that the trial court properly evaluated the evidence before it and law and arrived at the correct determination.
10. The brief facts of this matter are that vide an application dated 2nd September 2019, the Respondent herein Jackson Sitonik Lorkoyo, sought for various orders. The main Order sought was an order for temporary injunction to be issued against the Appellants herein who were Defendants/ Respondents in the said Application, wherein he urged the court to restrain the Defendants/Respondents thereon(Appellants herein), their servants, employees, agents and/ or workmen from putting up structures, cultivating, leasing, felling trees, remaining upon, or interfering in any way whatsoever with the land title number Cis Mara/ Empatipat/ 555, pending the hearing and determination of the suit.
11. The said Application was opposed by the Appellants herein, who were the Defendants/ Respondents thereon, and vide a Ruling delivered in court on 28th January 2020, the trial court then granted temporary injunction in the following terms; that an injunction order is hereby granted to the plaintiff/ applicant in respect of land parcel No. Cis Mara/ Empatipat/ 555, and injunction order shall remain in force for only four months(4), unless extended by a further order of this court; the parties to comply with Order 11 of the CPR, and to fix the matter for hearing on priority basis within the said period of four months.
12. Though all the pleadings are not attached to the Record of Appeal herein, it is evident that the Order that brought about the Application for contempt was issued on 17th August 2023, wherein the trial court issued the following orders; That the Defendants, their servants, agents, employees, or workmen be temporarily restrained from putting up structures, cultivating, leasing, cutting trees, remaining upon or interfering in any way whatsoever with title number Cis Mara/ Empatipat/ 555, pending hearing and determination of the suit; that costs be provided for.
13. The above order was similar to the one issued on 28th January 2020, save that the orders herein were to remain in force until the final determination of the suit. This order of 17th August 2023, was issued in the presence of Mr Langat for the Plaintiff/ Applicant, and Mr Kamwaro for the Defendants/ Respondents, who are the Appellants herein. With the presence of both counsels, the parties are expected to be aware of the said orders of 17th August 2023.
14. It is evident from the impugned ruling that on 28th August 2023, the Plaintiff, who is the Respondent herein filed an application for contempt of court against the Defendants, who are the Appellants herein, and after inter-parties hearing, the trial court found them in contempt of court, wherein they were directed to pay a fine of ksh 30, 000/=, or be jailed for 6 months. It is that Ruling that aggrieved the Appellants herein, and thus this Appeal.
15. The Appeal was admitted under Section 79B of the *Civil Procedure Act*, on 4th December 2024, and the court directed that the Appeal be canvassed by way of written submissions, which directions were compiled by the parties.
16. The Appellants filed their written submissions through Kamwaro & Co Advocates, wherein they set out the issues for determination as follows;



- i. Whether the accusation of wilful and deliberate disobedience of court orders of 23rd August 2023, was proved;
 - ii. What principles would the court apply when dealing with contempt of court proceedings;
 - iii. What was the standard of proof to condemn contemnors in contempt proceedings;
 - iv. Whether the court presiding over contempt proceedings had a right to ignore deliberate the responses/ defence placed before it by the cited contemnors.
17. On the first issue, the Appellants relied on the Scottish case of Stewart Robertson vs Her Majesty’s Advocate, 2007 HCAC63, which quoted the case of Philip Chepkwony vs Benjamin Tarus & 4 others(2019) eklr, where the court defined contempt as;
- “.... Contempt of court is constituted by conduct that denotes wilful defiance of, or disrespect towards the court or that wilfully challenges or affronts the authority of the court or the supremacy of the law, whether in civil or criminal proceedings.”
18. It was their submissions that before the trial court, the Appellants denied the wilfully and deliberately disobeyed the orders of the court, and thus they rebutted the accusation, and contended that their activities were confined to their parcel of land Cis Mara/ Empatipat/558, and not 555.
19. The Appellants also submitted that the trial court erroneously convicted them for contempt of court, yet there was no proof of wilful disregard of the court order, and thus the requisite elements were not proved on the required standard.
20. For the standard of proof, the Appellants relied on the case of Sam Nyamweya & 3 Others vs Kenya Premier League ltd & 2 others (2015) eklr, where the court held;
- “I reiterate that contempt proceedings are of criminal nature and involve if proved loss of liberty, the applicant therefore endeavour to prove all facts relied on by way of evidence beyond reasonable doubt.”
21. Further, the Appellants submitted that the Respondent was not able to prove on the required standard that indeed they failed to comply with the court order of 23rd August 2023, and continued with activities on the suit land Cis Mara/ Empatipat/ 555, which activities the Appellants had denied before the trial court.
22. On the second issue, the Appellants submitted that the trial court deliberately ignored their responses to the application and condemned them unfairly, as they are in occupation of land parcel No. Cis Mara/ Empatipat/ 558, and not 555. They also submitted that the Respondents did not avail evidence that the Appellants did carry out the alleged activities, and the trial court ought to have adopted fair and reasonable procedure given that the appellants liberty was at risk. For this submissions, the Appellants relied on the case of R vs Ahmad Abolfathi Mohammed & Another SC Appl No.2 of(2018)eklr.
23. Further, it was submitted that Article 50(2) of *the Constitution* guarantee the right to fair trial to all the parties appearing in court, and contempt proceedings is one of them. Therefore, the court had a duty to evaluate the evidence brought before it fairly, and procedural and administrative fairness was expected of the trial court. Reliance was sought in the case of Nicholas Kiptoo Arap Salat vs IEBC & 7 others SC Petition No 23 of 2014(2015)eklr, to support the submissions on fair trial.
24. On the third issue, the Appellants relied on the definition of miscarriage of justice as defined by Black’s Law Dictionary 11th Edition, which states as follows; “ a grossly unfair outcome in judicial proceedings



as when a defendant is convicted despite lack of evidence on an essential element of the crime...also termed a failure of justice.”

25. It was the Appellants submissions that the trial court overlooked and caused miscarriage of justice when it failed to take into account the evidence that the Land Registrar field’s Report which confirmed that land parcels Nos Cis Mara/ Empatipat/ 555 & 558, are distinct and separate on their occupation on the ground, and they recommended amendment to the RIM to conform with the ground occupation of the two parcels of land. Therefore, to be fair in the administration of justice, the trial court ought to have called for the Survey Report and confirm whether indeed the contemnors response was factual and that their activities were confined to land parcel No. Cis Mara/ Empatipat/ 558, and not 555.
26. The Appellants relied on Article 159 of *the Constitution* which obligates courts to ensure that the procedures in the administration of justice would not lead to miscarriage of justice. Thus, the trial court was supposed to ensure procedural and substantive justice was observed.
27. In conclusion, the Appellants submitted that the trial court occasioned miscarriage of justice when it proceeded to convict them for contempt and fined them, and thus it was their prayer for the Appeal to be allowed and the ruling of the court of 16th February 2024, be set aside with costs to the appellants.
28. On his part, the Respondent filed his submissions through C.K Langat & Co Advocates and submitted that the ruling of the trial court was sound and merited, and the instant Appeal should be dismissed with costs to the Respondent.
29. The Respondent set out one issue for determination being; whether the learned magistrate erred in finding the appellants in contempt of court orders, and if so, whether this appeal is merited.
30. The Respondent submitted that the Appeal herein lacks merit and should not succeed, as the ruling of the trial court was based on thorough evaluation of evidence and law, and the argument by the Appellants is unsubstantiated and do not demonstrate error in the trial court’s reasoning.
31. The Respondent relied on the case of Mbogo & Another vs Shah(1968) EA 93, where the court held that the appellate court should not interfere with the exercise of discretion by the lower court, unless it is satisfied that the decision was clearly wrong.
32. He submitted that the Appellants were not able to show that the trial court erred in its Ruling, and therefore the order of the ruling of the trial court needs to be upheld. On the need to obey the order of the court, the Respondent relied on the case of Econet Wireless Kenya ltd vs Minister For Information and Communication of Kenya & Another (20025) eklr.
33. It was also submitted that the trial court’s ruling is sound and reinforces the authority of the courts, and maintains public confidence in the legal system, and allowing the Appellants to evade the consequences of the contempt would erode this public confidence, and set a negative precedent, thus risking making judicial process a mere academic exercise.
34. Further, it was submitted that the appeal herein is unnecessary and non- starter, as the appellants had a duty to obey the court orders, and therefore, the appellants have no justifiable appeal as they were in contempt of court orders, and the trial court rightly found them in such contempt, and the ruling of the trial court is well reasoned and is well grounded in both law and facts. Further, he submitted that since the appellants are in contempt of court, they should not be given audience by this court.
35. On costs, the Respondent submitted that the court should be guided by Section 27 of the *Civil Procedure Act*, which provides that costs follow the event, and are ordinarily awarded to the successful party, thus costs herein should be awarded to the Respondent.



36. The above are the grounds of the appeal herein, the facts as contained in the Record of Appeal and the rival written submissions which this court has carefully considered and finds as follows; -
37. This being a first Appeal, as provided by Section 65 of the *Civil Procedure Act*, the court has a duty to consider both the law and facts. Further section 78 of the said Act mandates the court in the first instance Appeal to re-evaluate, re-consider, re-examine and re-assess the evidence that was adduced before the trial court, and then arrive at its own independent decision, while taking into consideration that it never saw nor heard the witnesses as did the trial court.
38. In the case of *Selle & Another vs Associated Motor Boat Co.Ltd & Others (1968) EA. 123*, the court held as follows;-
- “...this court is not bound necessarily to accept the findings of facts by court below. An Appeal to this court is by way of retrial and the principles upon which this court acts in such an Appeal are well settled. Briefly put, they are that this court must reconsider the evidence, re-evaluate it itself and draw its own conclusion, though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in this respect...”
39. Further, this court as an appellate court will not just set aside the trial court’s findings and holding just because it has been moved in an appeal. It will give deference to the trial court’s findings, while considering that the said court has constitutional and statutory discretion to make findings just like this court. See the case of *Musa Cherutich Sirma vs Independent Electoral & Boundary Commission & 2 Others (2019) eKLR*, where the court held;
- “..in reiterating the above position, we affirm that we would only interfere with the appellate court’s exercise of discretion if we reach the conclusion that in exercise of such discretion, the appellate court acted arbitrary or capriciously ,or ignored relevant facts or completely disregarded the principles of the governing leading to unjust order. Conversely, if we find that the discretion has been exercised reasonably and judiciously, then the fact that we would have arrived at a different conclusion than the Court of Appeal is not a reason to interfere with the court’s exercise of discretion”
40. This court also appreciates that it will not interfere with the findings of the trial court unless the said findings were based on no evidence at all or on misapprehension of the law and facts, or it is shown that the trial court acted on the wrong principles. See the case of *Mbogo vs Shah. Shah [1968] E.A. 93*, where the court held; -
- “ [A] Court of Appeal should not interfere with the exercise of the discretion of a judge unless it is satisfied that the judge in exercising his discretion has misdirected himself in some matter and as a result has arrived at a wrong decision, or unless it is manifest from the case as a whole that the judge has been clearly wrong in the exercise of his discretion and that as a result there has been injustice.”
41. Being guided as above, the court will now consider the impugned ruling, the written submissions, the relevant provisions law and cited authorities and then comes up with its own independent conclusion.
42. After considering the above, the court finds the issues for determination are
- i. Whether this Appeal is merited;
 - ii. Who should bear costs of this appeal.



Whether the Appeal herein is merited.

43. The gist of this Appeal as captured in the Memo of Appeal is that the trial court erred in law and fact in holding that the Appellants herein are in disobedience of the Court Orders issued on 17th August 2023, and that the Ruling of the trial court was against the law and weight of evidence on record.
44. It is indeed on record that the Appellants herein were found to be in contempt of the Court Order that was issued on the 17th August 2023. The question that begs answers is whether the trial court was right in finding as it did that indeed the Appellants disobeyed court orders, and thus were in contempt of court.
45. It is very clear that Contempt of court is conduct or action that defies or disrespects authority of court. Black's Law Dictionary 9th Edition, defines contempt as:

“The act or state of despising; the conduct of being despised. Conduct that defies the authority or dignity of a court or legislature. Because such conduct interferes with the administration of justice.”

46. The Application before the trial court that gave rise to the impugned Ruling was filed under Order 40 Rule 3(1) of the Civil Procedure Rules which provides; -

“(1) In cases of disobedience, or of breach of any such terms, the court granting an injunction may order the property of the person guilty of such disobedience or breach to be attached, and may also order such person to be detained in prison for a term not exceeding six months unless in the meantime the court directs his release.”

It is also premised under section 3A of the *Civil Procedure Act* which provides; -

“Nothing in this Act shall limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.”

47. Therefore, from the above provisions of law, the trial Court could punish for disobedience of Court Order granted under Order 40. Further, the said court could also issue orders that are necessary for the end of justice to be met.
48. It is not in doubt that Courts punish for contempt to uphold the dignity and authority of the court, ensure compliance with directions of the court, observance and respect of due process of law, preserve an effective and impartial system of justice, and maintain public confidence in the administration of justice by courts: See the cases of Sheila Cassatt Issenberg & Another v Antony Machatha Kinyanjui [2021] eKLR, the court cited with approval the decision of the Supreme Court of India in Mahinderjit Singh Bitta v Union of India & Others 1 A NO. 10 of 2010 (13th October, 2011), where it was stated that:

“In exercise of its contempt jurisdiction, the courts are primarily concerned with enquiring whether the contemnor is guilty of intentional and wilful violation of the order of the court, even to constitute a civil contempt. Every party is lis before the court and even otherwise, is expected to obey the orders of the court in its spirit and substance. Every person is required to respect and obey the orders of the court with due dignity for the institution.”



49. Further, in the case of Samuel M. N. Mweru & Others v National Land Commission & 2 others [2020] eKLR, the court as follows:

“Contempt of court is not merely a mechanism for the enforcement of court orders. The jurisdiction of the superior courts to commit recalcitrant litigants for contempt of court when they fail or refuse to obey court orders has at its heart the very effectiveness and legitimacy of the judicial system. That, in turn, means that the court called upon to commit such a litigant for his or her contempt is not only dealing with the individual interest of the frustrated successful litigant but also, as importantly, acting as guardian of the public interest.”

50. Further in the above case of Samuel M. N. Mweru Case (Supra), the court set down the test for contempt 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.

Upon proof of these requirements the presence of wilfulness 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. Perhaps the most comprehensive of the elements of civil contempt was stated by the learned authors of the book Contempt in Modern New Zealand [47] who succinctly stated: -

“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: -

- a. The terms of the order (or injunction or undertaking) were clear and unambiguous and were binding on the defendant;
- b. The defendant had knowledge of or proper notice of the terms of the order;
- c. The defendant has acted in breach of the terms of the order; and
- d. The defendant’s conduct was deliberate.”

51. In the case of Ochino & another v Okhombo & others (1989) KLR, the court held that as a general rule, no court order requiring a person to do or abstain from doing any act may be enforced by committing him for contempt, unless a copy of the order has been served personally on the person required to do or abstain from doing it.

52. Further, in the case of Duncan Mamel Murigi v Kenya Railway Corporation (2008) eKLR the court while citing the case of Re Bramblevale Ltd (1970) CH 128, held that contempt of court is an offense of a criminal nature, and that a man may be sent to prison for it once it is proved that when the man was asked about it, he told lies and that there should be further evidence to incriminate him.

53. Contempt of court being quasi- criminal proceedings, in nature, therefore the degree of proof is high. See the case of Justus Kariuki Mate & Another v Martin Nyaga Wambora & another C.A No. 24 of



2014, where the court held that a court must satisfy itself beyond any shadow of a doubt that the person alleged to be in contempt committed the acts complained of with full knowledge or notice of the existence of the order of the court, forbidding it since the threshold involves possible deprivation of a person's liberty.

54. Given that contempt of court proceedings is quasi-criminal in nature, and that the liberty of the citees is at stake, then the degree of proof must be in the required standard. See the case of Gatharia K. Mutitika vs Baharini Farm Ltd (1985)klr 227, where the court held; -

“In our view, the standard of proof in contempt proceedings must be higher than proof on the 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, in criminal cases. It is not safe to extend it to an offence which can be said to be quasi-criminal in nature.”

55. Considering all the above, the court will evaluate the Memo of Appeal, the impugned ruling and then comes up with its own independent conclusion and findings. Though the Appellants did not attach all the pleadings from the trial court in their Record of Appeal, the court finds that the order that was allegedly disobeyed was issued on 17th August 2023, wherein the Appellants were restrained from dealing and/ or interfering with land parcel No.Cis Mara/ Empatipat/ 555.

56. In the application for contempt, the Respondent alleged that the Appellants were served with the court order through the Chief of Empatipat location Mr Morombi and OCS of Oloropil Police Station, which was alleged to be evident from annexure JK1, which was a copy of the OB Abstract. However, the Appellants did not include the said abstract of the OB, and the other annexures, among the pleadings in the Record of Appeal.

57. Without those annexures, this court cannot dispute that the Appellants were served. The Appellants are the ones who have alleged in this Appeal, and they needed to avail all the evidence adduced before the trial court, through their Record of Appeal. They failed to do so.

58. The Respondent had alleged that the Appellants continued to clear forests and cultivating land parcel No Cis Mara/ Empatipat/ 555, as per the attached copies of the photographs. The said photographs were not attached, and the court cannot dispute that indeed there was evidence that the Appellants were taken photographs clearing forests and cultivating a parcel of land.

59. It was also alleged by the Respondent that the Appellants had intimated and threatened to kill the Respondent once they were confronted and told to stop interfering with the suit land. The said threat was allegedly reported to the Police and there was annexure JK4, which was a copy of the OB abstract. The same was also not annexed in the Record of Appeal, and this court cannot dispute that.

60. From the various jurisprudence availed in court on the issue of contempt of court, service and knowledge of the Order allegedly disobeyed are key elements to be established. See the case of Justus Kariuki Mate & Another v Martin Nyaga Wambora & another C.A No. 24 of 2014, the court held that;

“..it must satisfy itself beyond any shadow of a doubt that the person alleged to be in contempt committed the acts complained of with full knowledge or notice of the existence of the order of the court, forbidding it since the threshold involves possible deprivation of a person's liberty.”

61. The court order in issue was given in the presence of Mr Kamwaro for the Appellants, who was representing them as the Defendants/ Respondents before the trial court. The said order was allegedly



served upon the Appellants through the area Chief of Empatipat location, and therefore service and knowledge of the order issued on 17th August 2023, is not in dispute.

62. However, the Respondent also needed to prove that the Appellants acted deliberately in disobeying the court order. As courts have variously held, contempt of court is an offence of criminal nature, and given that if one is found liable, there is a risk of confining him to jail and thus his liberty will be curtailed, then the guilt has to be proved with such strictness of proof consistent with the gravity of the charge.
63. Therefore, the Respondent who alleged breach of the court order needed to avail sufficient evidence to prove the said allegations. The Appellants denied having worked and or entered onto the land parcel No. 555, but alleged that they were actually cultivating or working on their land parcel No 558. Given that the Appellants had denied that they breached the order by interfering with the suit land, then the Respondent ought to have gone an extra mile to avail the Land Registrar and / or Surveyor's report to confirm that indeed there were activities carried out on land parcel No 555 and not 558.
64. Further, the Respondent ought to have called independent evidence to confirm that indeed the Appellants did enter the Respondent's parcel of land and carried out activities that were barred or restrained by the court order of 17th August 2023. These activities were putting up structures, cultivating, leasing, cutting trees and or remaining on the suit land.
65. In his Supporting Affidavit for the Notice of Motion dated 28th August 2023, the Respondent herein as the Applicant thereon had alleged that the Appellants herein as the Respondents thereon in flagrant disobedience of the court order had continued to clear the forest and cultivate on the suit land. Photographs were attached, but there was no independent evidence from the Land Registrar to confirm that indeed the clearing of the Forest was on land parcel No.555, and not No.558, and an independent or eye witness to confirm that it was indeed the Appellants herein who carried out the alleged activities.
66. It was not enough to make mere allegations, as the said allegations needed to be proved on the required standard, which as the courts have variously held, in a contempt of court, it is on a standard higher than a balance of probabilities but not as high as beyond reasonable doubt, and that the alleged contemnor had clear knowledge of a court order, understood its terms, and deliberately disobeyed it. See the case of Sammy Nyamweya & others v Kenya Premier League Ltd & others (2015) eklr.
67. In the case of Gatharia K. Mutikika vs Baharini Farm Ltd (1985) KLR 227, the court explained the standard of proof for civil contempt, and held as follows:-

“In, *Re Breamblevale Ltd* [1969] 3 All ER 1062, Lord Denning MR. (as he then was), at page 1063, had this to say,

‘A contempt of court is an offence of a criminal character. A man may be sent to prison. It must be satisfactorily proved. To use the time-honoured phrase, it must be proved beyond reasonable doubt’.

With the greatest possible respect to that eminent English judge, that proof is much too high for an offence “of a criminal character” and, ipso facto, not a criminal offence properly so defined. We agree with Mr. Khaminwa's submissions in this respect. In our view the standard of proof in contempt proceedings must be higher than proof on the balance of probabilities, almost but not exactly, beyond reasonable doubt. We envisage no difficulty in courts determining the suggested standard of proof. The standard of proof beyond reasonable doubt ought to be left where it belongs, to wit, in criminal cases. It is not safe



to extend it to offence which can be said to be quasi – criminal in nature Winn LJ on page 1064 was in our view right in saying that the guilt has to be proved ‘with such strictness of proof ... as is consistent with the gravity of the charge’.”

68. Having re-evaluated and re-considered the available evidence before the trial court, and the impugned ruling, this court in its appellate jurisdiction has come to an independent conclusion that the Respondent failed to prove on the required standard that there was a deliberate breach of the court order of 17th August 2023, and that the Appellants herein did carry out the alleged activities on land parcel No. Cis Mara/ Empatipat/ 555, and Not 558, as alleged in the Appellants Replying Affidavit to the Notice of Motion dated 28th August 2023.
69. Consequently, this court finds and holds that the trial court erred in law and fact in finding and holding that the Appellants were in disobedience of the court order issued on 17th August 2023.
70. For the above reasons, the court allows the Appeal herein as per the Memo of Appeal dated 11th March 2024, and proceeds to overturn and/ or set aside the Ruling of the trial court delivered on 16th February 2024, and all the consequential orders thereto.
71. However, on the order of directing the District Land Surveyor to amend the RIM, as per the recommendations of the District Land Registrar dated 16th December 2020, that order cannot be issued at this inter-locutory stage. Let the matter proceed for hearing at the main trial before the trial court, and after the inter parties hearing, the trial court can make the appropriate orders.

Who should bear costs of this Appeal?

72. On the issue of costs, the court will be guided by the provisions of section 27 of the *Civil procedure Act*, which provides that costs are granted at the discretion of the court. However, costs follow the event and are ordinarily awarded to the successful litigants, unless there are circumstances warranting the court to depart from that holding. There are no such circumstances, and the Appellants herein being the successful litigants are awarded costs of this Appeal and costs at the lower court.
73. Ultimately the Appeal herein is allowed as above with costs to the Appellants herein.
Appeal allowed accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY AN NAROK THIS 26TH DAY OF JUNE 2025.

L. GACHERU

JUDGE

Delivered online in the presence of

Elija Meyoki Court Assistant

Mr. Kamwaro for the Appellants

Mr. Langat for the Defendant.

