



**Kijeti v Lisaliza & 2 others (Environment and Land Case
300 of 2013) [2025] KEELC 7290 (KLR) (16 October 2025) (Ruling)**

Neutral citation: [2025] KEELC 7290 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA
ENVIRONMENT AND LAND CASE 300 OF 2013
A NYUKURI, J
OCTOBER 16, 2025**

BETWEEN

JOSHUA ONZERE KIJETI PLAINTIFF

AND

ISAAC LISALIZA 1ST DEFENDANT

LAND REGISTRAR KAKAMEGA DISTRICT 2ND DEFENDANT

DISTRICT SURVEYOR KAKAMEGA 3RD DEFENDANT

RULING

1. Before court is a Notice of Motion dated 19th September 2024 filed by the 1st defendant seeking the following orders;
 - a. That the Honourable court be pleased to find the plaintiff/respondent/judgment debtor being contemptuous by willfully disobeying and failing to comply with the decree of this Honourable court and punish him accordingly as provided by law.
 - b. That the applicant/decreed holder be granted leave to use forceful means to reopen the road of access by cutting down the trees and uprooting the stumps which the respondent/ plaintiff failed to remove from the access road as was decreed by this Honourable court.
 - c. That all expenses incurred by the applicant in re-opening the access road be recovered from the sale of the said trees on the access road and any balance (if any) be recovered from the respondent/plaintiff through execution process upon the applicant filing the returns of the exercise in court.
 - d. That the OCS Kabras Police Station do provide security in enforcing cutting and uprooting the said trees and any other objects from the said access road.



- e. That costs of this application be provided for.
2. The application is predicated on the supporting affidavit sworn by the applicant on 19th September 2024. The applicant's case is that judgment was delivered in this matter on 27th February 2019 in his favour whereof the plaintiff's suit was dismissed and his counterclaim allowed.
3. The applicant stated that the 1st defendant is aware of the judgment but has ignored to comply with the same. That the local administration has asked him to comply in vain. That the trees on the access road have grown big and blocked the road making it difficult for him to access his land. That as the respondent has refused to remove the said trees the applicant be allowed to remove the same, sell them to meet his expenses and that the OCS should provide security when he cuts the same.
4. No response was filed in response to the application.
5. The applicant filed submissions dated 19th May 2025 in arguing the application, which this court has duly considered.

Analysis and determination.

6. The court has considered the application and submissions and two issues arise for determination, namely;
 - a. Whether the applicant has proved contempt against the plaintiff; and
 - b. Whether the applicant should execute the decree in the manner proposed in the application.
7. The legal framework on contempt is founded on section 5 of the *Judicature Act* which confers jurisdiction on the Superior Courts to punish for contempt and uphold the dignity and authority of the court. The Black's Law Dictionary (9th Edition), defines contempt of Court to mean:

“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.”
8. Compliance with court orders is essential for the maintenance of the rule of law and good order which are the cornerstone for a democratic state like ours. Therefore, it is the role of the courts to ensure that the authority and dignity of our courts are upheld at all times, hence deliberate disobedience of court orders cannot be tolerated by the courts.
9. In the case of *Hadkinson –V- Hadkinson* (1952) 2 All ER. 567, it was held that:

“It is plain and unqualified obligation of every person against or in respect of, who an order is made by a court of competent jurisdiction to obey it unless and until that 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 an order believes it to be irregular or even void.”
10. To prove contempt of a court order, an applicant must demonstrate that there are clear unambiguous terms of a court order, that the respondent was aware of the terms of the order and that the respondent deliberately and willfully disobeyed clear terms of the court order.
11. In the instant case, the applicant has stated that in the decree, the respondent was ordered to remove and uproot trees he had planted on the access road. That the applicant had ignored complying with the decree and despite being asked to comply by the local administration, he has refused.



12. I have considered the decree herein. It stated as follows;

“The access road used by the 1st defendant to access his land parcel No. South Kabras/Shamberere/2002 through land parcels South Kabras/Shamberere/2664 and 2665 blocked by the plaintiff be ordered reopened forthwith by uprooting all trees planted by the plaintiff.”

13. The above order was what the applicant sought in the counterclaim and it was granted in the terms crafted by the applicant. My interpretation of the same is that the court ordered the reopening of the road and uprooting of trees planted by the plaintiff. No one in particular was asked to do that task. Any of the parties herein is therefore at liberty to remove the trees as the road was ordered open. Clearly, there is nothing in the decree to suggest that the same could be said to have been complied with, only if it is the plaintiff who uproots the trees on the access road. Looking at the decree, it is clear that any of the parties can remove the trees on the access road. The applicant has not suggested that his effort to remove the trees was thwarted by the respondent. It appears to me that the applicant was using contempt proceedings which are quasi-criminal proceedings for purposes of executing the decree in this matter. This in my view is improper. Contempt is a crime against the court. There is nothing in the application to suggest that the application is aimed at upholding the dignity and authority of the court. It is apparent that the application is meant to execute the decree which has been unexecuted since 2019. For the above reasons, I am not convinced that there is contempt of court on the part of the plaintiff/ respondent and therefore I find and hold that the applicant has not proved contempt of court against the respondent

14. Regarding execution of the decree, the applicant has the liberty to execute the same, since having a decree that is not executed means that the applicant has not effectively accessed justice. As the court ordered the removal of the trees on the access road, the applicant is at liberty to remove the trees as ordered. Since it is not disputed that the trees belong to the plaintiff, it is only fair that the cost of the removal thereof be borne by the plaintiff.

15. On whether or not the trees should be sold to cover expenses of felling the same and the shortfall be met by the respondent, the applicant has not provided any valuation and expense reports to show that the cost of uprooting the trees will be more than the value of the said trees. Therefore, his position is merely speculative. Sale of a judgment debtor's property must be in compliance with the law as provided for in the Civil Procedure Rules and the Auctioneers Rules and can only be done when the same has been authorized by court upon a specified and known debt. As of now, the court does not know the cost of removing the trees from the access road, and cannot therefore grant the orders as sought by the applicant. Clearly, the applicant is ahead of himself. Therefore, the orders that commend themselves in the circumstances of this case, which this court hereby grants are as follows;

- a. The applicant to execute the decree herein by uprooting the trees on the access road and the cost thereof shall be borne by the plaintiff/respondent. If the same is not paid by the plaintiff, the applicant shall be at liberty to execute for the recovery of the said cost as provided for in law.
- b. The Officer Commanding Station Kabras Police Station is authorized to provide security during the uprooting of the said trees, which exercise should be done in a single day.

16. It is so ordered.

DATED, SIGNED AND DELIVERED AT KAKAMEGA VIRTUALLY THIS 16TH DAY OF OCTOBER, 2025 THROUGH MICROSOFT TEAMS VIDEO CONFERENCING PLATFORM

A. NYUKURI



JUDGE

In the presence of;

Mr. Siro holding brief for Mr. Getanda for the 1st defendant

Mr. Joshua Onzere the plaintiff in person

No appearance for the 2nd and 3rd defendants

Court Assistant- Delhine

