



REPUBLIC OF KENYA



KENYA LAW
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**Njau & 11 others v Markroscar Kenya Limited (Environment and Land Case
623 of 2012) [2025] KEELC 6719 (KLR) (25 September 2025) (Ruling)**

Neutral citation: [2025] KEELC 6719 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND CASE 623 OF 2012**

JG KEMEI, J

SEPTEMBER 25, 2025

BETWEEN

JOHN WAKABA NJAU 1ST APPLICANT
EDWARD MWAURA MBUGUA 2ND APPLICANT
ANDREW KAMAU KINUTHIA 3RD APPLICANT
SAMUEL NGUKU KARIUKI 4TH APPLICANT
PAUL KAMAU KAHINJU 5TH APPLICANT
JOSEPH KINYANJUI MUIRURI 6TH APPLICANT
DAVID MBUBUA MBECA 7TH APPLICANT
PETER KIBUI THINJI 8TH APPLICANT
ZIPPORAH WANJIKU KARIUKI 9TH APPLICANT
ELIUED NDICHIU THUBIRA 10TH APPLICANT
FRANCIS MUNYINGI GAKAMI 11TH APPLICANT
MARY NDUTA MURABA 12TH APPLICANT

AND

MARKROSCAR KENYA LIMITED RESPONDENT



RULING

The Applicant's application dated 12/3/25)

1. What is before the court is the Applicant's application dated 12/3/25, brought under Section 13 (5) (f) and 29 of the Environment and Land Court Act, Section 1A, 1B and 3A of the Civil Procedure Act, Order 51 Rule 1 of the CPR, and all enabling provisions of the law, seeking the following orders; -
 - a. The Honourable Court be pleased to order restitution of a sum of Kshs 15,000,000/=, the market value of Title No. L.R 8469/72 to the Applicants/Plaintiffs from the directors of the Respondent/Defendant herein in lieu of Title No. L.R 8469/72.
 - b. The Honourable Court be pleased to issue summons to Irene Sonia Mumbi and Mitch K Mureithi the Directors of the Respondent/Defendant herein to appear physically in the Environment and Land Court at Nairobi and show cause why they should not be cited for being in contempt of the Orders issued by Justice M.D Mwangi in the Environment and Land Court at Nairobi on 31/10/24.
 - c. The Honourable Court be pleased to imprison Irene Sonia Mumbi and Mitch K Mureithi for contempt of the Court Orders issued by the Environment and Land Court at Nairobi on 31/10/24 for a period of two (2) years or such other period as the court will determine.
 - d. The Honourable Court be pleased to fine Irene Sonia Mumbi and Mitch K Mureithi for contempt of the Court Orders issued by the Environment and Land Court at Nairobi on 31/10/24 for a total sum of Kshs 20,000,000/=.
 - e. The Respondent/Defendant be condemned to pay the costs of this application.
2. The application is founded on the grounds attached thereto and the supporting affidavit sworn on 12/3/2025 by John Wakaba Njau on 6/11/24. He deponed that, pursuant to the court orders issued on 9/10/24, the respondent was ordered by the court to issue the Applicants with a title for L R No 8469/72 and to effect the transfer within 30 days. That the respondent was duly served with the said orders. Despite numerous mentions of the matter in court, the respondent has not complied with the court's orders, including the direction of 20/11/24 to forward the documents confirming the surrender of the title for LR No. 8469/72 to the Director of Survey to the Applicants.
3. That the court was urged to command the directors of the respondent to appear in court and show cause why they should not be cited for contempt of the court's orders.
4. In opposing the application, Irene Sonia Mumbi, a director of the respondent, in her replying affidavit sworn on 4/4/25, deposed that she has the authority to swear the affidavit on behalf of the company.
5. She stated that the court on 30/10/24 ordered the respondent to avail title for parcel No 8469/72 to the Applicants within a period of 30 days. At the time of the orders, the title was among 24 titles that had been delivered to the Director of Surveys for the purpose of converting from the old regime to the current one. She enclosed a letter to that effect dated 22/4/24, on which the title appears as No 24 and marked IM1. This was brought to the attention of the Applicants' lawyers in a letter dated 29/11/2024 marked as IM2. The delay was caused by some land grabbers who sought to interfere with the process of title conversion, aiming to register the titles in their own names — an issue they had raised with officials of the Ministry of Lands. Furthermore, the process of conversion is taking too



- long, a matter beyond respondent's control. Consequently, she averred that they are not deliberately disobeying court orders, but are doing everything possible to obtain the title for the applicant.
6. In addition, the deponent stated that the plot, having been sold to the Applicants sometime in 1996, they ought to have taken possession of by now. That the respondent is not in possession. She refuted the proposition that the respondent should pay the Applicants the sum of Kshs 15 million in lieu of the land. She was emphatic that the value of the land, being 0.0200 of a hectare, cannot possibly be valued at Kshs 15 million.
 7. In his supplementary affidavit sworn on 11/4/25, John Wakaba Njau stated that the letter IM1 claiming to have forwarded the titles to the Director of Survey cannot be verified without the stamp of that office or an acknowledgement of the titles by the said office. That the transfer of the title is the responsibility of the Land Registrar of Lands, and this process should be initiated on the Ardhi Sasa Platform, not the office of the Director of Survey, as claimed by the respondent.
 8. That despite the court directing the respondents on 20/11/24 to forward documents confirming the surrender of title No 8469/72 to the survey office, the respondent has remained non-compliant.
 9. In addition, he deponed that there is no evidence that the letter to the Principal Secretary at the Ministry of Lands was received in that office in the absence of an official stamp acknowledging the same.
 10. In any event, the order of the court was not subject to any qualifications, including the conversion of title, and all it did was to order the respondent to transfer the title in favour of the Plaintiffs within 30 days.
 11. There is glaring evidence that the respondent is in contempt of the court orders of 31/10/24, and the court ought to hold the respondent in contempt of those orders.
 12. That the directors of the respondent should therefore be summoned to attend court to show cause why they should not be cited for contempt, punished for defying court orders, and ordered to restitute the Applicants with a sum of Kshs 15 Million. That the property in issue is a ¼ acre valued at Kshs 15 million.
 13. The court has read and considered the written submissions filed by the parties.
 14. Having considered the application, the responses, and the written submissions, the court is of the view that the issues falling for determination are;
 - a. Whether the respondents should be held guilty of contempt
 - b. Whether the Applicants are entitled to orders of restitution in the sum of Kshs 15 Million
 - c. Costs of the application.
 15. Blacks Law dictionary 10th edition defines contempt as Black's Law Dictionary, 9th Edition at page 360 defines contempt as follows;

“Contempt is a disregard of, disobedience to, the rules, or Orders of a legislative or judicial body, or an interruption of its proceedings by disorderly behaviour or insolent language, in its presence or so near thereto as to disturb the proceedings or to impair the respect due to such a body.”
 16. Section 29 of the Environment and [Land 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.

17. Further, Section 63 (c) of the [Civil Procedure Act](#) provides as follows:-

“In order to prevent the ends of justice from being defeated, the Court may, if it is so prescribed—

- (a)
- (b)
- (c) grant a temporary injunction and in case of disobedience commit the person guilty thereof to prison and order that his property be attached and sold.”

18. Order rule 3 of the Civil Procedure Rules outlines the consequences of contempt, which include, in cases of disobedience or breach of any Court Order, an order for the attachment of the person's property and potentially detention in prison for up to 6 months. This demonstrates that the punishment for contempt is significant; beyond property attachment, the liberty of the contemnor is also at risk.

18. The standard of proving contempt of court was aptly discussed in the case of *Gatharia K. Mutikika v Baharini Farm Limited* [1985] KLR 227, which established that contempt of court is akin to criminal proceedings. Therefore, proof against a contemnor must be higher than the balance of probability. This is because the liberty of the alleged contemnor is usually at stake, and the applicant must prove willful and deliberate disobedience of the court order to succeed.

19. In the case of *Republic v Attorney General & another Exparte Mike Maina Kamau* [2020] eKLR the court citing with approval the High Court case of South Africa in the case of *Kristen Carla Burchell vs Barry Grant Burchell*, Eastern Cape Division Case No. 364 of 2005 case of outlined the ingredients for proving contempt of court that an applicant for contempt of court should demonstrate that the terms of the order were clear and unambiguous and binding on the defendant; that the defendant had knowledge or proper notice of the orders; that he acted in breach of the terms of the order and that his conduct was deliberate.

20. In this suit, judgment was entered in favour of the Applicants vide a judgment dated 9/7/2020. The respondent was ordered to transfer LR No 8469/75 and 8469/76, together with all the completion documents

21. The respondents failed to comply with the orders above, and on 20/12/2022, the court held the respondent's directors guilty of contempt and directed them to appear in court for mitigation and sentencing.

22. On 18/12/23, the directors of the Respondent were fined the sum of Kshs 300,000/- in default, they would be committed to civil jail for 30 days. The contemnors further failed to comply with the court's orders issued on 30/4/24; warrants of arrest were subsequently ordered against the directors of the respondents.

23. Another application urging the court to hold the respondent in contempt of court led to a consent that was recorded on 9/10/24 in the following terms;

“by consent of the parties, the application dated 14/12/2023 is hereby allowed. The title LR No 8469/76 in the judgment given in this case on 9/1/2020 is deleted and substituted with



the title No LR 8469/72. The defendant shall effect the transfer in favour of the Plaintiff as ordered in the judgment of 9/7/2020 within 30 days from today”.

24. It is the respondent's case that it has not disobeyed the orders. That the process of conversion of the titles is beyond their control, and that the delay was attributed to a third party who interfered with the process of conversion of the title. The court ordered the respondent to effect the transfer of the title within 30 days, that is, by 11/11/24.
25. The above judgment was recorded in the presence of the respondent's counsel, and therefore, the respondents were aware of it throughout. The orders are unambiguous, and to date, the respondents have deliberately disobeyed them.
26. The respondents have blatantly disobeyed every court order issued by the court, and this court cannot fold its hands in helplessness and watch as the orders are disobeyed with impunity. At this rate, the dignity of this court must be protected, and the respondents must be punished accordingly.
27. Evidently, the court did not subject the orders to the actions of third parties. It has not been explained why the respondent is eager to undertake the conversion of the title before transferring it to the applicant.
28. For the above reasons, I find that the respondent is in contempt and I shall issue the necessary orders in due course.
29. On the question of the alternative compensation in lieu of the land, the court finds that the applicant has not established a basis for this request. Needless to say, the court's orders did not include any restitution or any other form of compensation save the subject title.
30. Final orders for disposal
 - a. Irene Sonia Mumbi and Mitch K Mureithi are hereby held to be in contempt of the Court Orders issued by the Environment and Land Court at Nairobi on 31/10/24.
 - b. Summons to Irene Sonia Mumbi and Mitch K Mureithi the Directors of the Respondent/ Defendant herein be and are hereby issued to appear physically in the Environment and Land Court at Nairobi and show cause why they should not be cited for being in contempt of the Orders issued by Justice M.D Mwangi in the Environment and Land Court at Nairobi on 31/10/24 for mitigation and sentencing 27/11/25.
 - c. The above directors are at liberty to purge the contempt before then.
 - d. The order restitution of a sum of Kshs 15,000,000/=, in lieu of Title No. L.R 8469/72 is hereby declined.
 - e. Costs are in favour of the Applicants.
31. Orders accordingly.

DELIVERED, DATED AND SIGNED AT NAIROBI THIS 25th DAY OF SEPTEMBER, 2025 VIA MICROSOFT TEAMS.

J. G. KEMEI

JUDGE

Delivered Online in the presence of:

Ms Wachira HB for Ms Koki for the Plaintiffs



Mr Keyonzo for the Respondent

C/A – Ms Kendi

