



**Republic v Attorney General & 4 others; Mbogho & 63 others (Ex parte Applicants)
 (Environment and Land Judicial Review Miscellaneous Application E004 of 2025)
 [2025] KEELC 7401 (KLR) (Environment and Land) (30 October 2025) (Judgment)**

Neutral citation: [2025] KEELC 7401 (KLR)

**REPUBLIC OF KENYA
 IN THE ENVIRONMENT AND LAND COURT AT VOI
 ENVIRONMENT AND LAND
 ENVIRONMENT AND LAND JUDICIAL REVIEW
 MISCELLANEOUS APPLICATION E004 OF 2025**

**EK WABWOTO, J
 OCTOBER 30, 2025**

BETWEEN

REPUBLIC APPLICANT

AND

ATTORNEY GENERAL 1ST RESPONDENT

DIRECTOR LANDS ADJUDICATION AND SETTLEMENT 2ND RESPONDENT

NATIONAL LAND COMMISSION 3RD RESPONDENT

CHIEF LANG REGISTRAR 4TH RESPONDENT

LAND REGISTRAR TAITA TAVETA 5TH RESPONDENT

AND

HERMAN MWAKITAU MBOGHO EX PARTE APPLICANT

ASHA MWAKE NDOLONGA EX PARTE APPLICANT

ANTHONY MAJIMBO BOMBO EX PARTE APPLICANT

NEWTON CHUMA MWAKIO & 60 OTHERS & 60 OTHERS & 60

OTHERS EX PARTE APPLICANT

JUDGMENT

1. The Applicants filed this substantive motion dated 21st July 2025 seeking the following orders:-



- i. That an order of MANDAMUS do and hereby issue directed to the Respondents compelling them jointly and severally to provide and release to the Applicants herein the list of the persons who were allocated plots created from the sub-division of the parcel of land known as Voi Municipality Block/3 situated just after crossing the old railway line and extending down the right side of the road to the Voi River when facing Mombasa side.
 - ii. That an order do hereby issue to the Respondents jointly and severally to show cause against detention in civil jail for non compliance with the court orders herein.
 - iii. That the honourable court be pleased such or further orders it deems fit to grant in the interests of justice.
 - iv. That costs of this application be provided for.
2. The application was canvassed by way of written submissions. No response nor submissions were filed by any of the Respondents herein. The Applicant filed written submissions dated 23rd July 2025.
3. It was the Applicants case that the Applicants herein seeks from this court orders of MANDAMUS to issue compelling the Respondents herein jointly and severally to provide and release to the Applicants, the list of the persons who were allocated plots created from the sub-division of the parcel of land known as VOI MUNICIPAL/BLOCK 3 situated just after crossing over the old railway line and extending down the right side of the road to the Voi River when facing Mombasa side.
4. That the order is specifically sought for enforcing obedience and compliance of the judgment and decree of the court in formerly Mombasa ELC Petition No. 38 of 2021 now Voi E012 of 2024 delivered on the 15th May 2023 and decree issues thereafter on the 1st July 2024.
5. That not only that the Respondents herein were represented in the said petition by the office of the Attorney General to the end of the petition but also after the judgment, the Respondents were again served with a letter by the Applicants demanding compliance of the said decree.
6. That to date there has been no compliance from the Respondents, clearly demonstrating deliberate refusal and disrespect of the court's decree and/or orders.
7. That the said judgment and the decree of the court has not been stayed varied and/or vacated at all as at the filing hereof, hence the judgment and the decree of the court in formerly Mombasa ELC Petition No. 38 of 2021 now Voi E012 of 2024 still subsists and remains in force todate.
8. It is on the basis of the foregoing that the Applicants have been left with no other legal recourse for enforcement of the decree of the court other than approaching this honourable court as they have done.
9. It was contended that the Applicants claim their land Voi Municipal/Block 3 which they have for decades been in their possession, occupation, use and cultivation. It was also contended that the Applicants were made to belief that the subdivision was to make them legal owners by being issued with title deeds for the plots created from the subdivision. However after the subdivision was completed, the Respondents herein secretly went on dishing out the plots to other parties and themselves. The Applicants came to know of the illegality after the title deeds had been issued and processed.
10. Relying on the cases of Republic =Versus= Director Kenya School of Law (2024) eKLR and Teachers Service Commission =Versus= Kenya Union of Teachers & 2 Others (2013) eKLR it was submitted that this court has jurisdiction to grant the relief sought by virtue of Article 23(3)(e) of *the Constitution*.
11. The court was urged to grant the reliefs sought together with the costs of the application.



12. Having considered the application dated 21st July 2025 and the submissions filed by the Applicants, the issues for determination are
 - i. Whether the Applicants have made a case for grant of the judicial review remedy of mandamus
 - ii. Whether the Applicants have made a case warranting this court to cite the Respondents for contempt of the orders and decree given on 15th May 2023.
13. The Applicants seeks an order of mandamus to compel the Respondents jointly and severally to provide and release to them the list of persons who were allocated plots created from the sub division of the parcel of land known as Voi Municipality Block/3.
14. The nature of the remedy of mandamus has been elaborated in a long line of authorities. In *Republic v Kenya National Examinations Council ex parte Gathenji & 8 Others* [1997] eKLR, the Court of Appeal cited with approval Halsbury's Laws of England (4th Edn., Vol. 7, p.111 para 89) as follows: "The order of mandamus is of most extensive remedial nature and is in form, a command issuing from the High Court of Justice, directed to any person, corporation or inferior tribunal, requiring him or them to do some particular thing therein specified which appertains to his or their office and is in the nature of a public duty. Its purpose is to remedy the defects of justice and accordingly it will issue, to the end that justice may be done, in all cases where there is a specific legal right and no specific legal remedy for enforcing that right..."
15. In *R (Regina) v Dudsheath, ex parte Meredith* [1950] 2 All E.R. 741 at 743, Lord Goddard C.J. stated that:

"It is important to remember that mandamus is neither a writ of course nor a writ of right, but that it will be granted if the duty is in the nature of a public duty, and specially affects the rights of an individual, provided there is no more appropriate remedy. This court has always refused to issue a mandamus if there is another remedy open to the party seeking it."
16. Applying the above principles in the present case, the Applicants have anchored their case on the grounds that they had filed a Mombasa ELC Petition No. 38 of 2021 which was later designated as Voi ELC No. E012 of 2024 and pursuant to the judgment delivered on 15th May 2023, the Respondent s were directed within 21 days to provide to the Petitioners in that matter the list of the persons who were allocated and benefited from the 135 plots created from the subdivision of the land known as Voi Municipal Block/3 which had not been provided to date.
17. Considering the authorities cited above it is worth noting that mandamus being a commanding order for a public duty, the court may not issue the same if there is an alternative remedy. In the instant case, the Court has carefully perused the grounds made in support of the application together with the statement and it is evident that the Applicants have merely stated that the Respondents have not complied with the said judgment. On this breath it is clear that the Applicants have not demonstrated nor furnished this Court with any evidence demonstrating any action taken by them towards execution of the decree issued in Mombasa ELC No. 38 of 2021 and Voi ELC No. E012 of 2024 nor have them demonstrated the failure on the part of the Respondents in complying with the same. It is not enough to merely state that there is no compliance without any supporting evidence.
18. For the reasons set out above, it follows that the writ of mandamus cannot issue in the circumstances of this case.
19. On the second issue the Applicants seeks orders for contempt against the Respondents for non-compliance with the orders and decree issued in Mombasa ELC Petition No. 38 of 2021 and Voi ELC



No. E012 of 2024. Contempt of court is the conduct or action that defies or disrespects the authority of the court. Black's Law Dictionary 9th Edition, defines contempt as "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."

20. In the case of *Shimmers Plaza Limited v National Bank of Kenya Limited* [2015] eKLR, the Learned Judges of Appeal went to great lengths in tracing the foundations of law on contempt as practiced in Kenya.
21. Properly understood, contempt is conduct that impairs the fair and efficient administration of justice. Section 5 of the *Judicature Act* confers jurisdiction on the superior courts to punish for contempt.
22. Courts punish for contempt in order to uphold their dignity and authority; ensure compliance with their directions; observance and respect of due process of law; preserve an effective and impartial system of justice, and maintain public confidence in the administration of justice. If there were no sanctions for disobedience of court orders, there would be a serious threat to the rule of law and administration of justice. In that respect, for a party to be cited for contempt, he must have wilfully violated or disobeyed a court order directed at him.
23. The application before this court seeks to have the Respondents show cause on why they should not be committed to civil jail for non compliance of the Court orders given on 15th May 2023 in Mombasa ELC Petition No. 38 of 2021.
24. Obedience of court orders is not an option. In *Econet Wireless Kenya Ltd v Minister for Information & Communication of Kenya & another* [2005] KLR 828, Ibrahim, J. (as he then was), underscored the importance of obeying court orders, stating:

"It is essential for the maintenance of the rule of law and order that the authority and the dignity of our courts are upheld at all times. The Court will not condone deliberate disobedience of its orders and will not shy away from its responsibility to deal firmly with proved contemnors. It is the plain and unqualified obligation of every person against whom an order is made by court of competent jurisdiction, to obey it unless and until the 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 the order believes it to be irregular or void."
25. In *T. N. Gadavarman Thiru Mulpad v Ashok Khot And Anor* [2006] 5 SCC, the Supreme Court of India emphasized on the dangers of disobeying Court orders, stating:

"Disobedience of this Court's order strikes at the very root of the rule of law on which the judicial system rests. The rule of law is the foundation of a democratic society. Judiciary is the guardian of the rule of law. Hence, it is not only the third pillar but also the central pillar of the democratic State. If the judiciary is to perform its duties and functions effectively and remain true to the spirit with which they are sacredly entrusted to it, the dignity and authority of the Courts have to be respected and protected at all costs. Otherwise, the very cornerstone of our constitutional scheme will give way and with it will disappear the rule of law and the civilized life in the society. That is why it is imperative and invariable that Court's orders are to be followed and complied with."
26. 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..."

27. 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.
28. It is worth noting that contempt of court being personal; 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.
29. In the instant case the Applicants seek the said orders against cite the Respondents who are listed as the Land Adjudication and Settlement Officer, the Attorney General, National Land Commission, the Chief Land Registrar and the Land Registrar, Taita Taveta County. The individuals holding those offices were not made parties to this application as the individuals that violated the orders. The Applicants have equally not furnished this court with any evidence of any written or verbal instructions purportedly issued by the Respondents linking them to non-compliance of the said orders. The Court cannot make any assumptions owing to the higher standard required for contempt proceedings.
30. 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 willful. If disobedience is based on the interpretation of court's order, notification and other relevant documents, it does not amount to willful disobedience."
31. In the present application, it has not been sufficiently demonstrated that the Respondents 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.



32. 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.”

33. 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.

34. 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 Applicants have proved the same to the required standard.

35. Having considered the Notice of Motion dated 21st July 2025 and further having addressed the issues raised herein, and for the reasons stated above, the Court finds that the said application is devoid of merit and the same is hereby dismissed in its entirety.

36. There shall be no orders as to costs.

DATED, SIGNED AND DELIVERED VIRTUALLY AT VOI THIS 30TH DAY OF OCTOBER 2025.

E. K. WABWOTO

JUDGE

In the presence of:-

N/A for the Applicants.

N/A for Respondents.

Court Assistants: Mary Ngoira.

