



**Tapoyo v Tapoyo & another (Environment and Land Case 36
(E032) of 2021) [2025] KEELC 6908 (KLR) (13 October 2025) (Ruling)**

Neutral citation: [2025] KEELC 6908 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KITALE
ENVIRONMENT AND LAND CASE 36 (E032) OF 2021
CK NZILI, J
OCTOBER 13, 2025**

BETWEEN

JAMES MUSA TAPOYO PLAINTIFF

AND

SAMSON TAPOYO 1ST DEFENDANT

FREDRICK PKEMOI ANDIEMA 2ND DEFENDANT

RULING

1. The court, by an application dated 27/6/2025, is asked to punish the 2nd defendant herein for contempt of court. The grounds are contained on the face of the application and in a supporting affidavit of James Musa Tapoyo, sworn on 27/6/2025. It is deposed that though the 2nd defendant was found guilty of contempt of court, convicted and sentenced twice, he has nevertheless continued to disobey court orders of 6/7/2021, 25/1/2022, and the ruling dated 3/3/2022, 16/11/2022, and 5/7/2024. It is averred that complaints to that effect have been made at Kapenguria Police Station as per OB Nos. attached as JMT-1(a),(b),(c), and (d).
2. The applicant deposes that since February 2025, the 2nd defendant has trespassed onto the suit land, despite the court orders stopping him from doing so until the suit is heard and determined.
3. For instance, the applicant deposes that in February 2025, the 2nd defendant drove a tractor into the suit land, ploughed and planted maize thereon, and has also cut down trees as per photos attached as JMT-2(a), (b), (c), (d), (e), and (f).
4. The applicant deposes that other than the 2nd defendant, his family members have daily basis, been patrolling the suit land while armed with pangas, thereby subjecting him and his family members to psychological torture, mental anguish, and irreparable damage.



5. Though the 2nd defendant was served with the application and an affidavit of service sworn by Wycliffe Juma on 7/7/2025, he filed no replying affidavit.
6. The applicant relies on a written submission dated 22/7/2025. Reliance is placed on Samuel M.N. Maweu & Others vs National Land Commission [2020] eKLR, M'Mukira & Others -vs- Magiri & Another [2024] KEELC 5736 [KLR], Mwenda -vs- Mukiama [2025] KEELC 3276 [KLR] (28th March 2025) (Ruling), Shimmers Plaza -vs- National Bank of Kenya Ltd [2015] eKLR, and Section 29 of the [Environment and Land Court Act](#).
7. Contempt of court is a serious issue, and whoever seeks to cite a person for it must demonstrate and prove the allegation of contempt. See Mutitika -vs- Baharini Farm Limited (1985) KLR 229,234 The purpose for which courts punish for contempt of court is to maintain the rule of law, the authority, and the dignity of the court. See Econet Wireless(K) Ltd -vs- Minister for Information & Communication (K) & Another [2005] eKLR.
8. In M'Mukiria & Another -vs- Magiri (supra), the court cited Republic -vs- Mohamed & Another [2019] KESC 47 [KLR] (15th March 2019), that contempt constitutes an affront to judicial authority, hence the reason the court has powers to mete out a penalty for such conduct in a proper case to vindicate its authority and sustain both the rule of law and the administration of justice.
9. The procedural and substantive law on contempt proceedings remains Section 5 of the [Judicature Act](#), Order 40 Rule 3(1)(1) of the Civil Procedure Rules, and Section 29 of the [Environment and Land Court Act](#). In Shimmers Plaza -vs- National Bank of Kenya Ltd (supra), the ingredients to found a contempt of court were said to include knowledge of a court order, an act in breach of the same, and doing so willfully or deliberately. In Samuel M.N. Maweu & Others -vs- National Land Commission (supra), the court observed that the applicant must prove that the order was clear, unambiguous, and binding on the citee.
10. Regarding the process the court follows in punishing for contempt in Githinga & Others -vs- Kiiru Tea Factory Co. Ltd [2023] KESC 411 [KLR] (16th June 2023) (Judgment), the court said that due to the gravity of consequence and the nature of contempt, rules of fair hearing and natural justice should be observed by the court.
11. In this application, the applicant says that the 2nd defendant has breached several court orders and rulings by trespassing into the suit premises, ploughing, planting maize, and also using armed personnel to patrol the land, especially in February 2025, leading to several OB reports. Other than the OB and photographs annexed, which are not certified and or in compliance with electronic evidence, there is no evidence that the 2nd defendant was duly served with the court orders or whether the ruling or orders were made in his presence. The court orders and ruling(s) have not been attached to the application. When they were served upon the 2nd defendant, it is left for the court to guess, speculate, and or fill in the gaps for the applicant.
12. An order must be endorsed with a penal notice. It must personally be served upon a person before contempt can be proved. See Basil Criticos -vs- Attorney General & 8 others & 4 others [2012] eKLR. Acknowledgment of receipt of the order has to be proved. Acting as if aware of the order is important. See Justus Kariuki Mate & another -vs- Martin Nyaga Wambora & another [2014] eKLR.
13. Other than the OB reports, the court has not been told if the police mounted any investigations over the acts by the 2nd defendant and his family members bordering on criminality.
14. The applicant has, in my view, not met the test for this court to find contempt of court proved. The application is dismissed with no orders as to costs.



15. Orders accordingly.

**RULING DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT
KITALE ON THIS 13TH DAY OF OCTOBER 2025.**

In the presence of:

Court Assistant – Dennis

Advocates absent

Plaintiff present

1st defendant absent

2nd defendant present

HON. C.K. NZILI

JUDGE, ELC KITALE.

