



Registered Trustees of Fountain Gate Church & 2 others v Kioko (Suing in his capacity as Chairman for and on behalf of Runda Gardens Residents Association & another (Environment and Land Appeal E012 of 2024) [2025] KEELC 7307 (KLR) (28 October 2025) (Judgment)

Neutral citation: [2025] KEELC 7307 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND APPEAL E012 OF 2024**

**JG KEMEL, J
OCTOBER 28, 2025**

BETWEEN

**THE REGISTERED TRUSTEES OF FOUNTAIN GATE CHURCH 1ST APPELLANT
JAMES MBUGUA 2ND APPELLANT
PHILIP G KIMANI 3RD APPELLANT**

AND

**VINCENT KIOKO (SUING IN HIS CAPACITY AS CHAIRMAN FOR AND ON BEHALF OF RUNDA GARDENS RESIDENTS ASSOCIATION) 1ST RESPONDENT
THE NATIONAL ENVIRONMENT MANAGEMENT AUTHORITY 2ND RESPONDENT**

(Appeal against the whole Ruling of the Hon National Environmental Tribunal in Nairobi (Hon Emmanuel Mumia -Chairperson, Winnie Tsuma, Vice Chairperson- Hon Kariuki Muigua, Hon Duncan Kuria and Ronald Allamano, dated 10/1/24 in NET Appeal No 018 of 2021)

JUDGMENT

1. This appeal arises from the Ruling of the National Environment Tribunal (NET) in Nairobi dated 10/1/2024 in NET Appeal No. 018 of 2021. The 1st Respondent lodged NET Appeal No. 18 of 2021 on 11/8/21, challenging the licence granted to the 1st Appellant by the 2nd Respondent (Nema) for the construction of the proposed Fountain Gate Church Development on LR 27937 Runda, Nairobi. The said Appeal is still pending before the Tribunal.



2. In brief, the background of the appeal, as outlined in the typed proceedings, is that on 2/9/2021, the Tribunal granted an order of injunction to maintain the status quo and prevent the 1st Appellant from continuing with construction works until the hearing and determination of a Preliminary Objection dated 19/8/2021 lodged by the 1st Appellant. The Tribunal also directed that the Preliminary Objection had to be decided first before any other matters. The Preliminary Objection aimed to challenge the Tribunal's jurisdiction to hear the appeal on the basis that it was filed out of time.
3. The 1st Respondent, through an application dated 13/9/2021 before the Tribunal, sought to cite the Appellants for contempt of Court of the orders issued by the Tribunal on 2/9/2021.
4. The Appellants, in their submissions, state that the Preliminary Objection dated 19/8/2021 was determined by the Tribunal's Ruling dated 28/9/2022. That Ruling was the subject of an Appeal No. E86 of 2022 before this Honourable Court. Ultimately, the Court issued a judgment dated 30/08/2023, upholding the jurisdiction of the Tribunal.
5. The application dated 13/9/2021, which had been stayed pending the determination of Appeal No. E86 of 2022, was heard and decided by the Tribunal. A ruling was delivered on 9/1/2024 and issued on 10/1/2024. The Tribunal found that the Appellants herein had failed to comply with the Tribunal's orders of 2/9/2021. The Appellants were directed to pay the 1st Respondent herein a sum of Kshs. 2,000,000/= within 90 days to purge the contempt. The orders sought in the application were to be executed after 90 days in default of payment. It is this ruling that is the subject of the present appeal.
6. Aggrieved by the said Ruling, the Appellants preferred this appeal vide the Memorandum of Appeal dated 6/2/2024 on the following grounds;
 - a. That the Hon. Tribunal erred in law and in fact by finding the Appellants in contempt of the Tribunal without satisfying itself whether the legal threshold for citing the Appellants for contempt was met.
 - b. That the Hon. Tribunal erred in law and in fact by relying on undated photographs to find the Appellants in contempt, without satisfying itself whether the photographs were taken before or after the Tribunal's order.
 - c. That the Hon. Tribunal erred in law and fact by considering inconsiderable issues and ignoring the considerable issues raised by the Appellants in their pleadings before it.
 - d. That the Hon. Tribunal erred in law by shifting the burden of proof that there was no disobedience of the court order to the Appellants.
 - e. That the Hon. Tribunal erred in law and in fact by ordering the Appellants to pay the Respondent the sum of Kshs. 2,000,000/= to purge the contempt verdict, whereas the nature of the alleged contempt is that it is an offence against the Tribunal and not the Respondent.
 - f. That the Hon. Tribunal erred in law and IN fact by ordering the Appellants to pay the Respondent the sum of Kshs. 2,000,000/= to purge the contempt verdict, while the Respondent had neither pleaded nor prayed for an award of damages in its application dated 13/09/2021.
 - g. That the Hon. Tribunal erred in law by relying on Section 144 of the Environmental Management and Coordination Act No. 8 of 1999, as prayed by the Respondent, in ordering the Appellants to pay Kshs. 2,000,000/= to purge for the alleged contempt.



7. The Appellants therefore pray that the Appeal herein be allowed and the Court to grant the following orders;
 - a. The Ruling of the Honourable Tribunal dated 10/1/2024 and the consequential orders arising from the impugned Ruling be and are hereby set aside.
 - b. The Appellants be awarded costs of the Appeal.

The written submissions

8. Upon admission of the appeal under Section 79B of the *Civil Procedure Act*, on 24/7/2025, the court directed that the appeal be canvassed by way of written submissions. Parties were granted 30 days within which to comply, that is, by close of business on 5/9/2025. The Appellants complied and filed their written submissions dated 10/9/2025. The Respondent did not comply.
9. The Appellants identified three issues for determination. The first issue is whether the Honourable Tribunal correctly applied the law on contempt of court, including the evidentiary threshold required and the burden of proof. The Appellants cited the provisions of Section 133 (2) of the Environmental Management and Coordination Act (EMCA), Cap 381 Laws of Kenya, which empowers the Tribunal to punish for contempt of court. They argue that contempt of court is treated as criminal in nature rather than a civil claim, in accordance with Section 144 of EMCA. The Appellants faulted the Tribunal for holding that they had not rebutted the evidence regarding what appeared to be ongoing construction works. They contend that this assertion was adequately rebutted in their Replying Affidavit dated 29/10/2021. They also faulted the Tribunal for basing its finding on the 1st Respondent's letters dated 3/09/2021 and 9/09/2021, arguing that these letters do not constitute an admission of engaging in the alleged contemptuous conduct.
10. The Appellants further submitted that the Tribunal relied on undated photographs of an unspecified site. They contend that the photographs did not reveal who took them, where they were taken, when they were taken, or the condition of the site before the orders. Since the site was under active construction, they contended that the Tribunal did not sufficiently establish beyond a reasonable doubt that the photographs used were taken during the period when the orders in question had been issued. They maintain that the Tribunal relied on speculative evidence in finding them in contempt, as the evidence presented raises doubt rather than providing proof beyond reasonable doubt.
11. The Appellants further argued that the Tribunal erred in imposing a penalty of Kshs. 2,000,000/= without allowing them an opportunity for mitigation. They contend that the principles of natural justice require that parties be heard not only on liability but also on sentencing. They refer to the case of Naboku –vs- Uganda (Criminal Appeal No. 036/2024) [2025] UGHC 840, where the court confirmed that the right to a fair hearing covers the sentencing process. Additionally, they cite the Court of Appeal case of Woburu Estate Ltd. –vs- Margaret Bashforth (2016) e KLR, which established that contempt proceedings are quasi-criminal and, since a person can face loss of liberty, every procedural step must be strictly followed. They faulted the Tribunal for misapplying the law on contempt of court and for not following proper procedures during mitigation before sentencing.
12. The second and third issues for determination, which were argued jointly, are whether the Tribunal erred in ordering a Kshs. 2,000,000/= payment to the 1st Respondent to purge the alleged contempt and whether the Tribunal correctly applied Section 144 of EMCA in awarding the 1st Respondent the sum of Kshs. 2,000,000/= against the Appellants. The Appellants submit that there are three punishments recognised under common law for contempt of court, which are committal, imposition



of a fine, or both. That Section 144 of EMCA does not authorise the Tribunal to award indemnity or compensatory fine to the complaining party for contempt.

13. The Appellants cited the case of Alfred Mutua –vs- Boniface Mwangi (2022) eKLR, where the court held that contempt of court does not exist to protect the private rights of parties but rather aims to safeguard the proper functioning of the administration of justice. Therefore, the purported fine of Kshs. 2,000,000/= cannot be paid to a private individual. They submitted that the fine imposed is paid into the Consolidated Fund/Judiciary and not to an individual. Finally, they submitted that the court should allow the appeal, set aside the Ruling dated 10/1/2024, and award the Appellants the costs of the appeal.

Analysis and Determination

14. After considering the above, the court finds the issues for determination are;
 - a. Whether there was sufficient evidence proving the contempt.
 - b. Whether the Appellants were condemned unheard.
 - c. Whether the Tribunal erred in directing the Appellants to pay to the Respondent the sum of Kshs. 2,000,000/- as fine for contempt.
 - c. Whether this Appeal is merited.

Whether there was sufficient evidence proving the contempt

15. As a first appellate Court, this Court has the duty to examine both the law and the facts, and to subject the entire evidence to a fresh and thorough review before reaching a conclusion. However, the Court must remember that it did not have the opportunity to see and hear the witnesses firsthand. This duty is outlined by Section 78 of the *Civil Procedure Act*, which defines the role of a first appellate Court as to:

‘..... re-evaluate, reassess and re-analyze the extracts of the record and draw its own conclusions.’ See also *Selle & Another vs. Associated Motor Boat Co. Ltd & Others* [1968] EA 123.

16. The core of this Appeal, as outlined in the Memorandum of Appeal, is that the trial court erred both in law and fact by finding that the Appellants disobeyed the Court Orders issued on 2/9/2021, and that the trial court’s Ruling was inconsistent with the law and the evidence on record. Order 5, which was the focus of the contempt proceedings, stated that;

‘That pending the hearing and determination of the Preliminary Objection dated 19/08/2021 filed by the 2nd Respondent, an order of injunction enforcing the status quo and barring construction is hereby issued’.

17. It is indeed on record that the Appellants herein were found to be in contempt of the Court Order issued on 10/1/2024. The question that warrants answers is whether the trial court was correct in its finding that the Appellants disobeyed court orders and, therefore, were in contempt of court.



18. It is very clear that contempt of court is conduct or action that defies or disrespects the authority of the court. Black's Law Dictionary, 9th Edition, at page 360, 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.”

19. Contempt is therefore essential for maintaining law and order in a civilised society and also to uphold the dignity of the Courts. It is well-established law that every person against whom a Court Order is made has an absolute obligation to obey the Order, no matter how unpalatable it may be, until the Order is discharged or set aside by the court.

20. This was the dicta pronounced by the Court in the case of *Hadkinson -vs- Hadkinson*, [1952] ALL ER 567 as follows;

“It is the plain and unqualified obligation of every person against, or in respect of, whom an order is made by a Court of competent jurisdiction to obey it unless and until that order is discharged. The uncompromising nature of this obligation is shown by the fact that it extends even to cases where the person affected by an order believes it to be irregular or even void.

21. Similarly, Lord Cottenham, L.C., had this to say in the case of *Chuck v Cremer* [1] [1 Coop. temp. Cott 342]:

“A party, who knows of an order, whether null or valid, regular or irregular, cannot be permitted to disobey it... It would be most dangerous to hold that the suitors, or their solicitors, could themselves judge whether an order was null or valid- whether it was regular or irregular. That they should come to the Court and not take upon themselves to determine such a question. That the course of a party knowing of an order, which was null or irregular, and who might be affected by it, was plain. He should apply to the Court that it might be discharged. As long as it exists it must not be disobeyed.”

22. Another compelling reason for contempt orders is stated in the case of *Teachers Service Commission v Kenya National Union of Teachers & 2 others* [2013] eKLR where Ndolo J observed as follows:

“The reason why Court's will punish for contempt of Court is to safeguard the rule of law which is fundamental in the administration of justice. It has nothing to do with the integrity of the Judiciary or the Court or even the personal ego of the presiding Judge. Neither is it about placating the Applicant who moves the Court by taking out contempt proceedings. It is about preserving and safeguarding the rule of law”

23. It is therefore a fundamental rule of law that Court orders must be obeyed, and when an individual is commanded by a Court order to do or refrain from a particular act, they have a duty to comply with that order. The Court also has a responsibility to hold that individual in contempt of court if they deliberately fail to obey such orders.

24. The standard of proof in such proceedings was articulated by the Court of Appeal in the case of *Mutitika -vs- Baharini Farm Limited* [1985] KLR 227 as follows:

“... In our view the standard of proof in contempt proceedings must be higher than proof on a balance of probabilities, almost but not exactly, beyond reasonable doubt. We envisage



no difficulty in Court's 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 offences which can be said to be quasi-criminal in nature..."

25. The test which an Applicant must pass in an application for contempt was laid out in the case of Samuel M. N. Mweru & Others v National Land Commission & 2 others [2020] eKLR, where Mativo J. (as he then was) observed as follows: -

"It is an established principle of law 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.

Upon proof of these requirements the presence of willfulness and bad faith on the part of the Respondent would normally be inferred, but the Respondent could rebut this inference by contrary proof on a balance of probabilities. Perhaps the most comprehensive of the elements of civil contempt was stated 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."

26. It is undisputed that the orders were clear and unambiguous regarding their terms and the obligations imposed on the Appellants. It is also undisputed that the said orders were issued in the presence of the Appellants' Counsel. In any event, the Appellants have not alleged any ambiguity or lack of knowledge or notice of the existence of the orders.

27. The issue then remains whether the Appellants acted in breach and deliberately disobeyed the terms of the orders. The Appellants state that the 1st Respondent produced no sufficient evidence to prove that they were in contempt of the orders. They argue that the ruling was based on photographic evidence which lacked authenticity, including the dates when the photographs were taken and by whom. They submit that contempt was not proved to the required standards.

28. The 1st respondent has submitted several photographs to support their claim that the appellants were in contempt of court by continuing construction work on the site. I have thoroughly examined the photographs, particularly VK-3 and VK-4. I have also reviewed the affidavits sworn by Tiras Wanyoike on 1/9/21 and 13/9/21. In these affidavits, the deponent does not specify which photographs are referred to, when they were taken, by whom, or where. This creates doubt regarding the identity of the site in question and whether construction was indeed ongoing contrary to the court's orders. It



is noteworthy that the affidavits dated 1/9/21 and 13/9/21 are identical in content. Essentially, they are general statements that do not assist the court in determining whether or not the appellants are in contempt.

29. The said deponent also swore another affidavit dated 13/9/21, in which he states under paragraph 2 that the attached computer printouts of photographs were taken on various dates between 3/9/21 and 10/9/21. The court needs to consider why the deponent would swear two affidavits on the same date, with different averments regarding the same subject matter. Which one should the court regard as authentic in the circumstances? That said, even this affidavit does not describe with certainty the photographs referred to in terms of the marked exhibits. Similar sentiments would apply to the affidavit sworn on 24/9/21.
30. Regarding exhibits Nos VK-1, VK-2, and VK-3, a careful perusal reveals only a few men on site, mainly sitting on wheelbarrows. The photographs are undated, which casts serious doubt on their authenticity and probative value. I am convinced that there is no evidence of ongoing construction work on site from the available photographs. In fact, the site appears abandoned, apart from about 5-6 workers who seem to be idling thereon.
31. Under paragraph 14 of the tribunal Ruling dated 10/1/2023, the tribunal concluded that the site appears to be undergoing ongoing construction work. Having found no evidence to support contempt of court, I determine that the tribunal erred in its conclusions due to the lack of evidence. The burden of proof rested with the 1st respondent to demonstrate contempt, and to the extent they relied on the photographs submitted before the court, the court finds that such reliance is unsupported.
32. At the risk of repeating myself, upon examining the photographs attached to the Supporting Affidavit and the Supplementary Affidavit regarding the ongoing construction, the photographs do not specify when they were taken. They do not show the state of the developments before and after the order was issued. Since construction had already started before the appeal was lodged before the Tribunal, it was incumbent upon the 1st Respondent to demonstrate that construction had continued despite the orders. The 1st Respondent also needed to prove that the Appellants acted deliberately in disobeying the court order. As courts have variously held, contempt of court is a criminal offence, and because a finding of culpability could lead to imprisonment and loss of liberty, guilt must be proved with a level of strictness appropriate to the seriousness of the charge.
33. Therefore, the 1st Respondent, who alleged a breach of the court order, needed to provide sufficient evidence to support those claims. Since the Appellants denied breaching the order by interfering with the suit land, the Respondent should have gone further, including requesting the Tribunal to conduct a site visit to assess the situation on the ground.
34. Having re-evaluated and reconsidered the available evidence before the trial court and the impugned ruling, this court, in its appellate jurisdiction, has reached an independent conclusion that the 1st Respondent failed to prove, on the required standard, that there was a deliberate breach of the court order of 2/09/2021, and that the Appellants herein did carry out the alleged activities on the suit property despite the orders issued.
35. Consequently, this court finds and holds that the trial court erred both in law and fact by finding and declaring that the Appellants were in disobedience of the court order issued on 2/9/2021.

Whether the Appellants were condemned unheard.

36. The Tribunal has been impugned for failing to afford the Appellants the opportunity to mitigate before sentencing. In the case of Muruatetu & another -Vs- Republic; Katiba Institute & 5 others (Amicus



Curiae) (Petition 15 & 16 of 2015 (Consolidated)) [2017] KESC2 (KLR) (14/12/ 2017) the Supreme Court stated as follows:

“Mitigation was an important congruent element of a fair trial. The fact that Mitigation was not expressly mentioned as a right in *the Constitution* did not deprive it of its necessity and essence in the fair trial process. The rights pertaining to the fair trial of an accused pursuant to Article 50(2) of *the Constitution* were not exhaustive.

The right to fair trial was not just a fundamental right. It was one of the inalienable rights enshrined in Article 10 of the Universal Declaration of Human Rights, and in the same vein Article 25(c) of *the Constitution* elevated it to a non-derogable right which could not be limited or taken away from a litigant. The right to fair trial was one of the cornerstones of a just and democratic society, without which the rule of law and public faith in the justice system would inevitably collapse”.

37. Lord Denning could not have expressed it better when the Learned Judge stated in the case of *Re Brambevale Ltd* (1970) 1 CH 128 that a contempt of court is an offence of criminal character. A man may be sent to prison for it. It must be satisfactorily proved that when the man was asked about it, he told lies. There must be some further evidence to incriminate him
38. As stated earlier in this ruling, contempt proceedings are quasi-criminal in nature and in Kenya, the right to mitigation, although not explicitly stated in Article 50 of *the Constitution*, forms part of the rights that underpin a fair trial within our criminal justice system. It must be no less applicable in contempt proceedings.
39. The right to fair trial spans the whole process, including the mitigation and sentencing. In this case, I find that the tribunal condemned the appellants unheard on their defence/mitigation. The right to a fair trial demands that the contemnors are given the right to mitigate the contempt and even, in some instances, to purge the contempt. It cannot be casually taken away, no less in contempt proceedings.
40. It is clear from the proceedings that the Appellants were not given an opportunity to mitigate before sentencing. I note that the Tribunal failed to observe this fundamental step prior to sentencing the Appellants, thereby condemning them without being heard in their defence. Since contempt proceedings are quasi-criminal, the right to a fair trial must not be disregarded lightly.

Whether the Tribunal erred in directing the Appellants to pay the Respondent a sum of Kshs. 2,000,000 as fine for contempt.

41. As previously stated in this Ruling, contempt of court is regarded as quasi-criminal in nature. Courts impose sanctions for contempt to uphold the rule of law, which is essential for the proper administration of justice. Therefore, fines imposed for contempt are paid to the state, serving as a penalty for violators, since the state represents the public interest that has been harmed. Unlike damages, which aim to compensate the affected party, fines cannot be paid to an individual. The Tribunal thus erred in ordering the Appellants to pay the 1st Respondent a sum of Kshs. 2,000,000/ = as a fine for contempt. Moreover, the 1st Respondent did not petition for such an order in its application.



42. Furthermore, I agree with the appellants assertion that the provisions of Section 144 of EMCA are inapplicable, and the tribunal erred in awarding compensation to a complainant in contempt proceedings. The section states as follows;

“any person who contravenes against any provision of this Act or of regulations made thereunder for which no other penalty is specifically provided is alible upon conviction to imprisonment for a term of not less than one year but not more than for years or to a fine of not less than 2 million shillings but not more than 4 million or to such fine and imprisonment or both such fine and imprisonment”.

43. In my considered view, the above section applies to a situation where a party breaches the provisions of the Act and not to contempt proceedings, as in the present case.

Whether this Appeal is merited.

44. For the reasons outlined above, the court allows the appeal as detailed in the Memorandum of Appeal dated 6/2/2024 and proceeds to overturn and/or set aside the Ruling of the Tribunal delivered on 10/1/2024, along with all the consequential orders related thereto.

45. Final orders for disposal

In the upshot;

- a. The Ruling of the Honourable Tribunal dated 10/1/2024 and the consequential orders arising from the impugned Ruling be and are hereby set aside.
- b. The Appellants shall have the costs of the Appeal.

46. It is so ordered

DATED, SIGNED & DELIVERED AT NAIROBI VIA MICROSOFT TEAMS THIS 28TH DAY OF OCTOBER 2025.

J G KEMEI

JUDGE

Delivered Online in the presence of:

1. Ms Khizi for the Appellants
2. N/A for the Respondents
3. CA – Ms. Yvette

