



**Sakaja & 2 others v Mariga & 2 others (Environment and Land Case  
13 of 2023) [2025] KEELC 4682 (KLR) (18 June 2025) (Ruling)**

Neutral citation: [2025] KEELC 4682 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KITALE  
ENVIRONMENT AND LAND CASE 13 OF 2023**

**CK NZILI, J  
JUNE 18, 2025**

**BETWEEN**

**JOHN SAKAJA ..... 1<sup>ST</sup> PLAINTIFF  
PASTOR GEORGE ODERA ..... 2<sup>ND</sup> PLAINTIFF  
GODFREY OJILO ..... 3<sup>RD</sup> PLAINTIFF**

**AND**

**NYOKABI MARIGA ..... 1<sup>ST</sup> DEFENDANT  
SCHOLASTICA MUDHAI ..... 2<sup>ND</sup> DEFENDANT  
PETER WILSON ..... 3<sup>RD</sup> DEFENDANT**

**RULING**

1. The court through an application dated 21/3/2025, is asked to commit the defendants to civil jail for contempt of court, regarding orders made on 23/8/2023. The grounds are contained on the face of the application and in a supporting affidavit of John Sakaja, sworn on 21/3/2025. It is deposed that an order of injunction was issued against the defendants on 23/3/2023, restraining them from interfering or dealing in any way with the reserved area meant for excision to expand the existing access road on L.R No. 2XX3/14/1, 2XX3/13/1, and 2XX3/13/2, until the hearing and determination of the suit.
2. Further, the applicant deposes that the defendants, their servants, and or agents were ordered to harvest crops that they had been planted in the aforesaid area during that particular season, after which they were to vacate the area until the suit is heard and determined. The applicant deposes that while aware of the order and its penal notice, the defendants have failed and or refused to comply but instead continue ploughing on the said area as per photographs attached as JS-2.
3. The application is opposed through a replying affidavit by the 3<sup>rd</sup> defendant sworn on 28/3/2025. It is deposed by Peter Wilson that the photographs provided before the court are not illegible but also it



is impossible to tell who took them if they relate to the suit property and how they demonstrate the alleged ploughing on the suit property.

4. The 3<sup>rd</sup> defendant while acknowledging knowledge of the order dated 10/8/2023 and its contents, confirms that the County Land Surveyor visited the suit land and prepared a report dated 29/9/2023, indicating that there are permanent structures on the area alleged to 12-meter road.
5. The 3<sup>rd</sup> defendant denies being the owner of LR No. 2XX3/14 and insists that the surveyor report did not allude to his encroachment to the reported area reserved for the 12-meter road. The report is attached as annexure PW-2, being the owner of the property indicated in the photograph. On the contrary, the 3<sup>rd</sup> defendant insists that it is the plaintiff who has been interfering with the suit property even though the issue of the boundaries and beacons of the alleged reserved road is yet to be determined. The 3<sup>rd</sup> defendant avers that he took photographs on 27 and 28 October 2023 of the status of the suit property when all the parties attended the survey exercise, which is attached as annexure marked PW-3 and 4.
6. The 3<sup>rd</sup> defendant deposes that after the injunction was issued, the plaintiff proceeded to expand and grade the road with a view to forcefully create a highway to his property and compromised the suit as per photographs attached as annexures PW-5 and 6. The 3<sup>rd</sup> defendant terms the application as made in bad faith and by an applicant with dirty hands who is the one disobeying the court order, for the boundaries and or whether there has been encroachment are issues to be determined by the court.
7. When the matter came up for hearing on 2/4/2025, Mr. Simiyu Advocate submitted that the 2<sup>nd</sup> defendant is the registered owner of the land, and has done nothing on the land against the order. Learned counsel submitted that the orders sought were serious in nature and should be brought against the registered owner of the land, assigns or agents. In this case, learned counsel submitted that there was no evidence to show the nexus between her and the alleged activities contrary to the order. Learned counsel submitted that the photographs are inadmissible for lack of a certificate of electronic evidence. Further, the learned counsel submitted that the photographs were not a true reflection of what was on the ground. Therefore, the 2<sup>nd</sup> defendant urged the court to find the application is bad in law and malicious.
8. Contempt of court refers to acts aimed at undermining or ridiculing the authority of a court. See [Basil Criticos v Attorney General & Others](#) [2012] eKLR. The jurisdiction of the court to commit an alleged contemnor, who fails or refuse to obey court orders or decrees, borders along the very core of the effectiveness and the legitimacy of a judicial system. It acts as a guardian of the public interest. See [Samuel M.N. Mweru & Others v National Land Commission & Others](#) [2020] eKLR.
9. In order to succeed in contempt proceedings an applicant has to prove the terms and conditions of the order, knowledge of the same, and the willful failure by the alleged respondent to comply with them. In [Wekesa & Others v Munialo](#) Civil Appeal 28 of 2019 [2025] KECA 679 [KLR] (11<sup>th</sup> April 2025) (Judgment), the court said that the order must be clear, unambiguous, and directed to the defiler. Secondly, the court said that knowledge of the order may supersede personal service as held in [Shimmers Plaza Ltd v NBK Ltd](#) [2015] eKLR, where a party acts or shows that he knew the court order, the strict requirement of personal service being rendered unnecessary. See [Basil Criticos v Attorney General & Others](#) [2012] eKLR. An applicant must therefore provide evidence of disobedience on a balance higher than of probabilities, since contempt of court order, if proved borders or likely to result to denial of liberties of the alleged contemnor. Defiance must also be proved to be willful and deliberate.
10. There is no dispute that an order of this court was issued on 10/8/2023. Its terms and conditions are not disputed especially regarding interference and or dealings in any way with the area reserved for



excision to expand the existing access road over LR No. 2XX3/14/1, LR No. 2XX3/13/1, and LR No. 2XX3/13/2.

11. The order was clear as regards the removal or harvesting of crops and the vacation by the defendants from the reserved area, once they had harvested the crops as of the issuance of the order. The parties were to engage a County Surveyor to determine the boundary and the beacons including any alleged encroachment thereof. The County Surveyor visited the land parcels and filed a report dated 29/9/2023 in line with Clause No. 3 of the said order.
12. The findings and the recommendations of the report have not been challenged by the defendants by way of another survey report in line with Clause No. 4 of the court order, especially to contradict survey plan FR No. 62/98 of 1XX2. The applicants are alleging that the respondents have flouted the court order by ploughing on the reserved area. The only evidence attached is the photographs which are not accompanied by a certificate in line with Section 106(B) of the *Evidence Act*. The survey report before the court has no details on whether the boundaries of the access road were established and beacons fitted. Equally, the report is inconclusive on who has encroached on the access road and in which manner. The burden was on the applicants to demonstrate how the defendants individually and jointly have interfered with the access road. It is not enough to allege that the defendants have ploughed the reserved area for the access road.
13. There are no reports attached from the Road Engineer, Physical Planner, and the Land Registrar showing that the defendants have interfered with a public road of access, blocked, or encroached on a road reserve contrary to the Public Roads of Access Act and the *Land Act*. In the absence of such reports, I find that the applicants have failed to discharge the burden that the defendants should be committed to civil jail for contempt of court. The application is dismissed with costs.

**RULING DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT KITALE ON THIS 18<sup>TH</sup> DAY OF JUNE 2025.**

In the presence of:

Court Assistant - Dennis

Wilson for Muthee for 3<sup>rd</sup> defendant present

Nasike for plaintiffs absent

1<sup>st</sup> defendant absent

2<sup>nd</sup> defendant absent

**HON. C.K. NZILI**

**JUDGE, ELC KITALE.**

