



St. Pauls Theological College, Kapsabet & another v John Keen Kiplagat Songok, Noah Kipkoech Lagat, Samson Kiptanui & Shadrack Kimurgor (As the Administrators of the Estate of the Late Clementina Chebet Songok - Deceased) & 4 others (Environment and Land Case E003 of 2023) [2025] KEELC 7471 (KLR) (29 October 2025) (Ruling)

Neutral citation: [2025] KEELC 7471 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAPSABET
ENVIRONMENT AND LAND CASE E003 OF 2023**

GMA ONGONDO, J

OCTOBER 29, 2025

BETWEEN

**ST. PAULS THEOLOGICAL COLLEGE, KAPSABET 1ST APPLICANT
CHURCH COMMISSIONERS OF KENYA REGISTERED TRUSTEES 2ND
APPLICANT**

AND

**JOHN KEEN KIPLAGAT SONGOK, NOAH KIPKOECH LAGAT, SAMSON
KIPTANUI & SHADRACK KIMURGOR (AS THE ADMINISTRATORS
OF THE ESTATE OF THE LATE CLEMENTINA CHEBET SONGOK -
DECEASED) 1ST RESPONDENT**

**REV. PHILIP OSENYA, REV, PAUL KIRUI, REV, PATRICE CHUMBA, REV.
TITUS ITAO, REV. WILLIAM KATANA, REV. PETER WAHOME, REV.
DOUGLAS NKANGA, REV. ABRAHAM MULWA, REV. ABRAHAM MULWA,
REV. PHILIP RAIMOI, REV. DANIEL NGUI, THE AFRICAN INLAND
CHURCH KENYA REGISTERED TRUSTEES 2ND RESPONDENT**

CHIEF LAND REGISTRAR 3RD RESPONDENT

THE LAND REGISTRAR, NANDI 4TH RESPONDENT

THE PHYSICAL PLANNER 5TH RESPONDENT

RULING

1. By the Notice of Motion dated 12th March 2025, the 1st defendant/applicant through Tororei and Company Advocates sought the following orders;



- a) Spent
 - b) Notice to show cause to issue to the Respondents/Contemnors to state why they should not be committed to civil jail for disobedience of the orders of the Honourable Court (Hon. Justice Mwanyale) issued on 29th January 2025 and read on 27th February 2025 by Hon. Justice G. M. A. Ong'ondo.
 - c) The Respondents/Contemnors be committed to civil jail and detained in prison for six (6) months or such period as the Honourable Court will deem fit, or both fine and imprisonment or contempt of the Honourable Court's orders issued on 29th January 2025 and delivered on 27th February 2025.
 - d) Pending the hearing and determination of prayers (2) and (3) above and for committal herein, the Respondents/Contemnors be ordered to purge the contempt and in so doing, to stop further dealing in the suit property, and allow the Applicant possession and peaceful occupation of the property.
 - e) Such other further or consequential orders as the Court may deem just.
2. The application is anchored upon the affidavit of twenty paragraphs of Elizabeth Jepkoech Cheruiyot, the principal of the applicant and the grounds which include;
- a) That, on the 21st of May 2024 Hon. Justice M. Mwanyale issued interim orders restraining the Respondents therein from trespassing into the suit properties pending the hearing and determination of the notice of motion dated 27th February 2024.
 - b) That, the said Notice of Motion aforementioned was heard inter-partes and determined by a ruling dated 29th January 2025 (Hon. Justice Mwanyale) and delivered by this Honourable Court (Justice G. M. A. Ong'ondo) on 27th February 2025. The Honourable Court confirmed the orders pending the hearing and determination of the suit.
 - c) That the 1st Defendant has blatantly disregarded, disobeyed and/or ignored the orders herein above and trespassed into the suit property and caused it to be ploughed, and now planted, despite being aware of the status quo orders.
3. By the Replying Affidavit of fifteen paragraphs sworn on 15th May 2025, the respondents/plaintiffs through C.D Nyamweya and Company Advocates, opposed the application and averred, inter alia;
- a) That the application is vexatious, frivolous and abuse of the process of this Honourable Court.
 - b) That no acts constituting contempt of Court orders as against the 1st Respondents have been cited in this application.
 - c) That in paragraph 8 where the specific incident is cited, the same refers to the Defendants, who are not the 1st Respondent.
 - d) That pursuant to paragraph 7 above, they filed an application for review dated 21st February 2025 and, in that application, they annexed photos of growing crops on land parcel Kapsabet Municipality/361.
 - e) That, the photographs annexed as EJC-3(a-d) at paragraph 8 of the supporting affidavit, were not taken from land parcel Kapsabet Municipality/361 which parcel they are claiming hence, unaware of the activities in those photographs.



- f) That, the photographs as at paragraph 8 of the supporting affidavit were allegedly taken between 10am and 3pm which is day time, they have not shown the 1st Respondents committing any acts of contempt in those photos.
 - g) That contempt of Court is quasi-criminal which requires prove beyond a balance of probabilities which prove is lacking in this application.
4. Also, the respondents/plaintiffs raised a preliminary objection dated 15th May 2025 on points of law to the application as infra;
 - a) That the application dated 12th March 2025 offends the provisions of Section 106 (A) (B) of the Evidence Act and is therefore bad in law.
 - b) The application dated 12th March 2025 be struck out in its entirety with costs.
 5. By the submissions dated 28th June 2025, learned counsel for the applicants implored the court to grant the orders sought in the application because the respondents/contemnors disobeyed orders of the court. Reliance was made on, inter alia, Shimmers Plaza Ltd-vs-National Bank of Kenya Ltd (2015) eKLR, Johnson -vs-Grant 1923 SC 789 and Basil Criticos-vs-Attorney General & 8 others (2012) eKLR to buttress the submissions.
 6. In submissions dated 19th June 2025, learned for the plaintiffs/respondents urged the court to dismiss the application as it offends section 106 (A) and (B) (Supra) and reference was made to Mutitika-vs-Baharini Farm Ltd (1985) eKLR 229, 234. Further, counsel cited Cecil Miller-vs-Jackson Njeru NBI HCC NO. 111 of 2016 and Mukisa Biscuit Manufacturing Company Ltd -vs- West End Distributors Ltd (1969) EA 696, to reinforce the submissions.
 7. The 2nd respondent's submissions dated 21st October 2025 supported the submissions dated 19th June 2025 herein.
 8. I have duly considered the entire application, the replying affidavit, the preliminary objection and the rival submissions. So, the duty of this court is to determine thus;
 - a. Whether the preliminary objection is sustainable and
 - b. subject to issue (a) above, is there merit in the application?
 - c. For the ends of justice, the orders that the court can issue.
 9. The preliminary objection is hinged on section 106 (A) (Supra) which stipulates that section 106B (Supra) to apply in proof of electronic records. Notably, section 106 (B) (Supra) governs admissibility of electronic records.
 10. It is trite law that a preliminary objection must be on pure points of law and not on any fact that has to be ascertained at the trial of the suit; see Mukisa Biscuit case (supra) and Oraro-vs-Mbaja (2005) KEHC 3182 (KLR) that a preliminary objection must not be blurred with factual details liable to be contested or proved through the processes of evidence.
 11. Admissibility of photograph or electronic evidence or record under section 106A and B (supra) is primarily a point of law in view of the rules governing the same. It involves the interpretation and application of the existing sections of the law, legal principles, relevance and authenticity.
 12. The case of Nixon vs Administrator of General Services, 433 U.S 425 (1977) is an early precedent for the use of electronic evidence, specifically tape recordings, at the US Supreme Court level. Similarly, in Anvar P.V vs P.K Basheer & others (2014), the Supreme Court of India held that secondary electronic



records such as CDs or hard drive are not admissible unless accompanied by a certificate under section 65B (4) of the Indian *Evidence Act*, 1872.

13. In the case of Nobert Oluoch Obanda-vs-Republic (1983) eKLR, the Court of Appeal made an early step toward accepting non-traditional forms of evidence such as admissibility of tape recording. So, production of electronic or digital evidence must be accompanied by a certificate; see also William Odhiambo Oduol-vs IEBC & 2 others (2013) KLR, among others.
14. It is noteworthy that on the 21st of May 2024, the court granted interim orders pending the hearing and determination of the application dated 27th February 2024 which was eventually disposed of by a ruling dated 29th January 2025 and delivered on 27th February 2025. The Honourable Court confirmed the orders of 21st May 2024 pending the hearing and determination of the suit.
15. This court is conscious of the character of contempt of court as noted in Re Bramble Vale Ltd (1970) 1 CH 128 at 137 and Woburn Estate Ltd-vs-Margaret Bashforth (2016) eKLR. Further, in the case of Hadkinson-vs-Hadkinson (1952) 2 ALL ER 567, it was held that there is an unqualified obligation upon every person against or in respect of whom an order was made by a court of competent jurisdiction to obey it unless and until it is discharged.
16. By the preliminary objection, the plaintiffs/respondents have questioned the admissibility of the photographs relied upon at paragraph 8 of the affidavit in support of the application. I bear in mind the elements of contempt of court including deliberate breach of clear lawful orders as observed in Contempt in Modern New Zealand (2014) by New Zealand Law Commission. Clearly, the allegations in the application, do not meet the threshold in Nixon, Anvar, Obanda, Oduol and Hadkinson cases (supra) on proof of contempt of court thus, the application is devoid of merit.
17. To that end, the preliminary objection is sustainable and the same be and is hereby upheld.
18. Accordingly, the application dated 12th March 2025 is hereby dismissed with costs in the cause.
19. It is so ordered.

DATED AND DELIVERED AT KAPSABET THIS 29TH DAY OF OCTOBER 2025

HON G M A ONGONDO

JUDGE

In the presence of;

Mr C Nyamweya learned counsel for the Plaintiffs/Respondents

Mr Lukas Sawe learned counsel for the 2nd defendant

Ms D Kimeli instructed by Tororei learned counsel for the 1st Defendant

Mr Kariuki, Court Assistant

