



**Kibanga & 72 others v Land Adjudication and Settlement Officer-
Taveta & 2 others (Environment and Land Petition E006 of 2025)
[2025] KEELC 6867 (KLR) (Environment and Land) (13 October 2025) (Ruling)**

Neutral citation: [2025] KEELC 6867 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT VOI
ENVIRONMENT AND LAND
ENVIRONMENT AND LAND PETITION E006 OF 2025
EK WABWOTO, J
OCTOBER 13, 2025**

BETWEEN

**JEREMIAH KINANGUKA KIBANGA 1ST PETITIONER
RICHARD NIXON OTANO 2ND PETITIONER
GABRIEL KAZEE 3RD PETITIONER
NICHOLAS MUNUVE MUNA & 69 OTHERS & 69 OTHERS & 69
OTHERS 4TH PETITIONER**

AND

**LAND ADJUDICATION AND SETTLEMENT OFFICER- TAVETA 1ST
RESPONDENT
CABINET SECRETARY MINISTRY OF LAND, PUBLIC WORKS, HOUSING
AND URBAN DEVELOPMENT 2ND RESPONDENT
THE HON ATTORNEY GENERAL 3RD RESPONDENT**

RULING

1. This Ruling is in respect to the Petitioners' application dated 6th October 2025 which seeks the following orders:-
 - i. Spent...
 - ii. That pending the hearing and determination of this Application and Petition this Court be pleased to issue an order directing the 1st and 2nd Respondents through their agents or persons acting under instructions to open the gate erected and locked within the suit property.



- iii. That the 1st and 2nd Respondents be cited for contempt for being in contempt of the court order issued on the 22nd day of June 2025 and be jailed for six months and or fined such sum of money as the Court may deem just.
 - iv. That the Court be pleased to issue any such other relief it deems fit in the interest of justice.
 - v. Costs of the application be provided for.
2. The application was premised on the grounds on its face and supported by the affidavits of Richard Nixon Ogaro sworn 6th and 8th October 2025 respectively.
3. The application was opposed by the Respondents vide their Replying Affidavit sworn by Philemon Mutai on 8th October 2025.
4. During the plenary hearing of the application Learned Counsel Mr. Mwzighe and Mr. Kamwendwa appeared for the Petitioners with while Learned Counsel Mr. Penda made oral submissions on behalf of the Respondents.
5. It was the Petitioners case that on the night of 5th October 2025 at around 1.00am, the Respondents in blatant disregard of the existing orders of this court that were issued on 25th June 2025 invaded the suit property with bulldozers accompanied by heavy police and forcefully evicted the Petitioners by demolishing their houses. It was also submitted that they have been locked in the area and cannot move and thus they have been rendered homeless. it was also submitted that the said eviction was done despite the pendency of this Petition.
6. In response to the Replying Affidavit filed by the Respondents, it was submitted that the Respondents were aware of the orders issued by the court, the eviction happened at Kachero Settlement Scheme and that the 1st Respondent cannot run away from the said acts. The court was urged to grant the orders sought.
7. According to the Respondents, it submitted that there are no direct or specific allegations implicating the 1st Respondent or any officer under his supervision in respect to the eviction. It was also submitted that the photographs annexed to the Supporting Affidavit should be disregarded having been produced contrary to section 78 of the Evidence Act and further that the purported Petitioners list of documents bearing the Certificate of Photographic print is inadmissible. It was argued that the same does not show the serial number of the phone and exact location where the photos were taken and hence the same does not meet the test.
8. It was contended that the Respondents did not evict any person from the land, they do not own the land and neither do they control the same.
9. It was further contended that contempt proceedings are quasi criminal in nature with a higher standard of proof. The Petitioners have not mentioned any names of any person who evicted the parties and the said application does not meet the test. There is lack of precision. The court was urged to dismiss the application.
10. Having considered the entire application, the rival affidavits and oral submissions made together with the existing legal framework, the following issues arise for determination: -
 - i. Whether the 1st and 2nd Respondents should be cited for contempt of the orders issued by this Court on 25th June 2025.



- ii. Whether this Court should direct the 1st and 2nd Respondents to open the gate of the suit property as demanded by the Applicants pending the hearing and determination of the Petition.
11. I shall now proceed to consider the said issues sequentially.
12. I have taken in to consideration the provisions of the Constitution of Kenya 2010, relevant statutes and various judicial decisions.
13. The law relating to contempt of this court is found in section 5 of the judicature Act, section 29 of the Land Act and The Practice Directions on Proceedings in the Environment and Land Court.
14. Section 5 of the Judicature Act provides as follows;

“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 such power shall extend to upholding the authority and dignity of subordinate courts”.
15. Section 29 of the Environment and Land Court Act also grants this court powers to punish for contempt.
16. Practice direction 43 on Proceedings Relating to the Environment and the Use and Occupation of, and title to Land and Proceedings in Other Courts (Gazette Notice No. 5178) provides that non-compliance with the relevant provisions of the CPR, orders, and/or directions issued by a judge shall attract sanctions including but not limited to the imposition of costs, fines, striking out of pleadings, the dismissal of a suit and/or meting out punishment prescribed in the ELC Act or any other Statute as the court may deem fit bearing in mind the overriding interest of justice
17. The Petitioners are seeking orders that the 1st and 2nd Respondents and be found to be in contempt. What constitutes contempt of court?
18. Contempt of court is the conduct or action that defies or disrespects the authority of the 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.”
19. In the case of Shimmers Plaza Limited v National Bank of Kenya Limited [2015] Eklr, the Learned Judges of Appeal went to great lengths in tracing the foundations of law on contempt as practiced in Kenya.
20. Properly understood, contempt is conduct that impairs the fair and efficient administration of justice. Section 5 of the Judicature Act confers jurisdiction on the superior courts to punish for contempt.
21. The order said to have been violated or disobeyed was issued in these proceedings on 25th June 2025. This court has jurisdiction since the petitioners have invoked powers of this court due to actions alleged to have been taken in violation of an order issued in these proceedings.
22. Courts punish for contempt in order to uphold their dignity and authority; ensure compliance with their directions; 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. If there were no sanctions for disobedience of court orders, there would be a serious threat to the rule of law and administration of justice. In that respect, for a party to be cited for contempt, he must have wilfully violated or disobeyed a court order directed at him.



23. The application before this court seeks to have the 1st and 2nd Respondents cited for contempt of court for violating the order issued on 25th June 2025 and to be committed to civil jail and or fined.

24. Obedience of court orders is not an option. In *Econet Wireless Kenya Ltd v Minister for Information & Communication of Kenya & another* [2005] KLR 828, Ibrahim, J. (as he then was), underscored the importance of obeying court orders, stating:

“It is essential for the maintenance of the rule of law and order that the authority and the dignity of our courts are upheld at all times. The Court will not condone deliberate disobedience of its orders and will not shy away from its responsibility to deal firmly with proved contemnors. It is the plain and unqualified obligation of every person against whom an order is made by court of competent jurisdiction, to obey it unless and until the 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 the order believes it to be irregular or void.”

25. In *T. N. Gadavarman Thiru Mulpad v Ashok Khot And Anor* [2006] 5 SCC, the Supreme Court of India emphasized on the dangers of disobeying Court orders, stating:

“Disobedience of this Court’s order strikes at the very root of the rule of law on which the judicial system rests. The rule of law is the foundation of a democratic society. Judiciary is the guardian of the rule of law. Hence, it is not only the third pillar but also the central pillar of the democratic State. If the judiciary is to perform its duties and functions effectively and remain true to the spirit with which they are sacredly entrusted to it, the dignity and authority of the Courts have to be respected and protected at all costs. Otherwise, the very cornerstone of our constitutional scheme will give way and with it will disappear the rule of law and the civilized life in the society. That is why it is imperative and invariable that Court’s orders are to be followed and complied with.”

26. Contempt of Court is in the nature of criminal proceedings and, therefore, proof of a case against a contemnor is higher than that of the balance of probability. This is because liberty of a person is usually at stake and the applicant must prove wilful and deliberate disobedience of the court order, if he is to succeed. This was aptly stated in *Gatharia K. Mutikika v Baharini Farm Limited* [1985] KLR 227, that:

“Contempt of court is an offence of a criminal character. A man may be sent to prison. It must be proved satisfactorily...It must be higher than proof on a 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 criminal cases. It is not safe to extend it to offences which can be said to be quasi-criminal in nature. However, the guilt has to be proved with such strictness of proof as is consistent with the gravity of the charge.

The Court opined that recourse should not be had to contempt of court in aid of a civil remedy where there is another method of doing justice. “The jurisdiction of committing for contempt being practically arbitrary and unlimited, should be most jealously and carefully watched and exercised with the greatest reluctance and the greatest anxiety on the part of the judge to see whether there is no other mode which is not open to the objection of arbitrariness and which can be brought to bear upon the subject...”

27. Due to the gravity of the consequences that flow from contempt proceedings, it is proper that the order be served and the person cited for contempt should have had personal knowledge of that order.



28. It is worth noting that contempt of court being *personnum*; the parties against whom the order was directed must be made parties to these proceedings. Contempt of court is an act of personal responsibility and the position in law is that a contemnor must have personal knowledge of the terms of the order and must have deliberately and wilfully disobeyed the order.
29. In the instant case the Petitioners seeks to cite the 1st and 2nd Respondents who are listed as the Land Adjudication and Settlement Officer and the Cabinet Secretary Ministry of Lands and Public Works. The individuals holding those offices were not made parties to this application as the individuals that violated the orders. The Petitioners repeatedly stated and submitted that the eviction was done by police officers but no individual is mentioned therein. The Petitioners have equally not furnished this court with any evidence of any written or verbal instructions purportedly issued by the 1st and 2nd Respondents to evict them. The Court cannot make any assumptions owing to the higher standard required for contempt proceedings.
30. For a party to be adjudged to be in contempt, the applicant must demonstrate that there was wilful disobedience of that order. In this regard, the Supreme Court of India held in *Indian Airports Employees Union v Ranjan Catterjee & Another* [AIR 1999 SC 880: 1999(2) SCC:537, that “in order to amount to “civil contempt” disobedience must be willful. If disobedience is based on the interpretation of court’s order, notification and other relevant documents, it does not amount to willful disobedience.”
31. In the present application, it has not been sufficiently demonstrated that the 1st and 2nd Respondents as listed in these proceedings deliberately disobeyed the court order. Contempt proceedings are a serious undertaking because a court exercising this jurisdiction is minded to ensure the orderly functioning of society and the rule of law. On conviction, the alleged contemnor stands to lose his or her liberty thus, it is not a matter to be taken lightly as courts have to ensure that the authority and dignity of the court is preserved.
32. In this regard, the Supreme Court of India stated in *Re: Vinay Chandra Mishra* [(1995) 2 SCC584] stated:
- “The judiciary has a special and additional duty to perform, viz, to oversee that all individuals and institutions including the executive and the legislature act within the framework of not only the law but also the fundamental law of the land. This duty is apart from the function of adjudicating the disputes between the parties which is essential to peaceful and orderly development of the society. Dignity and authority of the court has to be respected and protected at all costs.”
33. But even as courts punish for contempt to safeguard the peaceful and development of society and the rule of law, it must be borne in mind that the power to punish for contempt is a discretionary one and should be used sparingly. That is why the court warned in *Carey v Laiken* (*supra*), that if courts were to find contempt too easily, “a court’s outrage might be treated as just so much bluster that might ultimately cheapen the role and authority of the very judicial power it seeks to protect. The court’s contempt power should be used cautiously and with great restraint. It is an enforcement power of last resort rather than first resort.” (underlining)
34. In the circumstances, contempt being a personal responsibility to be proved, and being “an enforcement power of last resort rather than first resort”, i am not satisfied that the petitioners have proved contempt of court to the required standard.



35. In respect to the second aspect of the application as to whether the court should direct the 1st and 2nd Respondents to open the gate erected on the suit property. The nature of said order sought is akin to granting a mandatory injunction against the 1st and 2nd Respondents at an interlocutory stage. A grant of mandatory injunction at an interlocutory stage inevitably determines the suit in a summary manner. The established principles as distilled are that the court, at this stage, must be satisfied, based on the facts presented, with a high degree of assurance that the injunction granted will appear after the trial to have rightly been granted. See the case of *Shepherd Homes Ltd v Sandham* [1971] ICH 34.
36. The Court should equally be satisfied that the said order must be directed to the correct parties before court. The court has again carefully considered the entire application and it is evident that the 1st and 2nd Respondents are not the ones behind the misfortunes of the Petitioners, it has not been demonstrated that they are the ones who have access and control of the gate and the suit property. The court has not been furnished with any evidence demonstrating the same. It is worth noting that court orders cannot be issued in vain, and in the circumstances the court is unable to accede to the said request.
37. In conclusion, while the Court sympathises with the Petitioners, it is the finding of this Court that the their application dated 6th October 2025 is devoid of merit and the same is hereby dismissed with an order that each party to bear own costs of the same.

DATED, SIGNED AND DELIVERED VIRTUALLY/OPEN COURT AT VOI THIS 13TH DAY OF OCTOBER 2025.

E. K. WABWOTO

JUDGE.

In the presence of:-

Mr. Mwazighe for the Petitioners.

Mr. Penda for the 1st to the 3rd Respondents.

Court Assistant: Mary Ngoira.

