



**Mwaisama & 158 others v Ndara B Community & 2 others (Environment and Land Petition E001 of 2023) [2025] KEELC 7371 (KLR) (Environment and Land) (30 October 2025) (Ruling)**

Neutral citation: [2025] KEELC 7371 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT VOI  
ENVIRONMENT AND LAND  
ENVIRONMENT AND LAND PETITION E001 OF 2023  
EK WABWOTO, J  
OCTOBER 30, 2025**

**BETWEEN**

**GADIEL MNYAMBO MWAISAMA & 158 OTHERS ..... PETITIONER**

**AND**

**NDARA B COMMUNITY ..... 1<sup>ST</sup> RESPONDENT**

**TRUSTEES OF DIASPORA UNIVERSITY TOWN ..... 2<sup>ND</sup> RESPONDENT**

**UNIVERSAL RESOURCES INTERNATIONAL LIMITED .... 3<sup>RD</sup> RESPONDENT**

**RULING**

1. This Ruling is in respect to the Petitioners application dated 29<sup>th</sup> September 2025 which seeks the following orders:-
  - i. Spent...
  - ii. That the 2<sup>nd</sup> Respondent be cited for being in contempt of the Court Order issued on 23<sup>rd</sup> October 2023 and be jailed for (6) months and of fined such sum of money as the Court may deem just.
  - iii. That this Honourable Court be pleased to issue any other relief it deems fit just in the interest of justice.
  - iv. Costs of this application be provided for.
2. The said application is premised on the grounds enumerated at the foot of the application and supported by the affidavit sworn by Gabriel Mnyambo Mwaisama on 29<sup>th</sup> September 2025 and a Supplementary Affidavit of 17<sup>th</sup> October 2025.



3. When the application came up for hearing on 7<sup>th</sup> October 2025, it was directed that the same be canvassed by way of written submissions. The Petitioner in compliance with this direction filed written submissions dated 17<sup>th</sup> October 2025 while the 2<sup>nd</sup> Respondent filed written submissions dated 22<sup>nd</sup> October 2025.
4. The Petitioner submitted on the following issues:-
  - i. Whether the 2<sup>nd</sup> Respondent is in contempt of court orders issued on 23<sup>rd</sup> October 2025.
  - ii. Who is to bear cost of this application.
5. It was submitted that on 23<sup>rd</sup> October 2023, this Honourable Court gave an order for status quo to be maintained in the suit property, restraining the Respondents from conducting any further proceedings. The said order was issued in their presence and their Advocates whose content was in clear terms and unambiguous. That despite acknowledging the existence and validity of the court order, the 2<sup>nd</sup> Respondent unabated and in total disregard of the orders proceeded and is now constructing permanent structures on the suit property.
6. While submitting on the core elements to prove contempt, the Applicants submit that the court orders issued on 23<sup>rd</sup> October 2023 were clear and unambiguous and were binding on the all Respondents including the 2<sup>nd</sup> Respondents. On the second element, the 2<sup>nd</sup> Respondent was fully aware of the same as their respective Advocate and themselves were present in court. That by virtue of them being represented their respective Advocate was duty bound to explain the same and also the Respondents had the duty to seek clarification from their representatives.
7. It was also submitted that further from the attendances of court, both parties including the Respondents were present while the orders were being issued. Therefore, they indeed had knowledge of the same. Kenya's growing jurisprudence right from the High Court has reiterated that knowledge of a court order suffices to prove service and dispense with personal service of the purposes of contempt proceedings. Reliance was placed in the case of *Basil Criticos Vs Attorney General and 8 Others (2012) KLR* where Lenaola J. (as he then was) pronounced himself as follows:-

“...the law has changed and as it stands today knowledge supersedes personal service....where a party clearly acts and shows that he had knowledge of a Court Order; the strict requirement that personal service must be proved is rendered unnecessary”.
8. It was further submitted that the court satisfies itself beyond any shadow of a doubt that the person alleged to be in contempt committed the act complained of with full knowledge or notice of the existence of the order of the Court forbidding it. The threshold is quite high as it involves possible deprivation of a person's liberty. This standard has not changed since the old celebrated case of *Ex parte Langley 1879, 13n Ch D. 110(C.A)*, where Thesiger L.J stated as follows at p. 119:

“...the question in each case and depending upon the particular circumstance of the case, must be, was there or was there not such a notice given to the person who is charged with contempt of Court that you can infer from the facts that he had notice in fact of the order which has been made? And, in a matter of this kind, bearing in mind that the liberty of the subject is to be affected, I think that those who assert that there was such a notice ought to prove it beyond reasonable doubt.”
9. It was therefore submitted that the 2<sup>nd</sup> Respondent had full knowledge and notice of the order through the replying affidavit dated 6<sup>th</sup> October 2025, where under paragraph 5 in their terms acknowledge



- the existence of the same and went further to claim to have not really understood its content. That afterwards without seeking clarification from their representative or court they in ignorance went ahead to disobey the same. It was submitted that the Respondents deliberately disobeyed the orders by now doing construction of permanent structures on the suit property.
10. It was argued that the allegations that the machines seen on the photos are for the Chinese who are constructing Mbale Msau Road are unfounded. The construction is currently happening in the suit property. Mbale-Msau road touched the suit property within less than a Kilometer and it was tarmacked when the project started and currently the project is past like 5 Kilometers which is out of the suit property. The Machines where photos are taken are where the 2<sup>nd</sup> Respondents are undertaking constructions. The photos with ashes are photos where Petitioners have been farming and when they prepare their usual places of farming cannot be construed to be contempt. When it rains they will plant and harvest their crops as they have been previously doing.
  11. The Petitioners submitted that the 2<sup>nd</sup> Respondent be charged with contempt of the orders issued by this Honorable Court on 23<sup>rd</sup> October 2023. Reliance was placed on several authorities which the court has duly considered.
  12. The Petitioners urged the court to find the 2<sup>nd</sup> Respondent in contempt of the orders issued by this court and also grant costs of the application.
  13. The 2<sup>nd</sup> Respondent submitted that the application so filed by the Petitioners is an abuse of court process and is aimed at delaying the hearing of this matter.
  14. It was contended that the prayers as framed by the Petitioners in the application for contempt are general and does not name a particular person who is allegedly in contempt.
  15. It was further contended that the 2<sup>nd</sup> Respondent is not a person and cannot be cited for contempt since the 2<sup>nd</sup> Respondent is registered under the *Trustees (Perpetual Succession) Act*.
  16. It was the 2<sup>nd</sup> Respondent's contention that the Petitioners have not demonstrated to the court whether the orders were extracted and served upon the 2<sup>nd</sup> Respondent,
  17. It was submitted that there has not been any harassment and or intimidation of the Petitioners. The order for status quo meant that each person to continue with whatever activity it was undertaking on the area of the parcel of land he or she is occupying. The status quo order did not mean that the 2<sup>nd</sup> Respondent could not even construct a pit latrine, a store, daily renovations or a kitchen for daily use on its property or structures on the parcel of land it is occupying.
  18. It was argued that an order of status quo is not an order of injunction barring the 2<sup>nd</sup> Respondent from dealing with the section of the property it is occupying and that if the court had the intention of issuing a temporary injunction barring the 2<sup>nd</sup> Respondent from undertaking any activity on its portion of the land, then the court would have expressly stated so.
  19. It was also argued that in the application dated 29<sup>th</sup> September 2023, the Petitioners had sought for injunctive orders against the Respondents, the court declined to grant the orders, however parties agreed to maintain status quo.
  20. In respect to the photographs that were produced by the Petitioners showing the lorries and caterpillars it was submitted that the same does not prove that they belong the 2<sup>nd</sup> Respondent or that they belong to a person engaged by the 2<sup>nd</sup> Respondent.



21. It was further submitted that even if the materials are on the parcel of land belonging to the 2<sup>nd</sup> Respondent the Petitioners have not stated as to when the materials were put on the 2<sup>nd</sup> Respondent's property and further that the presence of the alleged materials on the 2<sup>nd</sup> Respondent parcel of land does not actually mean that there is a construction being undertaken by the 2<sup>nd</sup> Respondent.
22. It was further submitted that the Petitioners have not satisfactorily proved that the 2<sup>nd</sup> Respondent is in contempt of court.
23. The Court was urged to dismiss the application with costs.
24. Having considered the said application and written submissions filed by the Petitioners and the 2<sup>nd</sup> Respondent, the following issues arise for determination:-
  - i. Whether the 2<sup>nd</sup> Respondent should be cited for contempt of the Court Orders issued on 23<sup>rd</sup> October 2023.
  - ii. What orders should issue on costs.
25. 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..."
26. 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.
27. 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.
28. In the instant case the Applicants seeks the said orders against cite the 2<sup>nd</sup> Respondents who is listed as the TRUSTEES OF DIASPORA UNIVERSITY TOWN. The Trustees of the 2<sup>nd</sup> Respondent were not made parties to this application as the individuals that violated the orders. The Petitioners have equally not furnished this court with any evidence of any written or verbal instructions purportedly issued by the 2<sup>nd</sup> Respondent linking them to non-compliance of the said orders. The Court cannot make any assumptions owing to the higher standard required for contempt proceedings.



29. 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 wilful. If disobedience is based on the interpretation of court’s order, notification and other relevant documents, it does not amount to willful disobedience.”

30. In the present application, it has not been sufficiently demonstrated that the 2<sup>nd</sup> Respondent 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.

31. 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.”

32. 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.

33. In the circumstances, contempt being a personal responsibility to be proved, and being “an enforcement power of last resort rather than first resort”, this Court is not satisfied that the Petitioners have proved the same to the required standard.

34. Based on the foregoing, this court agrees with the submissions made by the 2<sup>nd</sup> Respondent that an application for contempt ought to cite a particular name and if brought against a company it ought to cite the names of its directors to enable the court grant the reliefs sought.

35. Consequently, this court proceeds to issue the following orders:-

- i. The application dated 29<sup>th</sup> September 2025 is devoid of merit and is hereby dismissed.
- ii. Each party to bear own costs of the application.

**DATED, SIGNED AND DELIVERED VIRTUALLY/OPEN COURT AT VOI THIS 30<sup>TH</sup> DAY OF OCTOBER 2025.**

**E. K. WABWOTO**

**JUDGE**

In the presence of:-

Mr. Mwazighe for the Petitioners.

Ms. Zuleka for the 1<sup>st</sup> and 3<sup>rd</sup> Respondents.



Mr. Onindo for the 2<sup>nd</sup> Respondent.

Court Assistant: Mary Ngoira.

