



REPUBLIC OF KENYA



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Mapema Holdings Limited v Thika Dairies Limited & 4 others (Environment and Land Case 65 of 2019) [2025] KEELC 6476 (KLR) (29 September 2025) (Ruling)

Neutral citation: [2025] KEELC 6476 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENT AND LAND CASE 65 OF 2019
JM ONYANGO, J
SEPTEMBER 29, 2025**

BETWEEN

MAPEMA HOLDINGS LIMITED PLAINTIFF

AND

THIKA DAIRIES LIMITED 1ST DEFENDANT

PATRICK KARIUKI MUIRURI 2ND DEFENDANT

JOHN SEBASTIAN MUIRURI 3RD DEFENDANT

CHIEF LAND REGISTRAR CENTRAL REGISTRY 4TH DEFENDANT

THE HONOURABLE ATTORNEY GENERAL 5TH DEFENDANT

RULING

1. In the Notice of Motion Application dated 8th April 2025 placed before me, the 1st ,2nd and 3rd Defendants (Applicants) seek the following orders:
 - a. Spent
 - b. That the Plaintiff/Respondent, its director Viktah Maina Ngunjiri and the 4th Defendant/Respondent specifically J.O Cartwright be cited for contempt of this honourable court for disobeying the ruling and orders of this honourable court of 22/10/2020 by unilaterally and in contempt of the orders of courts altering the records of L.R 4953/2414 while expressly aware of this honourable court's orders of 22/10/2020 restricting any dealing in the suit property.
 - c. That the Plaintiff/Respondent be fined adequately for the contempt, its director one Viktah Maina Ngunjiri and one J.O Cartwright be committed to jail for a period not exceeding six (6) months for contempt of the orders of this honourable court.



- d. That the honourable court be pleased to order that the registration status of the suit property L.R No.4953/2414 revert to the status it was as at 22/10/2020, pending the hearing and determination of this suit.
 - e. That the Plaintiff/Respondent either through its directors, agents, employees, assigns or any persons be restrained from occupying and or in any manner dealing with the suit property, L.R No. 4953/2414 as ordered on 22/10/2020 pending hearing and determination of this suit.
 - f. That further the O.C.S Makongeni Police Station or in charge of the Administration Police within the area where the suit subject is situate, do ensure compliance of the orders herein.
 - g. That costs of this Application be provided for.
2. The Application is based on the grounds set out on the face of the Motion and on the Supporting Affidavit of Patrick Kariuki Muiruri, who is the 2nd Defendant and the director of the 1st Defendant/Applicant herein, sworn on the same date. He claims that the 1st Defendant/Applicant was the registered owner of L.R No. 4953/2414 (hereinafter referred to as “the suit property”), as at the time when the court delivered a ruling dated 22nd October 2020, preserving the status quo, as at 22nd October 2020. He adds that the court also issued an injunctive relief restraining any dealings with the suit property pending the hearing and determination of the suit. He emphasizes that the 1st and 3rd Applicants complied with the aforementioned orders, halting all construction works, vacating the premises together with their contractors and equipment, and only occasionally supervising the property from a distance.
 3. The 2nd Defendant further avers that upon conducting a search in February 2025, the Applicants discovered that the land records relating to the suit property had been altered illegally after the court orders of 22nd October 2020. They pointed out that an entry dated 18th November 2020, under the hand of one J.O. Cartwright, purported to cancel certain entries and reinstate earlier records, in effect granting the Plaintiff substantive reliefs sought in its plaint, contrary to the subsisting orders of the court.
 4. According to the 2nd Defendant, this conduct amounted to usurpation of the powers of the court by the Land Registrar, who, together with the Plaintiff’s director, Viktah Maina Ngunjiri, had effectively determined the Plaintiff’s case outside the judicial process. He maintains that these actions were not only illegal but also in contempt of this court’s orders, particularly given that a previous decision of the ELC in Nairobi Judicial Review Civil Application No. 6 of 2017 had held that cancellation of titles such as the one in issue could only be done by the court.
 5. He further contends that the alterations to the land records were anchored on a purported Land Registrar’s ruling of 14th January 2020, which they claimed was fictitious, unsigned, and unauthenticated, and therefore a mere cover for illegal acts. He also notes that the Plaintiff’s director was facing criminal charges at Kiambu Chief Magistrates Court in respect of alleged forgery relating to the suit property.
 6. He deposes that despite the subsisting court orders, the Plaintiff/Respondent and its director unlawfully placed workers on the property, erected structures, carried out demolitions, and engaged in farming activities, all in contempt of the court’s pronouncements. The 2nd Defendant argues that these actions demeaned the dignity of the court, undermined judicial authority, and deliberately distorted the status quo set to preserve the property pending the hearing.
 7. He urges the court to find the Plaintiff/Respondent, its director, and the 4th Defendant/Respondent’s officer in contempt, to punish them accordingly, and to issue further orders halting the illegal activities



- and preserving the property. He prays that the Officer Commanding Station, Makongeni Police Station, be directed to ensure compliance with the orders of the court.
8. He concludes that parties are not at liberty to choose which orders to obey and which to disregard, as such conduct would lead to anarchy in the administration of justice. He therefore prays that this application be allowed in order to preserve and uphold the dignity of the court and its authority.
 9. The Plaintiff/Respondent opposed the Application through a Replying Affidavit sworn on 23rd May 2025, by its director, Viktah Maina Ngunjiri. He asserts that there are no court orders issued against the Plaintiff/Respondent or in favour of the Applicants which he has disobeyed. He adds that the orders referred to by the Applicants are in favour of the Plaintiff/Respondent and against the Applicants, therefore, the allegations of contempt are misguided, unsubstantiated, and without merit.
 10. He maintains that he has not interfered with the suit property at all. On the contrary, he contends that it is the Applicants who have been secretly and unlawfully subdividing the property in breach of subsisting injunction orders. He explains that, to stop this interference, the Plaintiff's advocates wrote to the Land Registrar on 6th March 2025, forwarding the court orders and requesting that a restriction and injunction be registered to prevent further encroachment.
 11. He recalls that on 1st August 2019, the Plaintiff/Respondent lodged a complaint with the Chief Land Registrar over the unlawful cancellation of the transfer of the suit property into its name. According to him, the cancellation was based on the Applicants' false claim that the original title deed had been lost, which led to the unlawful issuance of a provisional title to the Applicants. He states that the Registrar, acting under section 14(a) of the *Land Registration Act*, summoned the parties and heard the complaint, which he attended.
 12. He further explains that the Registrar, in a ruling delivered on 14th January 2020, found that the provisional certificate of title issued to the Applicants was irregular and unlawful. The Registrar therefore, cancelled it and reinstated the suit property in the Plaintiff/Respondent's name. He adds that entry number 12 in the register was a lawful enforcement of that decision.
 13. He stresses that the Registrar acted independently and not under the Plaintiff/Respondent's influence. He adds that the decision of 14th January 2020 was made well before the court orders issued on 26th October 2020, and there was no order restraining the Registrar from enforcing its ruling. He notes that the Applicant has never challenged the Registrar's decision in court. In his view, the Registrar's action does not undermine the authority of this court because the case is still pending, and the Plaintiff/Respondent continues to seek substantive remedies, including a permanent injunction.
 14. He claims that the present Application is a delaying tactic by the Applicant, similar to their conduct in the criminal case pending before the Kiambu Law Courts. He reiterates that he has not disobeyed any court order requiring him to purge contempt. He dismisses as false the allegations that the Plaintiff/Respondent has placed workers on the property, erected illegal structures, carried out demolitions, or engaged in farming, insisting that the Plaintiff/Respondent has been in possession of the property throughout the pendency of the suit.
 15. He concludes by asserting that neither he nor the Land Registrar (the 4th Defendant/Respondent) is in contempt of court and urges that the Application be dismissed with costs.
 16. The 4th and 5th Defendants/Respondents oppose the Application through Grounds of Opposition dated 10th July 2025. It is their position that this Application is defective, lacks merit, and is founded on a misconception of the law. They assert that the Application and Preliminary Objection, which gave rise to the ruling and court order of 22nd October 2020, were matters purely between the Plaintiff/Respondent and the Applicants.



17. They contend that the Applicants have not produced any evidence to demonstrate that the court order of 22nd October 2020 was ever served upon their offices. They further point out that a court order is a registrable document, yet the Applicants have not shown that the said order was lodged with the 4th Defendant/Respondent or registered against the title to L.R. No. 4953/2414.
18. It is their position that there is no proof of personal service of the order upon the alleged contemnor, J.O. Cartwright, nor any evidence that he was expressly aware of its existence. They therefore argue that a party cannot be held in contempt of an order of which it has no knowledge. They maintain that the application is an abuse of the court process and should be dismissed.

Applicants' Submissions

19. The Motion was canvassed by way of written submissions. The Applicants' Submissions are dated 22nd August 2025.
20. On the factual background, counsel for the Applicants submitted that the ruling of 22nd October 2020 was delivered in the presence of all parties' counsels. He argued that the order was binding regardless of whether a formal extract was served or not.
21. On Contempt of Court and Notice of the Order, counsel contended that the Plaintiff/Respondent's director, Viktah Maina Ngunjiri, and an officer of the 4th Defendant, J.O. Cartwright, had acted in clear contempt. It was argued that on 18th November 2020, they caused a new entry (Entry No. 12) to be made in the land register concerning the suit property, despite having full knowledge of the court's restraining order.
22. Counsel relied on the decision in *Shimmers Plaza Limited vs National Bank of Kenya* [2015]eKLR to argue that personal service of a court order is not mandatory to establish notice. He cited the holding that notice is satisfied if a person or their agent was present in court when the order was made or was notified of its terms. He submitted that since counsel for all parties were present on 22nd October 2020, the contemnors were deemed to have had notice.
23. On the legal test for contempt, counsel cited the case of *Samuel M. N. Mweru & Others vs National Land Commission & 2 others* [2020] eKLR, which approved the elements of civil contempt as set out in the South African case of *Kristen Carla Burchell vs Barry Grant Burchell*. Counsel submitted that the following elements were satisfied:
 - i. The terms of the order of 22nd October 2020 were clear and unambiguous.
 - ii. The Respondents had knowledge of the terms through their advocates.
 - iii. The Respondents acted in breach of the terms by facilitating the registration on 18th November 2020.
 - iv. The conduct was deliberate, and willfulness should be inferred.
24. On Expunging Entry Number 12, counsel urged the court to expunge the entry made in violation of the court order. He submitted that allowing the entry to stand would render the entire suit moot, as it effectively granted the Plaintiff/Respondent the relief it sought in its plaint, and would make a mockery of the court's authority.
25. Counsel further urged the court to issue a fresh injunction restraining the Plaintiff/Respondent from occupying or dealing with the suit property, clarifying that the original order of 22nd October 2020 only restricted the 1st Defendant from developing the land.



26. Counsel urged the court to award the Applicants the costs of the Application and the suit. In conclusion, she urged the court to allow their application in its entirety, punish the cited individuals for contempt, expunge the illegal land registry entry, and issue a restraining order against the Plaintiff/Respondent.

4th and 5th Defendants/Respondents' Submissions

27. The Defendants' Counsel filed submissions in response dated 10th July 2025. Counsel identified one issue for determination: whether J.O. Cartwright was in contempt of a valid court order. Counsel referred to *Black's Law Dictionary* (9th Edition), which defined contempt as conduct that defied the authority or dignity of a court and interfered with the administration of justice. Counsel submitted that the guiding law on contempt in Kenya was found in the *Judicature Act*, Cap 8, and Section 29 of the *Environment and Land Court Act*.
28. On the elements that had to be proved in contempt proceedings, counsel for the 4th and 5th Defendants relied on *Samuel M. N. Mweru & Others vs National Land Commission & 2 Others* [2020] eKLR, where Mativo J had held that the applicant must establish the terms of the order, the respondent's knowledge of the order, and the respondent's failure to comply. Counsel also pointed out that once those requirements were proved, willfulness and bad faith would normally be inferred, though a respondent could rebut the inference on a balance of probabilities.
29. Counsel further submitted that the ruling delivered on 22/10/2020 and the order issued on 30/10/2020 emanated from an Application and a Preliminary Objection that had only involved the Plaintiff and the Applicants. The 4th and 5th Defendants/Respondents were not parties to that application. Counsel argued that for the order to bind all parties, it had to have been served upon the 5th Defendant/Respondent, who was the advocate on record for the 4th Defendant/Respondent, and also formally lodged at the 4th Defendant/Respondent's offices for registration against the title.
30. It was his submission that the extracted copy of the order bore no stamp from the 4th and 5th Defendants/Respondents' office and no indication of service. He argued that no affidavit of service had been presented, and therefore, there was no proof of service. He further referred to the title document, which showed that the order had never been registered. On that basis, counsel contended that the alleged contemnor had no knowledge of the order and that in the absence of proof of service, no allegation of willful disobedience could stand.
31. To reinforce this position, counsel cited Justice Angote's reasoning in *Simandi Investments Limited vs Njeru & 2 Others* [2024] eKLR; *Bwoma wa & Another (Intended Contemnors)* [2024] eKLR, where the court emphasized that service or notice of an order was crucial before contempt could be established. He also cited the case of *Kioni & 3 Others vs National Disciplinary Committee of the Jubilee Party & 2 Others; Chege (Contemnor)* [2024] eKLR, where the court had found that in the absence of an affidavit of service or evidence of knowledge, contempt could not be sustained.
32. On the standard of proof, counsel relied on *Mutitika vs Babarini Farm Limited* [1985] KLR 229, where the Court of Appeal had held that proof in contempt proceedings had to be higher than a balance of probabilities, though not as high as beyond reasonable doubt. He stressed that because contempt proceedings could result in loss of liberty, the court had to exercise caution and ensure that deliberate and willful disobedience was proved. He also cited *Mwangi H.C. Wangondu vs Nairobi City Commission*, Civil Appeal No. 95 of 1998, where it was held that evidence must leave no doubt as to culpability.



33. In conclusion, counsel for the 4th and 5th Defendants/Respondents urged the court to find that the culpability of J.O. Cartwright had not been proved to the required standard. He urged the court to dismiss the Application for Contempt with costs.

Analysis and Determination

34. The Court has carefully read and considered the Application herein, Affidavit and Grounds of Opposition filed in response, submissions, authorities cited and the relevant provisions of law and finds that the issues for determination are; Whether there are clear and unambiguous orders capable of being obeyed Whether personal service of the court order is mandatory in contempt proceedings or knowledge of the order is sufficient Whether the Plaintiff/Respondent, the 4th and 5th Defendants/ Respondents are in are in contempt of the orders court given on 22nd October, 2020.
35. A brief background to this case is that the Plaintiff/Respondent initiated this suit through a Plaint dated 5th April 2019 claiming to be the rightful owner of the suit property having purchased it from the 1st Defendant vide a Sale Agreement dated 10th March 2008. The Plaintiff/Respondent alleged that on 4th October 2016, the 4th Defendant/Respondent, in cahoots with the 1st to 3rd Defendants/Applicants, fraudulently caused the cancellation of the entry of the transfer of the suit property to it. The Plaintiff/Respondent adds that the 1st to 3rd Defendants/Applicants intentionally misrepresented to the 4th Defendant/Respondent that it had acquired the suit property fraudulently, hence leading to the cancellation. Together with the Plaint, the Plaintiff/Respondent filed an Application of even date seeking injunctive relief against the Defendants, preventing them from dealing with the suit property pending hearing and determination of the suit.
36. In response, the 1st Defendant/Applicant filed a Preliminary Objection dated 13th May 2019 on the ground that the suit was time-barred and in the alternative *res judicata*. The two applications were heard concurrently and a ruling was delivered by the court (Gacheru J) on 22nd October 2020 to the following effect:
- a. That the court finds and holds that the Notice of Preliminary Objection dated 13th May 2019 is not merited and the same is dismissed with costs.
 - b. That an order of Restriction be and is hereby issued to be registered against the suit property LR No. 4953/2414 located in Thika Municipality pending the hearing and determination of this suit or until further orders of the court.
 - c. That a temporary injunction be and is hereby issued restraining the Defendant/Respondents whether by themselves, their directors, their shareholders, agents and/or servants from leasing, transferring, alienating, developing, or in any way dealing with the property L.R No 4953/2414 located in Thika Municipality pending the hearing of the suit.
 - d. That the Plaintiff is awarded the costs of the Application.
37. It is this order that the Applicants allege the Plaintiff/Respondent and the 4th Defendant have disobeyed and ask the court to punish them for contempt of its said order.

Whether there are clear and unambiguous orders capable of being obeyed

38. It is imperative that every person against whom or in respect of whom an order is made by a court of competent jurisdiction has an obligation to obey it unless and until the order is discharged. This obligation is uncompromising, and it applies even where one believes the order to be irregular or void. Consequently, courts do not condone deliberate disobedience of orders and will deal firmly with



proved contemnors. Courts possess inherent power to enforce compliance with their lawful orders and impose sanctions through contempt of court. The power to punish for contempt is meant to ensure that court processes are not abused and the authority and dignity of the courts is upheld at all times because contempt of court by its very nature demeans the integrity and authority of Courts and disparages the rule of law.

39. The *Black's Law Dictionary* (11th Edition) defines contempt of court as:-

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

40. The instructive provision on contempt of court is Section 5 (1) of the *Judicature Act*, which grants the High Court and the Court of Appeal the power to punish for contempt. Additionally, for this court, Section 29 of the *Environment and Land Court Act* provides 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.”

41. This Court, therefore, has inherent powers under the *Judicature Act* as well as Section 29 of the *Environment and Land Court Act*. The jurisdiction of the superior courts to punish litigants for contempt of court when they fail or refuse to obey court orders is aimed at protecting the dignity and legitimacy of the courts. The test applicable in an application for contempt, was well set out in Samuel M. N. Mweru & Others vs National Land Commission & 2 others [2020] eKLR where the court held that:-

“40. 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 willfulness 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* 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’.”

42. The first question to be determined with regards to contempt of court, is whether there is a valid order capable of being obeyed. This limb also requires that the order must be clear and unambiguous. On



the 22nd October, 2020 the court pronounced itself on the Plaintiff's Application dated 5th April, 2019 in the presence of both counsel for the Plaintiff and the Defendants. The words of the court in ruling as well as the injunctive order from which this application emanates are clear and unambiguous and there has been no complaint from the Respondents that it was ambiguous or confusing in any way. For this reason, this court finds that there were in existence clear and unambiguous orders capable of being executed and/or obeyed by the parties.

Whether personal service of the court order is mandatory in contempt proceedings or knowledge of the order is sufficient

43. Secondly, it is a requirement that the party alleged to have breached the order must have had actual knowledge of it. The 4th and 5th Defendants/Respondents have stated that they were neither served with the said orders and that neither the orders nor the restriction was registered against the title to the suit property as required by law.
44. I agree with the Respondents assertion that in order to prove that they willfully and/or deliberately disobeyed the court order, it has to be shown that they were aware of the order to begin with. Previously, courts were of the opinion that this awareness of the order was proved by establishing personal service of the subject order and the attendant penal notice upon the alleged contemnor (see in *Nyamogo & Another vs Kenya Posts and Telecommunications Corporation* (1994) KLR 141). This position has however shifted in recent years, and courts have held that it is sufficient for the applicant to demonstrate awareness and/or knowledge by the alleged contemnor of the orders.
45. The action complained of by the Applicants is the action of the 4th Defendant (J.O Cartwright) cancelling entries 5,8, and 11 registered in the title to the suit property, re-enstating entry no 2, which was the transfer to the Plaintiff/Respondent and cancelling any titles issued subsequent to entry no. 11. The Plaintiff/Respondent has explained that the Registrar, in a ruling delivered on 14th January 2020, found that the provisional certificate of title issued to the Applicants was irregular and unlawful. The Registrar therefore, cancelled it and reinstated the suit property in the Plaintiff/Respondent's name. He has added that entry number 12 in the register, which the Applicants are disputing, was a lawful enforcement of that decision. The director of the Plaintiff/Respondent has stressed that the Registrar acted independently and not under the Plaintiff/Respondent's influence. He adds that the decision of 14th January 2020 was made well before the court orders of 22nd October 2020, and there was no order restraining the Registrar from enforcing its ruling.
46. The Court of Appeal in the case of *Shimmers Plaza Limited vs National Bank of Kenya* [2015] eKLR, stated as follows:-
- “We now revisit the issue of service. Was there service of the order said to have been disobeyed on the respondent? There is no dispute that no formal order was extracted and personally served on the respondent and an affidavit of service filed to that effect.”
47. The Court of Appeal similarly pronounced itself in *Woburn Estate Limited vs Margaret Bashforth* [2016] eKLR citing the decision in *Refrigeration and Kitchen Utensils Ltd v Gulabchand Popatlal Shah & Another*, Nairobi Civil Application No.39 of 1990, where it was observed that:-
- “A party who knows of an order, whether null or valid, regular or irregular, cannot be permitted to disobey it... It would be most dangerous to hold that the suitors, or their solicitors, could themselves judge whether an order was null or valid-whether it was regular or irregular. That they should come to the court and not take upon themselves to determine



such a question...he should apply to the court that it might be discharged. As long as it exists it must not be disobeyed.”

48. The above provision takes cognizance of the fact that personal service may not be achieved in some circumstances. For these reasons, this court will not hesitate to hold that where a party has knowledge of a court order, personal service is not mandatory. However, in this instant case, the Applicants have not proved that the 4th Respondent (Registrar) was aware of the existence of the court order. A perusal of the title to the suit property does not show an entry of registration of either the order or the restriction as ordered by the court. A further perusal of the court record shows that one Mr. Mwambonu was present during the delivery of the ruling. He stated that he was holding brief for M/s Ndundu for the 4th and 5th Defendants/Respondents. However, the court cannot confirm whether the Registrar was aware of the existence of the said orders and neither have the Applicants proved the same.

Whether the 1st, 2nd, 3rd, 4th and 5th Defendants are in contempt of the orders Court made on 18th October, 2023 and issued on 23rd October, 2023

49. It trite that a court order must be obeyed whether a party agrees with its contents or not, and as long as the order still subsists, then it remains a valid court order that must be adhered to. The adherence to the court order is not optional even if a party has applied for review, variation or appeal of the said order. In the case of *Kenya Tea Growers Association vs Francis Atwoli and 5 Others* (*supra*) Lenaola J cited with approval the case of *Clarke and Others vs Chadburn & Others* [1985] 1All E.R (PC), 211 in which the court observed that:

“I need not cite authority for the proposition that it is of high importance that orders of the courts should be obeyed, willful disobedience to an order of the court is punishable as a contempt of court, and I feel no doubt that such disobedience may properly be described as being illegal...even if the Defendants thought that the injunction was improperly obtained or too wide in its terms, that provides no excuse for disobeying it. The remedy is to vary or discharge it.”

50. The Applicants have not proved that the Registrar had knowledge of the orders given on 22nd October 2020. In the case of *Mutitika vs Baharini Farm Limited* [1985] KLR 229, 234 the Court of Appeal held that:

“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. The rationale for this standard is that if cited for contempt, and the prayer sought is for committal to jail, the liberty of the contemnor will be affected. As such, the standard of proof is higher than the standard in civil cases. This power, to commit a person to jail, must be exercised with utmost care, and exercised only as a last resort. It is of utmost importance, therefore, for the respondents to establish that the alleged contemnor’s conduct was deliberate, in the sense that he or she willfully acted in a manner that flouted the Court Order.”

51. This then means that the violation that the Respondents are accused of must be proved to a standard which, though not as high as proof beyond reasonable doubt, must be higher than proof on a balance of probabilities. The threshold is quite high as it involves the possible deprivation of a person’s liberty. It is important, therefore, that the court satisfies itself that first, the acts complained of actually happened, secondly, that the person alleged to be in contempt committed the acts complained of, and lastly, he



did so with full knowledge of the existence of the order of the court forbidding it. It needs no mention that the burden of proving that the Respondents did disobey the court order lays squarely on the Applicants.

52. A perusal of the Application shows that the act complained about was undertaken by the 4th Defendant/Respondent, specifically by a Registrar named J.O Cartwright. However, the Applicants have failed to prove that the said Registrar knowingly acted contrary to the court orders of 22nd October 2020 and in contempt of court as no restriction was registered against the suit property in accordance with the court order. That being so, the Applicants' Application has fallen short of establishing that the Respondents are guilty of disobeying the order of this court dated 22nd October, 2020. In conclusion, the Applicants' Application dated 8th April 2025, is dismissed with costs. However, in order to protect the substratum of the suit, I hereby order that a Restriction be registered against the suit property LR No. 4953/2414 located in Thika Municipality pending the hearing and determination of this suit or until further orders of the court.

DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA THIS 29TH DAY OF SEPTEMBER 2025.

.....

J. M ONYANGO

JUDGE

In the presence of:

Miss Kirui for Mr Ayieko for the Plaintiff

Mr Tumu for the 1st, 2nd & 3rd Defendants/Applicants

Court Assistant: Hinga

