



REPUBLIC OF KENYA



**Osman v Mohamed & 3 others (Environment and Land Case
E108 of 2023) [2025] KEELC 7421 (KLR) (30 October 2025) (Ruling)**

Neutral citation: [2025] KEELC 7421 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND CASE E108 OF 2023
OA ANGOTE, J
OCTOBER 30, 2025**

BETWEEN

ABEY ABDINOOR OSMAN PLAINTIFF

AND

ABDIRAHMAN MOHAMED 1ST DEFENDANT

MAHAD ADAN 2ND DEFENDANT

CHIEF LAND REGISTRAR 3RD DEFENDANT

CORNER HOUSE APARTMENTS LIMITED 4TH DEFENDANT

RULING

1. Vide a Notice of Motion dated 17th April, 2025 brought pursuant to the provisions of Articles 40 and 50 of *the Constitution*, Section 29 of the *Environment and Land Court Act*, 2011, Sections 2 and 5 of the *Judicature Act* Cap 8, and Part 81 of the English Civil Procedure Rules, 1998, the Plaintiff/Applicant seeks the following reliefs:
 - i. The 4th Defendants' directors Mr. Abdirahman Adan Mohamed, Mr. Mahad Adan Abdullahi, Mr. Mohamud Ahmed Abdille, Mr. Ahmed Osman Abdi and Mr. Hussein Abdi Hussein to be found in contempt of court for disobeying the orders that were given by the court on 31st July, 2024.
 - ii. Upon being found to have disobeyed the orders given by the court on 31st July, 2024, Mr. Abdirahman Adan Mohamed, Mr. Mahad Adan Abdullahi, Mr. Mohamud Ahmed Abdille, Mr. Ahmed Osman Abdi, and Mr. Hussein Abdi Huissein, be arrested by the Officer Commanding Station, Pangani Police Station and detained in Kamiti Maximum Prison or any other jail/rehabilitation facility for a period of 2 years.



- have fully complied with the said orders and that the property has remained unchanged since their issuance. He further asserts that the impugned orders were never personally served upon him and, as such, contempt proceedings cannot be sustained.
12. According to him, he only became aware of the Motion and the orders of 31st July 2024 through his former Counsel on 22nd April 2025; that this lapse led him to instruct the firm of James Oketch and Company Advocates who proceeded to come on record and that his former Counsel's action constitutes mistake of Counsel which ought not be visited upon him.
 13. It was further deponed, on the advice of Counsel, that an order cannot be enforced for contempt unless it bears a clear and prominent notice on its face warning the person bound by it that disobedience would attract penalties such as imprisonment, a fine, or sequestration of assets. Additionally, he contended that for contempt to arise, it must be shown that the person alleged to be in breach committed the act with full knowledge or notice of the existence of the court order prohibiting such conduct.
 14. He asserted that the Plaintiff has not proved that he effected service or that the Defendants were aware of the orders; that in the Affidavit of Service dated the 21st November, 2024, the process server, Willis Agayi, admits to not being able to serve the Defendants in person and that the annexures therein are illegible and not admissible before this court. Ultimately, it was averred, a case has not been made for the contempt orders sought.
 15. The Officer Commanding Station, Pangani Police Station, Henry Muthuri Mutuma, force number 239010 filed a Replying Affidavit on the 14th July 2025. He deponed that under the *National Police Service Act*, the duties of the police include, among others, the collection of criminal intelligence, investigation of serious crimes, maintenance of law and order, detection and prevention of crime, apprehension of offenders, maintenance of criminal records, and execution of directives issued to the Inspector General by the Director of Public Prosecutions pursuant to Article 157(4) of *the Constitution*.
 16. He explained that on 20th November 2024, the OCS Pangani Police Station executed the court order dated 31st July 2024 under OB No. 105/20/11/2024, thereby halting the ongoing construction on the suit property, which had progressed to the ground-floor level.
 17. Subsequently, it was deposed, on 3rd April 2025, following a change in leadership at the station, the 1st, 2nd, and 4th Defendants lodged a complaint of malicious damage to property and assault under OB No. 71/3/4/2025, which was taken up for investigation. However, on 5th April 2025, while the investigations were still underway, the Plaintiff approached the police and clarified that the allegations were false and made in bad faith.
 18. It was deposed by the OCS that that following this report, and on the same day, the OCS and his officers visited the suit property located in Ushirika Area, Eastleigh, and found construction activities ongoing, with several labourers working on the first floor and that acting on the strength of the subsisting court orders, the police halted the works immediately.
 19. It was deposed that the police investigations revealed that the reports of malicious damage of property were false; that subsequently, a police file was thereafter opened and forwarded to the Office of the Director of Public Prosecutions on 7th April 2025 for perusal and further advice, and that the outcome remains pending.
 20. The Plaintiff filed a Supplementary Affidavit on the 27th June, 2025. He reiterated his assertions as set out in the Motion stating that prior to the filing of the instant application for contempt, he had on



- 20th November, 2024 reported the illegal construction activities by the 1st, 2nd and 4th Defendants to the Officer Commanding Station Pangani Police Station, as he was mandated by this court.
21. On the aforesaid date, it was deposed, the Officer Commanding Station, Pangani Police Station together with his officers visited the suit property and found the illegal construction on the suit property by the 1st, 2nd and 4th Defendants ongoing and that the OCS immediately halted the ongoing illegal construction activities as evinced by photographs.
 22. However, he deponed, the cessation was only temporary prompting another police visit by the Officer Commanding Station Pangani Police Station on 4th April, 2025 and that they once again halted the illegal construction activities. In defiance, it was contended, the Defendants resumed their illegal construction on the suit property, which they carried out at night.
 23. Mr. Osman asserted that the blatant and deliberate disobedience of the court's express orders left him with no alternative but to file the present Motion. With respect to the Defendants allegations of lack of knowledge and/or service of the orders, he reiterated the orders were issued in open court and in the presence of Counsel for all parties. Further, personal service was affected on them vide the letter of 19th November, 2024 and this was acknowledged by their letter of 25th November, 2024.
 24. In any event, it was urged, the 1st and 2nd Defendants' former Advocates have not deponed any affidavit to confirm not having informed them of the orders which would in any case not be a defence to non-compliance with a court order. This, especially after their agents were repeatedly warned by the Officer Commanding Station Pangani, Police Station.
 25. It was his deposition that he has also been advised by Counsel on record that the law is settled that personal service is not necessary where it can be shown that the person alleged to be in contempt had knowledge of the existence of the order. Knowledge of the order, and not personal formal service, is the cornerstone of contempt proceedings.
 26. In response to the allegation that he failed to demonstrate the status of the suit property, he clarified that as at 15th November 2023, when the parties consented that no further developments should take place and the status quo to be maintained pending the determination of the Motion dated 5th October 2023, the condition of the property was as shown in the photographs at pages 1–11 of the exhibit marked "AAO-4."
 27. He further explained that as of 19th November 2024, the property was in the state depicted in the photographs at pages 14–16 of the same exhibit. He added that as at 5th April 2025, shortly before the filing of the present Motion, the condition of the property was as captured in the photographs at pages 58–67 of exhibit "AAO-04." These pictures, he urged, progressively show the state of the suit property.
 28. Further, on the advice of Counsel, he averred that the certificate of electronic evidence produced by the 1st, 2nd, and 4th Defendants is invalid, rendering the accompanying photographs inadmissible. He argued that the certificate fails to specify the device used to capture the images, the date they were taken, the device on which they were stored, the process by which they were produced, and the equipment used for printing thus falling short of the evidentiary requirements under the *Evidence Act*.
 29. It was deposed that further still, the Replying Affidavit filed by the 1st, 2nd and 4th Defendants is fatally defective for not having been properly commissioned before a Commissioner of Oaths as the signature of the alleged Commissioner is starkly different from the one marking their exhibits undermining its authenticity and raising doubts as to whether the oath was administered in accordance with Sections 5 and 8 of the Oath and Statutory Declarations Act.



Submissions

30. The Plaintiff's advocate submitted that the court in *Samuel N. Mwera vs National Land Commission & 2 Others* [2020] eKLR, the court outlined the essential ingredients for establishing civil contempt being proof of the existence and terms of a valid court order, that the alleged contemnor had knowledge of the order, and that there was willful disobedience or failure to comply with its terms.
31. Counsel submitted that the orders issued on 31st July 2024 were clear, unambiguous, and binding upon the Defendants; that the orders directed maintenance of the prevailing status quo on the suit property and prohibition of any further construction or interference and that the said orders remain valid and enforceable, as they have neither been reviewed, varied, nor set aside on appeal.
32. Relying on the Court of Appeal's decision in *Shimmers Plaza Limited vs National Bank of Kenya Limited* [2015] eKLR, Counsel argued that personal service of a court order is not an absolute requirement in contempt proceedings; that the court affirmed that knowledge of an order by an Advocate of the alleged contemnor is sufficient to establish notice and that knowledge, therefore, supersedes the need for personal service or the inclusion of a penal notice. In this case, it was submitted, the Defendants were duly served and even responded, acknowledging the existence of the orders.
33. Lastly, Counsel challenged the admissibility of the certificate of electronic evidence filed by the 1st, 2nd, and 4th Defendants, arguing that it does not comply with the requirements of Section 106B of the *Evidence Act*. Reliance was placed on the case of *Idris Abdi Abdullahi vs Ahmed Bashane & 2 Others* [2018] eKLR, where the court held that non-compliance with the section renders such evidence inadmissible.
34. Additionally, it was submitted that the Defendants' Replying Affidavit is fatally defective for not having been properly sworn and commissioned before a Commissioner for Oaths, with Counsel citing the case of *Patel (as the Administrator of the Estate of Kanji Naran Patel) vs Kiptoo & Others* [2024] KEELC 13487 (KLR) in support.
35. The 1st, 2nd and 4th Defendants Counsel began by outlining the legal framework governing contempt proceedings, citing Section 5(1) of the *Judicature Act*, Section 29 of the *Environment and Land Court Act*, and the English Civil Procedure Rules, 1998 (Part 81), which together empower the court to punish for disobedience of its orders.
36. Reference was made to the Supreme Court case of *Githiga & 5 Others vs Kiru Tea Factory Company Ltd* [2023] and the case of *Republic vs Ahmad Abolfathi Mohammed & Another* [2018] eKLR, which explained that contempt proceedings are quasi-criminal in nature and require a higher standard of proof. It was submitted that the Applicant has the burden of demonstrating deliberate and wilful disobedience of a valid and clear court order.
37. Counsel submitted that although the orders of 31st July 2024 were valid and unambiguous, the Defendants were never personally served with the same. Citing authorities such as *HBI vs KBH* [2021] and *Republic vs County Secretary, Nairobi County* [2020], he argued that personal service is a mandatory requirement in contempt matters unless expressly dispensed with by the court.
38. It was submitted that while their previous advocates may have been aware of the order, that knowledge was never communicated to the Defendants until April 2025. Counsel invoked the case of *Patriotic Guards Ltd vs James Kipchirchir Sambu* [2018] eKLR and *Masinde vs Wafula* [2022] eKLR, asserting that the mistakes or omissions of counsel should not be visited upon an innocent client, especially in quasi-criminal proceedings where liberty is at stake.



39. On the allegation of disobedience, the Defendants challenged the reliability of the photographic and video evidence adduced by the Plaintiff. He noted that the photographs lacked date stamps, contained inconsistencies, and were contradicted by their own exhibits showing no ongoing construction.
40. Citing *Sang vs Keter & 5 Others* [2024]eKLR and *Northwest Capital Apartments Ltd vs Ohuru* [2024], counsel argued that the Plaintiff failed to demonstrate deliberate acts of defiance or prove that the alleged violations occurred after the issuance of the court orders, and that the contradictions noted rendered the Plaintiff's evidence unreliable and incapable of meeting the high threshold of proof required.
41. In response to the assertion that their Replying Affidavit was defective, counsel submitted that both handwritten and electronic signatures are legally recognized under Section 2 of the [Kenya Information and Communications Act](#) and Regulations 3 and 22 of the Electronic Case Management Practice Directions, 2020.
42. In conclusion, Counsel urged that the Plaintiff had failed to meet the required legal and evidentiary standards for establishing contempt. Consequently, he urged the court to dismiss the Motion in its entirety and, in keeping with the principle that costs follow the event, to award costs to the 1st, 2nd, and 4th Defendants.
43. The Plaintiff filed supplementary submissions on the 30th July, 2025. Counsel reiterated that the Plaintiff had duly established that the 1st, 2nd and 4th Defendants are in disobedience of the court orders of 31st July, 2024. This position, it was submitted, has been affirmed through the response of the OCS, Pangani Police station.

Analysis and Determination

44. Having considered the Motion, Affidavits and submissions, the issues that arise for determination are:
 - i. Whether the 1st, 2nd and 4th Defendants Replying Affidavit dated 28th April, 2024 is fatally defective?
 - ii. Whether the Plaintiff has demonstrated that there has been contempt of the Court Orders issued on 31st July 2024?
45. Vide his Supplementary Affidavit, the Plaintiff seeks to impugn the legitimacy of the 1st, 2nd and 4th Defendants' Replying Affidavit. It is contended that, first, the Affidavit was not properly commissioned before a Commissioner for Oaths, as the signature appearing thereon is markedly different from that of the Commissioner appearing on their exhibits.
46. Second, it is contended that the certificate of electronic evidence attached to the Replying Affidavit fails to meet the mandatory requirements of Section 106B (4) of the [Evidence Act](#) as it does not disclose the particulars of the device used to capture the photos, date and time the photos were taken, device on which the images were stored nor the process and equipment through which they were printed.
47. The law governing the commissioning of affidavits is set out under the [Oaths and Statutory Declarations Act](#). Of relevance are Sections 4 and 5 thereof. Section (4)(1) states:

“ A commissioner for oaths may, by virtue of his commission, in any part of Kenya, administer any oath or take any affidavit for the purpose of any court or matter in Kenya, including matters ecclesiastical and matters relating to the registration of any instrument, whether



under an Act or otherwise, and take any bail or recognizance in or for the purpose of any civil proceeding in the High Court or any subordinate court.

Provided that a commissioner for oaths shall not exercise any of the powers given by this section in any proceeding or matter in which he is the advocate for any of the parties to the proceeding or concerned in the matter, or clerk to any such advocate, or in which he is interested.”

48. On the other hand, Section 5 provides:

“Every commissioner for oaths before whom any oath or affidavit is taken or made under this Act shall state truly in the jurat or attestation at what place and on what date the oath or affidavit is taken or made.”

49. Having looked at the impugned Affidavit, the court notes that it is indeed commissioned by one Allan Odhiambo Onyango, and signed. It has not been alleged that Mr. Odhiambo is not a commissioner of oaths, rather, the Plaintiff contends that his signature is a forgery. The basis of this is that the same is different from his signature on the annexures.

50. The law with respect to fraud is well settled. It must not only be specifically pleaded but proved. [See *Demutilla Nanyama Pururmu vs Salim Mohamed Salim* [2021] eKLR]. In so alleging, the onus was on the Plaintiff to demonstrate that the signature on the Affidavit is indeed a forgery. Suppositions do not meet the threshold and this plea must fail.

51. Moving next to the certificate of electronic evidence, it is trite that electronic evidence is now recognized as a form of evidence in Kenya and is admissible in judicial proceedings. This is expressed in Section 78A of the *Evidence Act*. Section 106B thereof provides thus:

“(1) Notwithstanding anything contained in this Act, any information contained in an electronic record which is printed on paper, stored, recorded or copied on optical or electro-magnetic media produced by a computer (herein referred to as computer output) shall be deemed to be also a document if the conditions mentioned in this section are satisfied, in relation to the information and computer in question and shall be admissible in any proceedings without further proof or production of the original, as evidence of any contents of the original or of any fact stated therein where direct evidence would be admissible

(2) The conditions mentioned in subsection (1), in respect of a computer output, are the following—

(a) the computer output containing the information was produced by the computer during the period over which the computer was used to store or process information for any activities regularly carried out over that period by a person having lawful control over the use of the computer;

(b) during the said period, information of the kind contained in the electronic record or of the kind from which the information so contained is derived was regularly fed into the computer in the ordinary course of the said activities;

(c) throughout the material part of the said period, the computer was operating properly or, if not, then in respect of any period



- in which it was not operating properly or was out of operation during that part of the period, was not such as to affect the electronic record or the accuracy of its content; and
- (d) the information contained in the electronic record reproduces or is derived from such information fed into the computer in the ordinary course of the said activities.
- (3) Where over any period, the function of storing or processing information for the purposes of any activities regularly carried on over that period as mentioned in paragraph (a) of sub section (2) was regularly performed by computers, whether—
- (a) by combination of computers operating in succession over that period; or
 - (b) by different computers operating in succession over that period; or
 - (c) in any manner involving the successive operation over that period, in whatever order, of one or more computers and one or more combinations of computers, then all computers used for that purpose during that period shall be treated for the purposes of this section to constitute a single computer and references in this section to a computer shall be construed accordingly.
- (4) In any proceedings where it is desired to give a statement in evidence by virtue of this section, a certificate doing any of the following:
- (a) identifying the electronic record containing the statement and describing the manner in which it was produced;
 - (b) giving such particulars of any device involved in the production of that electronic record as may be appropriate for the purpose of showing that the electronic record was produced by a computer;
 - (c) dealing with any matters to which conditions mentioned in subsection (2) relate; and
 - (d) purporting to be signed by a person occupying a responsible position in relation to the operation of the relevant device or the management of the relevant activities (whichever is appropriate), shall be evidence of any matter stated in the certificate and for the purpose of this subsection it shall be sufficient for a matter to be stated to be the best of the knowledge of the person stating it.”

52. Speaking to these provisions, the court in *Samwel Kazungu Kambi vs Nelly Ilongo the Returning Officer, Kilifi County & 2 others* [2017] KEHC 2256 (KLR) noted:

“Under Section 106B, for an electronic record to meet the standards for production as an exhibit, the computer should be demonstrated to have been under the control of a particular person during the relevant period. The information ought to have been fed into the computer in the ordinary course of the activities that need to be proved. There is also



need to establish that at the material time the computer was operating properly but in case of any defect it should not have been to the extent that it would affect the electronic record or its accuracy. Another condition is that the electronic record should be derived from information fed into the computer in the ordinary course of the activities in question.

21. Sub-section (4) of Section 106B requires a certificate confirming the authenticity of the electronic record. Such a certificate should describe the manner of the production of the record or the particulars of the device. The certificate could also have the signature of the person in charge of the relevant device or the management of the relevant activities.”
53. The court has considered the impugned certificate of electronic evidence vis the requirements of Section 106B of the *Evidence Act*. While it identifies the source device (an iPhone) and affirms that the phone was operating properly at the time the photographs were taken, it does not describe the manner in which the electronic record was produced. This is a crucial omission.
54. As explained by the Court of Appeal in *John Lokitare Lodinyo vs Independent Electoral and Boundaries Commission & 2 others* [2018] KECA 439 (KLR) for electronic evidence to be admissible, it must not only identify the electronic record, it must indicate the manner in which the electronic evidence was produced, together with any particulars of any device involved in the production of that document.
55. As such, consistent with the appellate court’s reasoning, the certificate of electronic evidence adduced by the 1st, 2nd and 4th Defendants does not meet the statutory threshold for admissibility, rendering the attached photographs defective as electronic evidence.
56. Ultimately, whereas the Replying Affidavit is competent, the certificate of electronic evidence is incompetent rendering the evidence adduced thereby inadmissible.
57. 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.”
58. Discussing contempt, the Supreme Court in *Republic vs Ahmad Abolfathi Mohammed & another* [2019] eKLR posited thus:

“There is no doubt that an act in contempt of the Court constitutes an affront to judicial authority; and the Court has the liberty and empowerment to mete out penalty for such conduct, in a proper case. The object is, firstly, to vindicate the Court’s authority; secondly, to uphold honourable conduct among Advocates, in their standing as officers of the Court; and thirdly, to safeguard its processes for assuring compliance, so as to sustain the rule of law and the administration of justice”
59. Due to the repeal of the *Contempt of Court Act*, 2016, [see *The Kenya Human Rights Commission vs Attorney General & Another* [2018] eKLR] the substantive law governing contempt proceedings is the *Judicature Act* Cap. 8. Section 5 of which provides:

“(1) 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.



(2) An order of the High Court made by way of punishment for contempt of court shall be appealable as if it were a conviction and sentence made in the exercise of the ordinary original criminal jurisdiction of the High Court.”

60. Additionally, Section 29 of the *Environment and Land Court Act* under the title offences provides as follows:

“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.”

61. As a principle, courts do not act in vain and their orders must at all times be respected. This was articulated by the Court of Appeal in *Shimmers Plaza Limited v National Bank of Kenya Limited* [2015]eKLR referenced by the parties who stated thus:

“We reiterate here that court orders must be obeyed. Parties against whom such orders are made cannot be allowed to trash them with impunity. Obedience of Court orders is not optional, rather, it is mandatory and a person does not choose whether to obey a court order or not. For as Theodore Roosevelt, the 26th President of the United States of America once said:-

“No man is above the law and no man is below it; nor do we ask any man’s permission to obey it. Obedience to the law is demanded as a right; not as a favour”.

The courts should not fold their hands in helplessness and watch as their orders are disobeyed with impunity left, right and centre. This would amount to abdication of our sacrosanct duty bestowed on us by *the Constitution*. The dignity, and authority of the Court must be protected, and that is why those who flagrantly disobey them must be punished, lest they lead us all to a state of anarchy.”

62. It is trite that contempt proceedings are quasi-criminal in nature due to the severe consequences they attract. Consequently, the standard of proof in such proceedings is higher than the balance of probabilities in civil cases although not as high as beyond reasonable doubt. As stated by the Supreme Court in *Republic vs Ahmad Abolfathi Mohammed & another* [2018] eKLR:

“The standard of proof in cases of contempt of Court is well established. In the case of *Mutitika v. Baharini Farm Limited* [1985] KLR 229, 234 the Court of Appeal held that:

“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...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 an offence which can be said to be quasi-criminal in nature.”

The rationale for this standard is that if cited for contempt, and the prayer sought is for committal to jail, the liberty of the contemnor will be affected. As such, the standard of proof is higher than the standard in civil cases. This 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.”

63. In order to succeed in civil contempt proceedings, the Applicant has to prove that the terms of the order were clear, unambiguous and binding on the Respondent; knowledge of these terms by the Respondent; failure by the Respondent to comply with the terms of the order; and deliberate conduct by the Respondent.
64. This position was espoused by the court in *North Tetu Farmers Co. Ltd vs Joseph Nderitu Wanjohi (2016) eKLR* and *Republic vs Attorney General & another Ex parte Mike Maina Kamau [2020] eKLR* where Justice Mativo, dealing with the question of contempt relied on the exposition by the learned authors of the book “Contempt in Modern New Zealand” who succinctly stated:
- “There are essentially four elements that must be proved to make the case for civil contempt. The applicant must prove to the required standard (in civil contempt cases which is higher than civil cases) that:-
- (a) the terms of the order (or injunction or undertaking) were clear and unambiguous and were binding on the defendant;
 - (b) the defendant had knowledge of or proper notice of the terms of the order;
 - (c) the defendant has acted in breach of the terms of the order; and
 - (d) the defendant’s conduct was deliberate.”
65. By way of brief background, vide a Motion dated 5th October, 2023, the Plaintiff sought, inter-alia, temporary injunctive orders restraining the Defendants from any interference with L.R Nairobi/Block 42/129(hereinafter the suit property) pending determination of the suit. The court determined the same and rendered a Ruling on 31st July, 2024, in the following terms:
- i. Pending the hearing and determination of the suit, the current status quo shall be maintained meaning that there shall be no further survey work, mapping, application for further approvals and licenses, construction, development, depositing of any equipment or material, charging, selling or any dealing with the suit property that would change the current state of the property by the parties of their agents until the suit is heard and determined.
 - ii. Pending the hearing and determination of the suit and to preserve the suit property and the construction materials already deposited on the suit property, the 1st, 2nd and 4th Defendants may employ security guards for the sole purpose of guarding the suit property and ensuring that no one access the suit property including the 1st, 2nd and 4th Defendants.
 - iii. The Officer Commanding Station Police Station shall enforce the above orders.
66. The Plaintiff contends that despite the clear, express, and binding nature of the court orders aforesaid, issued in the presence of Counsel for the 1st and 2nd Defendants, and later on personally served on them, the Defendants have continued with construction works on the suit property.
67. The Defendants, on their part, deny any contravention of the said orders and argue that no credible evidence has been presented to establish the same. They further assert that they were never personally served with the orders, nor were any penal notices issued against them.
68. While conceding that their Counsel was present in court when the orders were made, they contend that he failed to communicate the same to them, and that such an omission should not be visited



upon them. Ultimately, they argue that the Plaintiff's Motion for contempt is without merit and unsustainable.

69. Beginning with whether the court's orders were clear and unequivocal, the answer is plainly in the affirmative. The court expressly directed that the status quo then prevailing at the time of the delivery of the Ruling be maintained restraining any interference of any nature with the suit property pending determination of the suit. There is no ambiguity in the language of the orders, and the Defendants themselves have not contested their clarity. In fact, they expressly concede that the orders were clear and unambiguous.
70. Turning now to the element of knowledge, it is important at the outset to reiterate the shift in jurisprudence, that knowledge now supersedes personal service together with the penal notice. This position has been endorsed by the Court of Appeal in *Shimmers Plaza Limited vs National Bank of Kenya Limited* (Civil Appeal 33 of 2012) [2015] KECA 945 (KLR)(Civ) (18 February 2015) (Ruling) where the court held that:

“This Court has slowly and gradually moved from the position that service of the order along with the penal notice must be personally served on a person before contempt can be proved. This is in line with the dispensations covered under 81.8 (1) (supra).

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”

71. The record indicates that at the time of the delivery of the Ruling, the 1st, 2nd and 4th Defendants were duly represented by Counsel. This is indeed undisputed. As to whether this suffices as knowledge to the aforesaid Defendants, the court finds that it does. The Court of Appeal in *Shimmers Plaza*(supra) speaking to this noted:

“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 behooves him/her to report back to the client all that transpired in court that has a bearing on the client's case.”

72. The court has considered the Defendants' contention that the alleged disobedience arose from a mistake of counsel. Beyond the bare assertion, no credible evidence has been presented to substantiate that claim.
73. In any event, apart from Counsel's presence, there is evidence of personal service upon the 1st, and 2nd Defendants vide the letter of 19th November 2024 as confirmed by the Affidavit of Service sworn on 21st November 2024, which sets out in detail the manner and mode of service. Further, the letter



dated 25th November 2024 from Omar Mohamud & Co. Advocates, Counsel, written on behalf of the Defendants, expressly acknowledged receipt of the orders. This is not refuted.

74. Ultimately, this court is satisfied that the Defendants had actual knowledge of the orders through both personal service and communication by their advocates. Consequently, the argument that they were unaware of the orders or that personal service was not done cannot stand.
75. Turning now to whether breach of the court orders has been demonstrated, it is important to recall that the orders expressly directed that the status quo be maintained. It is apparent that as at the time of the institution of the suit, construction works had begun on the property and were ongoing. Accordingly, compliance with the court's directive required that the property remain in that condition, save for the presence of security personnel, which the court had expressly permitted.
76. The Plaintiff has adduced evidence showing ongoing construction activities on the suit property on 20th November, 2024 as well as on 4th and 5th April 2025. The photos in this regard show active construction on the site. While the 1st -5th Defendants contest these photos citing lack of date stamps on the same, the certificates of electronic evidence reference the dates the pictures were taken and this suffices. As regards the alleged inconsistencies with their (Defendants') own photos, the court has already deemed their photos inadmissible.
77. The Plaintiff's evidence in this regard is corroborated by the Affidavit of C.I. Henry Mutuma, who deponed that officers from Pangani Police Station visited the premises on both 20th November 2024 and 5th April 2025. He confirmed that during their visit, they found ongoing construction which they halted on the strength of the court orders. The court is therefore satisfied that the breach of its orders has been clearly demonstrated.
78. In conclusion, the Motion dated the 17th April, 2025 succeeds as follows:
 - i. The court does hereby make a finding that Mr. Abdirahman Adan Mohamed, Mr. Mahad Adan Abdullahi, Mr. Mohamud Ahmed Abdille, Mr. Ahmed Osman Abdi, and Mr. Hussein Abdi Huissein are in breach of the court orders of 31st July, 2024 and are guilty of contempt.
 - ii. The aforesaid contemnors shall avail themselves on a date to be fixed by this court for mitigation and sentencing.
 - iii. The 1st, 2nd and 4th Defendants shall bear the costs of this Motion.

DATED, SIGNED AND DELIVERED VIRTUALLY IN NAIROBI THIS 30TH DAY OF OCTOBER, 2025.

O. A. ANGOTE

JUDGE

In the presence of;

Ms Morara holding brief for Ndegwa for Applicant

Mr. Allan Kamau for 3rd Respondent

No appearance for 1st and 4th Defendant

Court Assistant: Tracy

