Ngecha Mbari Ya Thaara Co. Ltd & 3 others v Langat & 5 others; OCS Kongoni Police Station & another (Interested Parties) (Environment and Land Case E003 of 2024) [2025] KEELC 7249 (KLR) (Environment and Land) (23 October 2025) (Ruling)

Neutral citation: [2025] KEELC 7249 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIVASHA

ENVIRONMENT AND LAND

ENVIRONMENT AND LAND CASE E003 OF 2024

MC OUNDO, J

OCTOBER 23, 2025

BETWEEN

NGECHA MBARI YA THAARA CO. LTD ..... 1ST PLAINTIFF

DAVID KAHURIA MBUGUA ..... 2ND PLAINTIFF

MARGARET WANJIRU KAHURIA ..... 3RD PLAINTIFF

WILFRED BENSON MBUGUA ..... 4TH PLAINTIFF

AND

ROBERT LANGAT ..... 1ST RESPONDENT

JANE LANGAT ..... 2ND RESPONDENT

WILLIAM KOONYO ..... 3RD RESPONDENT

APOLLO OJODE ..... 4TH RESPONDENT

NICHOLAS AYUGI ..... 5TH RESPONDENT

AGRICULTURAL DEVELOPMENT CORPORATION ..... 6TH RESPONDENT

AND

OCS KONGONI POLICE STATION ..... INTERESTED PARTY

HON. ATTORNEY GENERAL ..... INTERESTED PARTY

RULING

1. Vide a Notice of Motion Application dated 7th March, 2025 brought under the provisions of Section 18 of the Civil Procedure Rules 2010 (sic), Article 159 of *the Constitution* of Kenya and all other enabling provisions of the law, the Plaintiffs/Applicants herein have sought for the following orders:

    i. That the Honourable Court be pleased to give an order citing the Respondents and the 1st Interested Party herein for contempt of court by their disobedience of the court's order issued on 31st July 2024 by the Hon. Lady Justice M.C Oundo.

    ii. That the Honourable Court be pleased to give an order citing the Respondents and the 1st Interested Party herein for contempt of court and committing them to civil jail for a term of six (6) months and/or until he purges his contempt by restoring all of the applicant's property as the suit property to the locus in quo of the proceedings thereof.

    iii. That in the alternative to prayer 3 above, the Honourable Court be pleased to give an order citing the Respondents and the 1st Interested Party for contempt of court and fining them the amount of at least Kshs. 200,000/= for such contempt.

2. The said application was supported by the grounds therein as well as the supporting Affidavit of an even date, sworn by David Kahuria Mbugua, the 2nd Plaintiff/Applicant herein who deponed that pursuant to the issuance of conservatory orders on 31st July 2024, the said order had been duly extracted and served upon the Respondents and the 1st interested party together with the Application, Plaint and all the accompanying documents with a detailed chronology of the matter.

3. That however, despite service of the said order upon the Respondents and the 1st interested party herein, they had continued to interfere, mutilate and or defile the status quo contrary to and in disobedience of the Court Orders.

4. That the 1st interested party had failed to ensure strict compliance of the Court Order and had failed to rise to the oath of the Office of the Officer Commanding a police station as envisaged under *the constitution* of Kenya 2010. That the Respondents, contemptuously, despite having knowledge of an existing Order of the court had continued to occupy, make use and interfere with the suit premises and to employ all efforts to defeat justice and render the instant suit a mere academic exercise.

5. That the Respondents and the 1st Interested Parties' conduct denoted willful defiance and disrespect towards the Honorable Court, which conduct was meant to willfully challenge or affront the authority of the Court.

6. That the application was not merely to ensure that he received justice, but also for the good order that the Honourable court deserved, and to entrench the question of respect for the decisions of the Court of Law.

7. In response and in opposition to the Application, the 6th Respondent vide its Replying Affidavit dated 7th April, 2025 sworn by its Senior Legal Officer, deponed that the 4th and 5th Respondents were employees of the 6th Respondents hence their issues were joined for purposes of the instant suit. She denied having been served stating that contempt applications should be to a specific person. That the Applicants application was unclear not only as to who the contemnor was, but what particulars of the court order had been violated.

8. That indeed, it was an established principle of law that in order to succeed in contempt proceedings, the Plaintiff/Applicant has to prove:

   i. The terms of the order.

   ii. Knowledge of those terms by the Respondent.

   iii. Failure by the Respondent to comply with the terms of the order.

9. That the contempt proceedings were criminal in nature and the standard of proof in contempt of Court Applications was higher than that of a balance of probabilities but lower than that of beyond reasonable doubt.

10. That whereas the Applicants had alluded that the Respondents were in contempt of Court Orders that had been issued on the 31st July 2024 on the basis of interference, mutilation and/or defilement of status quo orders, there were no eviction orders that had been issued by the court in so far as the orders of 31st July 2024 had been issued.

11. That in any case, the 6th Respondents being the lawful and registered proprietor of the subject suit land had sold the same to the 1st and 2nd Respondents who had lawfully met the conditions that had been set. That subsequently, the allegations that the Applicants owned the subject suit land was fatally and legally incorrect, the 1st and 2nd Respondents being the actual owners and in occupation of the same. She affirmed that L.R Nos. 28068/31-44 had been allocated to the 1st Respondent, Robert Langat.

12. She placed reliance on the provisions of Section 107 of the *Evidence Act* to depone that whereas it was trite law that he who alleges must prove, there had been no tangible evidence to show that the 4th to 6th Respondents were in contempt of the Court orders of 31st July 2024. That in any case, the Applicants had never been in possession of the subject suit land hence if anything, they were the trespassers.

13. That Applicants application was characterized by ill motive and malice as it lay no legal basis of any contempt of court orders. That the fatal omission of proof could not form the basis for the grant of the Orders sought. The application had not met the threshold of contempt proceedings and ought to be dismissed.

14. That the Applicants neither owned or had any valid interest over the suit property but were rogue agents intending to dispossess the 1st and 2nd Respondents and grab the subject suit land. That a previous application dated 27th September 2024 filed by the Applicants' previous Advocate had been withdrawn through a Notice of Withdrawal dated 5th December 2024. That subsequently, the current application was not only repetitive but also an abuse of the court process. That filing a fresh application therefore amounted to forum shopping, harassment and an attempt to misuse judicial time and resources. That the instant application was frivolous, vexatious and an abuse of the court process and should be dismissed with costs.

15. There was no response from the 1st, 2nd and 3rd Respondents as well as the Interested Parties.

16. Directions were taken for the disposal of the application by way of written submissions which I shall summarize as herein under.

Plaintiffs/Applicant's Submissions.

17. The Applicant summarized the factual background of the matter and then framed one (1) issue for determination to wit; whether the instant Application is merited.

18. Vide their submission dated 21st July, 2025, they stated that they had obtained conservatory orders on the 25th July 2024 vide an order dated 31st July 2024 wherein the suit property was to be left untouched (locus in quo) pending the hearing and determination of their application. That on the 22nd January 2023 (sic), they got wind that the said suit property had been clandestinely interfered with and/or removed from the locus in quo by the Respondents. They thus contended that the Respondents' action was in direct disobedience of the court's conservatory orders wherein they as applicants stood to suffer.

19. That despite the Respondents having knowledge of the Order, the same having been served upon them physically where they acknowledged receipt by stamping on the copy of the order, they interfered with the status quo which they have not denied even in their submissions.

20. That indeed, under paragraph 10 of the Respondent's Replying Affidavit dated 25th October 2025 (sic), sworn by one Robert Langat, he had attempted to rewrite, misread and misinterpret the Ruling of the Honourable Court while under paragraph 11 he had admitted interfering with the status quo of the suit subject by fencing thus the actions of the Respondents had been willful and actuated by malice.

21. Reliance was placed on the decisions in the cases of Samuel M.N Mweru & Others v National Land Commission & 2 Others [2020] eKLR and Gatharia K. Mutikika v Baharini Farm Limited [1985] KLR 227 to submit that the essence of the law of contempt was to safeguard the honour of the court and uphold the principles of the rule of law. Further reliance was placed in the decided case of Koilel & 2 others v Koilel & another (Civil Appeal E002 of 2021) [2022] KEHC 10288 (KLR) (30 June 2022) (Judgment) on the essential elements of contempt. That whereas in their Replying Affidavits dated 25th October 2025 (sic) and 24th October 2024, sworn by Robert Langat and Lilian Kosgei, the 6th Respondent's Legal Officer they had deponed that had not been served with the order and thus had no knowledge of the same, these averments were mere denials.

22. That the Respondents had been duly represented by various firms of advocates where the orders were issued wherein jurisprudence now favored knowledge of the existence of the Court's order as opposed to strict personal service. Reliance was placed in the decided case of Shimmers Plaza Limited v National Bank of Kenya Limited [2015] eKLR where the Court of Appeal had affirmed that the knowledge of a court order or judgement by an Advocate of the alleged contemnor would be sufficient for purpose of contempt proceedings

23. That the terms of the order were specific to the effect that the status quo of the suit property was to be maintained by all parties wherein the court had noted that the Applicants are/were in occupation of land in parcel LR. Nos. 28068/31, 32, 33 and 34 ADC Ndabibi farm as at the time of filing the suit.

24. That the Respondent had admitted in his Replying Affidavit that he had since fenced the suit subject and proceeded to lay beacons on the suit subject which was in essence interfering with the status quo of the suit subject. Reliance was placed in the decided case of Kenya Human Rights Commission v Attorney General & Another. They thus prayed that the instant Application be allowed.

4th to 6th Respondents Submissions.

25. The 4th to 6th Respondents, vide their submissions dated 17th June 2025 submitted that the instant Application was not only fatally defective and lacking in merit, but also amounted to an abuse of the court process. They then framed three (3) issues for determination as follows:

    i. Whether the Plaintiffs/Applicants have established the legal threshold for contempt of Court.

    ii. Whether the cited Respondents are in contempt of the court orders issued on 31st July 2024.

iii. Whether the application is frivolous, vexatious, and an abuse of the court process.

26. On the first issue for determination as to whether the Plaintiffs/Applicants had established the legal threshold for contempt of Court, they placed reliance on the Samuel M.N Mweru case (supra) to submit that the principles governing contempt proceedings were well established in Law wherein the onus lay squarely on the Applicants to strictly prove that the Respondents were in Contempt. They also placed reliance on the Gatharia K. Mutikika case (supra) to submit that the act of Contempt of court was in the nature of criminal proceedings and therefore, the burden of proof was higher than that in a normal civil matter because such proceedings had the potential of impacting the rights of a party who may end up being committed to civil jail.

27. That arising therefrom the above legal principles, the Applicants had not sufficiently demonstrated that the 4th to 6th Respondents had deliberately disobeyed this Court Order of 31st July 2024 at all. It was thus their submission that without satisfying the aforesaid elements, the Application herein against the 4th ,5th and 6th Respondents could not stand.

28. On the second issue for determination as to whether the cited Respondents were in contempt of the court orders that had been issued on 31st July 2024, they submitted that whereas the Applicants in their supporting Affidavit had stated that the ''Respondents in blatant disrespect and in contempt of the authority and dignity of the Honourable Court, had totally failed and refused to comply with the Order and had continued to be in contempt of the court order by disobeying, mutilating and or interfering with the subject matter'', the application is vague on who exactly among the Respondents was allegedly in contempt. That further the 4th to the 6th Respondents, were never personally served with the orders that had been allegedly disobeyed.

29. They thus submitted that the instant Application is fatally defective for failure to clearly identify:

i. The specific person(s) alleged to have disobeyed the order;

ii. The particular order allegedly disobeyed;

iii. The date and manner of service of the order upon the 4th to 6th Respondents.

30. They placed reliance in the decided case of Kristina Wambui Kenyatta v Jomo Kenyatta University of Agriculture and Technology [2021] eKLR to submit that a party alleging contempt must be clear and specific in the pleading as to who the contemnor is, the order breached, and the act of disobedience. That even if there was an order in place (which they denied), the Applicants had not provided any photographic evidence to connect or associate the 4th to 6th Respondents as being willfully and deliberate in disobedience of any violation or non-compliance of the same. Reliance was placed on the provisions of Section 107 of the *Evidence Act* to submit that mere allegations of "mutilation, interference, or defilement of the status quo" without specifics or proof were legally inadequate since the burden of proof lay on he who alleges.

31. It was thus their submission that the blanket accusation of all Respondents with no clarity or evidence was malicious and speculative. That without proper personal service or clear terms that had been violated, no contempt could lay.

32. On the third issue for determination as to whether the instant application was frivolous, vexatious, and an abuse of the court process, they submitted that the Applicants had previously filed a similar contempt application dated 27th September 2024, which was later withdrawn on 5th December 2024. That subsequently, the current application was a re-filing of the same accusations with no new evidence which is forum shopping, judicial harassment, and a gross abuse of the court's discretion. They placed

reliance on the holding in Muchanga Investments Limited v Safaris Unlimited (Africa) Limited & 2 others (2009) eKLR to submit that the instant application fell squarely within the mischief of an abuse of the court process hence it should not stand.

33. In conclusion, they submitted that the Plaintiffs/Applicants had not discharged the burden of proof required to establish contempt. That there was no evidence of service, knowledge, or willful disobedience of any valid court order. That the current application was brought in bad faith and should not be allowed to stand but should be dismissed with costs.

Determination.

34. I have considered the Applicants application the response by the 4th to 6th Respondents, the submissions therein as well as the applicable law. I have also considered the fact that the 1st, 2nd, 3rd Respondents and the intersred parties herein did not participate in this application.

35. It should also be noted that whereas the 1st and 2nd Respondents filed their submissions, the same cannot be considered by the court in the absence of a Replying Affidavit which is a foundational pleading as was held by the Supreme Court in Gideon Sitelu Konchellah v Julius Lekakeny Ole Sunkuli & 2 others [2018] eKLR, where the court held as follows;

> ''A Replying Affidavit is the principal document wherein a respondent's reply is set and the basis of any submissions and/or List of Authorities that may be subsequently filed. Absence this foundational pleading, the Replying Affidavit, it follows that even the Written Submissions purportedly filed by the 1st Respondent on 17th August, 2018 are of no effect. Curiously, we further note that even the said Written Submissions are not dated, though this possibly might not have been fatal had the foundational document, the Replying Affidavit, been in order. From a perusal of the Written Submissions, it is clear to us that they are substantially based and relies on the undated and unsworn Replying Affidavit. Also, there are no Grounds of Objection raising any specific points of law of any preliminary or jurisdictional nature. The upshot is that as the 2nd and 3rd Respondents had categorically stated that they do not oppose the application, the Court will be excused for therefore deeming the application as being unopposed entirely.''

36. Vide a ruling delivered on the 25th day of July 2024 which ordered as follows;

> "With this in mind, and whilst cautioning myself on the preservation of the status quo so as to ensure that no party is prejudiced, I would therefore interfere in a limited manner by clearly defining the status quo herein to the effect that:
>
> i. An order of status quo is herein issued to be maintained by all the parties in that it must be understood that the Applicants are in occupation of land in parcel LR Nos. 28068/31, 28068/32, 28068/33 and 28068/34 ADC Ndabibi Farm as at the time of filing suit.
>
> ii. The Applicants shall also not deal with the said parcels of land adversely
>
> iii. There shall not be any interfering with parcel registration LR Nos. 28068/31, 28068/32, 28068/33 and 28068/34 ADC Ndabibi Farm by the Respondents.
>
> iv. That the Officer Commanding Station Kongoni Police Station ensures strict compliance of all parties with the court's orders

v. Such status quo is to be maintained by all parties until the matter is finally heard and determined.

vi. The cost of the application dated the 19th February, 2024 shall be in the cause."

37. The Applicants now bring their application on contempt proceedings against the Respondents and the 1st interested party on a complaint that pursuant to the above court's ruling wherein the order dated 31st July 2024, was extracted and served upon them, they had utterly failed to satisfy the same but they had continued to interfere mutilate and or defile the status quo contrary and in disobedience with the court orders. That the interested party had failed to ensure strict compliance of the Court Order and had failed to rise to the oath of the Office of the Officer Commanding a police station as envisaged under *the constitution* of Kenya.

38. The 4th to 6th Respondents' response to the application had been that despite there having been no personal service, the Applicants application was unclear not only as to who the contemnor was, but what particulars of the court order had been violated.

39. The Black's Law Dictionary (Ninth Edition) defines contempt of court as:-

> " Conduct that defies the authority or dignity of a court. Because such conduct interferes with the administration of justice, it is punishable usually by fine or imprisonment."

40. The law guiding the present Application is Order 40 Rule 3(1) of the Civil Procedure Rules which stipulates as follows:-

> ''In cases of disobedience, or of breach of any such terms, the Court granting an injunction may order the property of the person guilty of such disobedience or breach to be attached, and may also order such person to be detained in prison for a term not exceeding six months unless in the meantime the Court directs his release.''

41. Section 29 of the *Environment and Land Court Act* is clear to the effect 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."

42. It is an established principle of law as was held in the case of Kristen Carla Burchell vs Barry Grant Burchell, Eastern Cape Division Case No. 364 of 2005, that in order to succeed in civil contempt proceedings, the Applicant has to prove:

i. the terms of the order,

ii. Knowledge of these terms by the Respondent,

iii. Failure by the Respondent to comply with the terms of the order.

43. Having said that, from the application and the response, the sworn affidavits, annexures, submissions by the both Counsel, the applicable law and the decided authorities, the following issues stand out for determination:

i. Whether there was a valid order of the court of 31st July 2024.

ii. Whether the Respondents and the 1st interested party were served with or made aware of the orders issued on 31st July 2024.

iii. Whether the Respondents and the 1st interested party herein deliberately and willfully failed to comply with the terms of the order and are guilty of contempt of Court orders issued on 31st July 2024.

44. On the first issue for determination as to whether there had been a valid order issued by the court on the 31st July 2024, the Court of Appeal in the case of Mugah –v- Kunga [1988] KLR 748, held that in land matters, status quo orders should always be issued for purposes of preserving the subject matter. The court's practice directions vide Gazette Notice No. 3461/2025 Practice Direction No. 23(l) gives the court the leeway and discretion to make an order for status quo to be maintained until determination of the case. I therefore find that indeed vide its ruling of 25th July 2024, the court had issued a valid order directing the parties to maintain the status quo which had been expounded.

45. On the second issue as to whether the Respondents and the 1st interested party were served with or made aware of the said court order, I have perused through the proceedings of the 25th July 2024 when the ruling was delivered and I find that all the parties herein were represented by their respective Counsel and therefore personal service was not required.

46. The Court of Appeal in the Shimmers Plaza Limited v National Bank of Kenya Limited [2015] eKLR had held as follows:

> "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 for the purposes of contempt proceedings. For instance, Lenaola J in the case of Basil Criticos Vs Attorney General and 8 Others [2012] eKLR 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"
>
> This position has been affirmed by this Court in several other cases including the Wambora case (supra).
>
> > .....Would the knowledge of the judgment or order by the advocate of the alleged contemnor suffice for contempt proceedings? We hold the view that it does. This is more so in a case such as this one where the advocate was in Court representing the alleged contemnor and the orders were made in his presence. There is an assumption which is not unfounded, and which in our view is irrefutable to the effect that when an advocate appears in court on instructions of a party, then it behoves him/her to report back to the client all that transpired in court that has a bearing on the client's case.
>
> This is the position in other jurisdictions within and outside the commonwealth."

47. It can be seen from the above holding which is binding to this court that the Court of Appeal had made a significant finding that relaxed the strict requirement for personal service in contempt proceedings. The court held that jurisprudence had gradually moved beyond the necessity of personal service of orders to focus on whether the alleged contemnor had actual knowledge of the terms of the court order. It held that provided it could be shown that the person alleged to be in contempt was aware of the terms of the court order the same did not vitiated contempt proceedings. The primary consideration thus shifted to the substantive issue of awareness and willful disobedience of the court's command.

I find that the parties herein all had actual knowledge of the terms of the court order and therefore personal service was unnecessary.

48. Lastly as to whether the Respondents and the 1st interested party herein deliberately and willfully failed to comply with the terms of the order and are guilty of contempt of Court orders issued on 31st July 2024, in their application, the Applicants complaint was that the Respondents and the 1st Interested party had failed to satisfy the same but they had continued to interfere mutilate and or defile the status quo contrary and in disobedience with the court orders. That the interested party had failed to ensure strict compliance of the Court Order and had failed to rise to the oath of the Office of the Officer Commanding a police station as envisaged under *the constitution* of Kenya.

49. The mere assertion of non-compliance or negative actions is insufficient. The Applicants could not simply state that the Respondents had failed to satisfy the order or continued to interfere but they bore the burden of proof and ought to have presented clear evidence to the court for example photographs, documents etc, that the Respondents and 1st interested party had in fact committed an act of contempt of the court order.

50. It must be remembered that the burden of proof in contempt proceedings is higher than that in a normal civil matter because such proceedings had the potential of impacting the rights of a party who may end up being committed to civil jail.Contempt is a serious matter, and the standard of proof required is often high (sometimes proof beyond a reasonable doubt for criminal contempt, or a high civil standard like clear and convincing evidence). A court will not therefore find contempt simply based on the Applicants' accusation, concrete proof of the willful disobedience or breach is essential.

51. The Supreme Court of Kenya in Republic v Ahmad Abolfathi Mohammed & Another [2018] eKLR held that;

> " The power, to commit a person to jail, must be exercised with utmost care, and exercised only as a last resort. It is of utmost importance, therefore, for the Respondents to establish that the alleged Contemnor's conduct was deliberate, in the sense that he or she willfully acted in a manner that flouted the Court Order."

52. In Mutitika v Baharini Farm Ltd [1985] eKLR, the Court of Appeal held as follows;

> " In our view the standard of proof in contempt proceedings must be higher than proof on the balance of probabilities, almost but not exactly, beyond reasonable doubt. We envisage no difficulty in courts determining the suggested standard of proof. The standard of proof beyond reasonable doubt ought to be left where it belongs, to wit, in criminal cases. It is not safe to extend it to offence which can be said to be quasi – criminal in nature."

53. Evidence having not been provided by the Applicants that indeed they were willfully and deliberately in disobedience of the court order of 31st July 2024, and owing to the standard of proof required in contempt proceedings, I find that the Application dated the 7th March, 2025 is devoid of merit and is hereby dismissed with costs. The Respondents and the 1st Interested party are herein discharged from the contempt proceedings.

DATED AND DELIVERED VIA MICROSOFT TEAMS AT NAIVASHA THIS 23RD DAY OF OCTOBER 2025.

M.C. OUNDO

ENVIRONMENT & LAND COURT – JUDGE