



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NYERI

ELC NO. 703 OF 2014

(Formerly Nyeri HCCC NO. 161'A' Of 2010 (O.S))

PETER MAHINDA KANYORA1st PLAINTIFF/APPLICANT

and the land of DANIEL MUKUHA WAHOME.....2ND PLAINTIFF/APPLICANT

JOHN MIRING'U KIMANI (*Suing for and on behalf of themselves and the members of Maki Plot Owners Self Help Group*).....3rd PLAINTIFF/APPLICANT

-VERSUS-

JULIUS MUGO GACHAGUA (*Sued as the Administrator/legal representative of the Estate of MARY MWERUACHAGUA, the Administrator of the Estate of JOHN GACHAGUA KIBIRU*).....DEFENDANT/RESPONDENT

RULING

1. Before me for determination is the Notice of Motion dated 28th November 2019 brought under the provisions of Sections 10 of the Magistrates' Court Act 26 of 2015, Section 5(1) of the Judicature Act Cap 8 laws of Kenya, Civil Procedure Rules of England, Schedule 1, Order 52 Rule 2(3) of the Rules of the Supreme Court of England 1965, Practice direction, Part 1 Para 2.2 and 2.6 scpd 52.2 and all other enabling provisions of the law where the Plaintiffs/Applicants seeks for the following orders;

- i. That Julius Mugo Gachagua, the Respondent herein, be committed to prison for 6 months or such period as the honorable Court may deem fit and just for being in contempt of Court orders made by this Court in the instant suit on the 10th December 2012 and re-issued on the 14th April 2015.(sic)
- ii. spent
- iii. They also sought that the Police Officer Commanding Police Division–Nanyuki do assist in enforcing the Court order issued on the 10th December 2012.
- iv. That pending the hearing and determination of this Application, an order do issue directing the Registrar of Lands to stay any further transfers, subdivisions or transactions in progress or effected on Land reference No. 10422/9.
- v. That the Registrar of Lands be ordered to the cancel all transfers, sub divisions or transactions effected on the Land Reference No. 10422/9 and to immediately reissue the title in its original form, without any alterations done by the Respondents.

2. The said application was supported by the grounds set on the face of it as well as on the sworn affidavits of Peter Mahinda Kanyora the Chairman of the Plaintiff/Applicant group herein.

3. The above application was premised on a consent recorded by the parties and adopted as an order of the Court on the 27th September 2017 to the effect that;

“By consent the Respondent, his agents, servants or anyone claiming interest under him be restrained by a temporary injunction from carrying out the threatened action contained in a public notice issued by and published in the Daily Nation of Wednesday July 12th, 2017, that is cancelling names of the applicants or purporting to refund monies paid to him or his predecessor in title by the Plaintiff until the hearing and determination of the suit’.

4. Following the adoption of the said consent, parties sought for a hearing date for the main suit as they tried to settle the matter out of Court.
5. When they failed to reach a settlement, the matter proceeded for hearing where the Plaintiff testified and closed its case. It was thus while the matter was pending the hearing of the Defence case, that the Plaintiffs herein filed an application dated the 28th November, 2019 which application sought for the above captioned orders.
6. In response to the application, the Defendant/Respondents filed their Notice of preliminary objection dated the 16th December 2019 challenging the application on the grounds that it had been filed in contravention of the provisions of Order 9 Rule 8 of the Civil Procedure Rules and therefore should be struck out with costs.
7. On the 11th December 2019, the Court directed that in order to preserve the subject parcel of land, that there be status quo maintained to the effect that there shall be no dealings to the suit land pending the determination of both the applications dated the 28th November, 2019 and the preliminary objection which applications were to be disposed of by way of written submissions.
8. The Plaintiff/Applicant complied and filed their written submissions. The Respondent on the other hand only filed their Replying Affidavits to both the Application and Preliminary Objection as well as a list of authorities in support.

Plaintiff/Applicants’ submission.

9. The Plaintiff gave a background on the orders that had been issued in the matter pending its hearing and determination to wit that on the 10th December 2012 the Court issued temporary orders of injunction against both parties herein from disposing, transferring or alienating land reference No. 10422/9 occupied by the Plaintiffs pending the hearing and determination of the suit. That these orders were issued in the presence of the Respondent and his Counsel. On the 14th April 2015 (sic) the same orders were re-issued again.
10. That despite there being no orders sought to vary or lift the above captioned orders, the Defendant/Respondent herein proceeded to sell part of the parcel of land which effected the total alienation of the subject land wherein on or around the 23rd November 2018, he effected the sub division of the suit land into 507 new portions wherein parcel reference No. 10422/9 ceased to exist and was replaced by a land known as Nanyuki/Marua Block 11 as captured in a letter dated the 23rd November 2018 annexed as PMK2.
11. That the Respondent surrendered the original title to the Government and made requisite payments to finalize the illegal sub-divisions which leaseholds titles now await purchasers. That the subject suit had been vaporized by the Respondent in full brazen disobedience of the Court order herein.
12. The Applicant framed their issues for determination as follows;
 - i. Was the Respondent aware of the existence of Court orders?
 - ii. Has there been deliberate and intentional non-compliance with the said order and has the burden of proof of the non-compliance/disobedience with the Court order been satisfied
13. On the first issue for determination, it was the Applicants’ submission that the order was issued in the presence of both the Respondent and his Counsel and therefore the issue of service did not arise for determination. That the said order was issued to restrain the Respondent from the continued alienation of parts of the suit land which he had been undertaking despite there being an order issued earlier in the year 2010.
14. On the second issue for determination, the Applicants’ submission was that the Respondent had not denied any of the facts in the Application, but only filed a Notice of preliminary objection to the application and no attempt was made to explain his action. The Applicant relied on the decided case of **Africa Management Communication International Limited vs Joseph Mathenge Mugo & Another [2013] eKLR** to buttress their submissions.
15. That the evidence annexed on their application went beyond the required standard of reasonable doubt and showed that the contemptuous act by the Respondent were willingly conducted. The Court order was clear and not ambiguous wherein it had prohibited all parties from any dealings in the subject matter.
16. It was the Applicants’ submission that despite there being clear orders, the Respondent herein;
 - i. Purported to sale a parcel of the suit land wherein he had paid a sum of Ksh 133,000/= to the department of land for sub-division and change of user. A receipt dated the 29th January 2019 was issued to him- Julius M. Gachagua.
 - ii. Mugo Gachagua, vide a receipt dated the 2nd August 2019, had paid a sum of Ksh 1,067,560/= for the sub division of LR 10422/9.

iii. Removed and deleted the previously existing sub-division and altogether created different parcels of land in complete conflict with the pre-existing plots.

iv. Obliterated the subject matter of the suit No. LR 10422/9 and created 507 plots under a series known as Nanyuki/ Marua Block 11/1-507 (all owned by the Respondent as an administrator in a Succession Cause).

17. In regard to the Preliminary objection raised by the Respondent, the Applicants' response was that the said objection was premised on the provisions of Order 9 Rule 8 of the Civil Procedure Rules which ostensibly dealt with parties who wished to act in person and therefore had no bearing to the application. Further, it was their submission that at no time had they made any indication that they wished to act in person. That the preliminary objection therefore must have been filed because that the application was drawn and filed by the Applicant- Maki Plot Owners Self Help Group.

18. The applicants relied on the provisions of Order 2 Rule 16 of the Civil Procedure Rules to submit that the said pleadings had been signed by their Counsel M/S Martin Gitonga Advocate and not the Plaintiff in person. That further the provisions of Order 2 Rule 15 empowered the Court to strike out any pleadings which could not be cured through amendment, which was not the case in the present circumstance.

19. That Order 2 Rule 14 of the Act was clear to the effect that the rule on substance over form must guide the Civil Procedure and practice.

20. The Applicants submitted that Contempt of Court was a measure intended to safeguard the dignity of the Court and to ensure that the society did not plunge into chaos as was held in the case of **Republic vs Kenya School of Law & 2 Others Ex- parte Juliet Waniru Njoroge & 5 Others [2015] eKLR**.

21. It was the Applicants submission that the Respondent's blatant disrespect of Court orders had earned him 6 months in civil jail and that the Court do reverse the illegal subdivisions to their original state being Title No. LR 10422/9 as sought in their prayers.

22. They also sought for costs at a higher scale keeping in mind the great difficulty and merger resources they had in marshaling up and filing the present application.

Respondent's Response.

23. In response to the Applicants' application, the Respondent deponed in his Affidavit dated the 31st December 2019 and filed on the 8th January 2020 that the Application under the Certificate of Urgency dated the 28th November 2019 was a nullity as it had been filed by an unauthorized person.

24. That the Respondent had not been served with the orders of 10th March 2012 and the same was not even annexed on the said Application. That further, the suit land No LR 10422/9 had always been sub divided and allotted to various subscribers among them the Applicants and that he had neither disposed, transferred nor alienated any of the parcels of land occupied by the Applicants.

25. The Respondent further deponed that the conversion of registration of the land and registration of the already existing parcels did not constitute disposal, alienation or transfer of the said parcels of land which was still occupied by the allotted persons. The Respondent relied on the decided case of **Republic vs Principal Secretary, Ministry of Defence Ex-parte George Kariuki Waithaka [2019] eKLR** to support his response.

26. It was the Respondent's further averment that Peter Mahinda Kanyora who had instituted the Application had no authority to do so.

27. In support of his notice of Preliminary Objection, filed on the 8th January 2020 and dated the 31st December 2019, the Respondent deponed that the Application which was purported to have been instituted, drawn and filed by Maki Plot owners Self Help Group was not signed by every member of the group but had disclosed the person who signed the same as one Peter Mahinda Kanyora, who did not sign it on behalf of the group and whose signature was distinct from the one on the Supporting Affidavit.

28. That at the time the Applicant/Plaintiffs were being represented by the firm of Kibuka Wachira (Sic) and Company Advocates and there was no evidence that the Applicants had complied with the provisions of Order 9 Rule 8 of the Civil Procedure Rules in purporting to act in person, which rendered the Application a nullity. The Respondent relied on the case of **Stephen Mwangi Kimote v Murata Sacco Society [2018] eKLR** to support his response.

Analyses and Determination

29. The application under consideration was filed on **28th November 2019** where the Applicants sought that the Respondent herein be held in contempt of the Court order of 10th December 2012. In response to the said Application the Respondent filed his notice of Preliminary objection on the 16th December 2019 dated an even date to the effect that the said Application should be struck out for contravening the provisions of Order 9 Rule 8 of the Civil Procedure Rules.

30. I wish to deal with the issue on the Preliminary Objection in the first instance. A Preliminary Objection according to the decided case by the Court of Appeal in the case of **Mukisa Biscuits Manufacturing Co. Ltd-v- West End Distributors Limited (1969) EA. 696** was stated to be thus:-

“So far as I am 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.”(Emphasis mine)

31. I must point out that the authority cited by the Respondent herein in support of his Preliminary Objection herein is distinguishable in the present circumstance as the same is in regard to mandatory procedures under Order 9 Rule 9 of the Civil Procedure Rules, which set out the procedure to be followed in matters where a judgment of the Court has since been delivered. Judgment in this matter has not been delivered as the matter is part heard.

32. The summation of the Respondent’s preliminary objection is that the Application for contempt of Court proceedings was a nullity as it had been filed by an unauthorized person in contravention of the provisions of Order 9 Rule 8 of the Civil Procedure Rules which provisions provide as follows:

Where a party, after having sued or defended by an advocate, intends to act in person in the cause or matter, he shall give a notice stating his intention to act in person and giving an address for service within the jurisdiction of the Court in which the cause or matter is proceeding, and the provisions of this Order relating to a notice of change of advocate shall apply to a notice of intention to act in person, with the necessary modifications.

(2) The address for service given under subrule (1) shall comply with Order 6, rule 3.

33. From the definition of the meaning of a preliminary objection the same is clear that it must be a point of law which if argued as a preliminary point may dispose of the suit. In the instance case I find that the Respondents Preliminary Objection when argued cannot dispose of the entire suit and therefore is not a true preliminary objection. Indeed there was nothing stopping the Applicants to file the application for contempt proceeding if they so pleased keeping in mind that the case was theirs and the Advocate on record only acted as their agent and that is why the law allows them to change Counsel or act in person if they so wish. Lastly, the provisions of Order 9 Rule 8 are applicable where the party intends to act in person in the cause or matter. In the present matter, there is no indication that the parties intended to act in person as Counsel on record has continued to represent them. The Preliminary Objection 16th December 2019 is herein dismissed.

34. On the main application for contempt of Court proceeding, the Black’s Law Dictionary (Ninth Edition) defines contempt of Court as:-

“Conduct that defies the authority or dignity of a Court. Because such conduct interferes with the administration of justice, it is punishable usually by fine or imprisonment.”

35. In **Johnson vs Grant (1923) SC 789 at 790** Clyde L J noted:-

“The phrase ‘contempt of Court’ does not in the least describe the true nature of the class of offence with which we are here concerned.... The offence consists in interfering with the administration of the law; in impeding and perverting the course of justice..... it is not the dignity of Court which is offended – a petty and misleading view of the issues involved, it is the fundamental supremacy of the law which is challenged.” (Emphasis mine).

36. In the case of **Woburn Estate Limited v Margaret Bashforth [2016] eKLR the Court of Appeal held as follows:**

For many years in the history of the Judiciary of Kenya the Courts have, pursuant to **section 5 (1)** of the Judicature Act, resorted to the prevailing law of England in the exercise of the power to punish for contempt of Court.....

Today that position has drastically changed, starting with the establishment of the Supreme Court which was not envisaged when section 5 of the Judicature Act was enacted. By Act No.7 of 2011, **Article 163 (9)** of the Constitution was operationalized by the enactment of the Supreme Court Act (CAP 9A), which among other things, makes express provision for the power of the Supreme Court to punish for contempt.

Under **section 29** of the Environment and Land Court Act, it is an offence punishable, upon conviction to a fine of not exceeding Kshs.20,000,000 or to imprisonment for a term not exceeding two years, or to both, if any person refuses, fails or neglects to obey an order or direction of the Court given under the Act.

We have gone to this great length to demonstrate how, before the passage of these legislations the powers of the High Court and this Court to punish for contempt of Court were dynamic and kept shifting depending on the prevailing laws in England. Today each level of Court has been expressly clothed with jurisdiction to punish for contempt of Court. The only missing link is the absence of the rules to be followed in commencing and prosecuting contempt of Court applications

37. The Contempt of Court Act commenced on the 13th January, 2017 but had been declared invalid by the High Court in the case of **Kenya Human Rights Commission vs Attorney General & Another [2018] eKLR**. In their application, the Applicants have filed their application pursuant to various provisions of the law including those that were inapplicable in the circumstance. However they have also filed the same pursuant to all other enabling provisions of the law. I am therefore obliged to revert to the provisions of the law that operated before the enactment of the Contempt of Court of Act, to avoid a lacuna in the enforcement of Court’s orders.

38. It was in this respect as observed in the case of **Republic vs. Returning Officer of Kamkunji Constituency & The Electoral Commission of Kenya HCMCA No. 13 of 2008**, that the High Court (read Environment and Land Court) has the responsibility for the maintenance of the rule of law, hence there cannot be a gap in the application of the rule of law.

39. In addition, in the case of **Republic v Principal Secretary, Ministry of Defence Ex parte George Kariuki Waithaka [2019] eKLR**, it was held that where there is a lacuna with respect to enforcement of remedies provided under the Constitution or an Act of Parliament, or if, through the procedure provided under an Act of Parliament, an aggrieved party is left with no alternative but to invoke the jurisdiction of the Court, the Court is perfectly within its rights to adopt such a procedure as would effectually give meaningful relief to the party aggrieved, in exercise of the inherent jurisdiction granted to the Court by section 3A of the Civil Procedure Act to grant such orders that meet the ends of justice and avoid abuse of the process of Court.

40. Section 5(1) of the Judicature Act which provided that:

“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.”

41. Section 29 of the Environment and Land Court is clear to the effect that;

Any person who refuses, fails or neglects to obey an order or direction of the Court given under this Act, commits an offence, and shall, on conviction, be liable to a fine not exceeding twenty million shillings or to imprisonment for a term not exceeding two years, or to both

42. The High Court in **John Mugo Gachuki vs New Nyamakima Co. Ltd Civil Case No. 456 of 2011** discussed the procedure for instituting Contempt proceedings in Kenya as follows:

"It is unfortunate that nearly 50 years after independence our procedure, with respect to punishment for contempt in our Court is referable to the procedure in High Court of Justice in England. It is saddening that the entities entrusted with updating and drafting our laws have not seen the urgency of enacting our own law relating to such an important aspect of the Rule of Law. That being the position, ours is not to enact the law but to interpret the law as enacted."

43. In the case of **Samuel M. N. Mweru & Others v National Land Commission & 2 others [2020] eKLR** the Court held that

A Court without contempt power is not a Court.[30] The contempt power (both in its civil and criminal form) is so innate in the concept of jurisdictional authority that a Court that could not secure compliance with its own judgments and orders is a contradiction in terms, an “oxymoron.” Contempt power is something regarded as intrinsic to the notion of Court; even obvious, I would say. In the common lawyer’s eye, the power of contempt “is inherent in Courts, and automatically exists by its very nature.....”

A Court order is binding on the party against whom it is addressed and until set aside remain valid and is to be complied with. Article 159(1) of the Constitution provides that judicial authority is derived from the people and vests in, and shall be exercised by, the Courts and tribunals established by or under the Constitution. Under Article 10(1) of the Constitution the national values and principles of governance in the Article bind all State organs, State officers, public officers and all persons whenever any of them (a) applies or interprets the Constitution; (b) enacts, applies or interprets any law; or (c) makes or implements public policy decisions. Under clause (2) (a) of the same Article the national values and principles of governance include the Rule of Law.

It is a crime unlawfully and intentionally to disobey a Court order.

This type of contempt of Court is part of a broader offence, which can take many forms, but the essence of which lies in violating the dignity, repute or authority of the Court. [36] The offence has in general terms received a constitutional ‘stamp of approval,’ since the Rule of Law – a founding value of the Constitution – ‘requires that the dignity and authority of the Courts, as well as their capacity to carry out their functions, should always be maintained.’ [

44. It is an established principle of law as was held in the case of Kristen **Carla Burchell vs Barry Grant Burchell, Eastern Cape Division Case No. 364 of 2005** 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.

45. Based on the above requirements I shall base my issues determination as follows:-

i. Whether the Respondent herein was served with or was made aware of the order of 10th December 2012 which were re-issued on the 27th September 2017 where the parties were barred from interfering with land reference No. 10422/9 pending the hearing and determination of the suit

ii. Whether there were any valid orders issued by this Court.

iii. Whether the Respondent brazenly disobeyed the orders of the Court.

46. On the first issues as to whether Respondent herein was served with or was made aware of the order of 10th December 2012 which were re-issued on the 27th September 2017, I find that in the case of **Kenya Tourist Development Corporation vs Kenya National Capital Corporation & Another, Nairobi High Court Civil Case No. 6776 of 1992**, it was held that the knowledge of an order supersedes personal service. Further the Court of Appeal case of **Kenya Bus Services v Susan Muteti, Nairobi Civil Appeal No 15 of 1992** held that an Advocate is a special agent authorized to Act for his Client, and by virtue of serving him the Respondents were served.

47. In the instant case however, the proceedings are clear that on 10th December 2012, the Respondent's Counsel was present when the Court issued temporary injunctive orders stopping the parties herein from disposing off transferring or alienating land reference No. 10422/9 occupied by the Applicant/Plaintiffs, pending the hearing and determination of the suit.

48. I also find that on the 27th July, 2017 Counsel for the Applicants filed an application in Court under a certificate of urgency dated the same date seeking orders of permanent injunction against the Respondent who despite the matter being in Court and there being orders of temporary injunction, had proceeded to put up a notice in the newspaper asking that members of the Applicant to collect their refunds and was still selling the suit property.

49. The application had been certified as urgent wherein the Applicant had been directed to serve. Service was effected and parties had entered a consent which was adopted as a Court order on the 27th September 2017 to the effect that:

‘By consent the Respondent, his agents, servants or anyone claiming interest under him be restrained by a temporary injunction from carrying out the threatened action contained in a public notice issued by and published in the Daily Nation of Wednesday July 12th, 2017, that is cancelling names of the applicants or purporting to refund monies paid to him or his predecessor in title by the Plaintiff until the hearing and determination of the suit’.

50. At the time of adoption of the consent, the Respondent was represented by his Counsel.

51. The Court of Appeal in the *Shimmers case Plaza Limited v National Bank of Kenya Limited [2015] eKLR* the Court of Appeal posed the question whether knowledge of a Court order or judgment by an Advocate of the alleged contemnor would be sufficient for purpose of contempt proceedings and answered the question in the affirmative stating:-

“We hold the view that it does. This is more so in a case as this one where the advocate was in Court representing the alleged contemnor and the orders were made in his presence. There is an assumption which is not unfounded, and which in our view is irrefutable to the effect that when an advocate appears in Court on instructions of a party, then it behooves him to report back to the client all that transpired in Court that has a bearing on the clients’ case...”

52. Indeed from the Court's record, the same is clear that the consent of the 27th September 2017 was adopted as an order of the Court in the presence of Counsel for both parties. This Court thus finds that the Respondent had knowledge of the Court's orders and therefore personal service was unnecessary

53. On the second issue for determination as to whether there were any valid orders issued by this Court. **Vide a ruling delivered on the 10th December 2012**, the Court directed as follows;

‘This Court is included to grant temporary orders stopping any person be it to Plaintiff or defendants from disposing off, transferring or alienating the parcel of land occupied by the Plaintiffs pending the hearing of the suit’

54. Parties to the suit have not disputed that indeed there was a valid order issued by the Court. I therefore find that indeed both orders of the 10th December 2012 and 27th September 2017 were valid orders and this issue thus rests.

55. On the last issue as to whether the Respondent brazenly disobeyed the orders of the Court, I have considered the submission by Counsel as well as looked at the annexures herein annexed to the Application herein. It is not in dispute that the annexures marked as PMK 2 shows that the subject suit herein No. 10422/9 has since been sub-divided into 507 parcels of land.

56. Further, the annexure marked as PMK 1 in the Applicants' supplementary affidavit of 14th January 2020 is a sale agreement between the Respondent as the vendor and one Wangalwa Derrick Kangwana the purchaser dated the 20th July 2016. PMK 2 is yet another sale agreement between the Respondents as the vendor and one Muriungi Kenneth Muthoni dated the 11th July 2013.

57. The order that has been flouted, directing parties to stop disposing off, transferring or alienating the parcel of land pending the hearing of the suit was issued on the 12th December 2012. From the Applicants' affidavit sworn on the 28th November 2019 and the annexures in form of a certificate of title and letters from the Ministry of Lands and Physical Planning dated the 23rd November 2018 and 19th February 2019, marked as PMK2, the same shows clearly that the suit land herein has since been sub-divided into 507 parcels of land and therefore has ceased to exist.

58. The Applicants had deponed in their affidavit that upon causing the said subdivisions the Respondent had embarked on selling the resulting parcels of land as per the sale agreements annexed. A fact which has not been controverted or denied by the Respondent.

59. The Scottish case of **Stewart Robertson vs. Her Majesty's Advocate, 2007 HCAC 63**, Lord Justice Clerk stated that:

“ contempt of Court is constituted by conduct that denotes willful defiance of or disrespect towards the Court or that willfully challenges or affronts the authority of the Court or the supremacy of the law, whether in civil or criminal proceedings”

60. Further, Romer L.J in **Hadkinson vs. Hadkinson(1952) ALL ER 567** stated that:

“It is the plain and unqualified obligation of every person, against, or in respect of, whom an order is made by a Court of competent jurisdiction to obey it unless and until that order is discharged. The uncompromising nature of this obligation is shown by the fact that it extends even to cases where the person affected by an order believes it to be irregular or even void”

61. From the foregoing, it is trite that contempt of Court proceedings and applications are subtle and criminal in nature and would impose criminal sanctions if a conviction followed.

62. I find that the Respondent/Defendant herein willfully and intentionally defied orders of the Court despite knowledge of the same. His action of sub dividing and continued transferring and/or alienating of the suit land ran afoul of the terms of the Court orders issued on the 12th December 2012 which had directed that parties stop disposing off, transferring or alienating the parcel of land pending the hearing of the suit.

63. The sub-division of the suit land herein and the further alienation of the same will now cause the Applicants to incur further expenses as the original suit land has now ceased to exist and third parties have since been introduced into the suit therefore necessitating the amendment of the pleadings.

64. It has been held by the Courts that unless and until a Court order is discharged, it ought to be obeyed. As was held by the Court of Appeal in **Central Bank of Kenya & Another vs. Ratilal Automobiles Limited & Others, Civil Application No. Nairobi 247 of 2006**, it is a fundamental tenet of the rule of law that Court orders must be obeyed and it is not open to any person or persons to choose whether or not to comply with or to ignore such orders as directed to him or them by a Court of law.

65. In the case of **Awadh vs. Marumbu (No. 2) No. 53 of 2001 (2004) KLR 458**, the Court held that it is the duty of the Court not to condone deliberate disobedience of its orders nor waiver from its responsibility to deal decisively and firmly with the approved contemnors.

66. I find that the Respondent/Defendants herein is in blatant contempt of Court orders.

67. By consent dated the 9th April 2020, a copy of this ruling has been sent to both Counsel for the parties through e-mail due to the extraordinary circumstance brought about by the emergence of the Covid-19 pandemic.

68. The sentencing is herein reserved for the 5th May 2020 at the Nyeri Environment and Land Court. In the meantime summons be issued to Julius Mugo Gachagua, the Respondent herein to appear on the said date for sentencing.

69. The Plaintiff/Applicants application dated the 28th November 2019 is herein allowed with costs.

Dated and delivered at Nyeri this 17th day of April 2020

M.C. OUNDO

ENVIRONMENT & LAND – JUDGE