



**Murithi v Republic (Criminal Appeal E001 of 2025)  
[2025] KEHC 15233 (KLR) (28 October 2025) (Judgment)**

Neutral citation: [2025] KEHC 15233 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MERU  
CRIMINAL APPEAL E001 OF 2025  
SM GITHINJI, J  
OCTOBER 28, 2025**

**BETWEEN**

**ELIAS GICHURU MURITHI ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Being an appeal from the orders of Hon. E.O Wambo in  
Nkubu Cr. Case No. E458 of 2022 given on 11/01/2024)*

**JUDGMENT**

1. elias gichuru murithi was charged in the Lower Court with the offence of Obtaining money by false presences, contrary to Section 313 of the Penal Code.
2. The particulars of this offence are that on diverse dates in 2012 at Nkubu Township in Imenti South Sub-county within Meru County, the accused with intent to defraud obtained from James Riungu Pius Shillings 400,000 by falsely pretending that he was in a position to sell a quarter Acre parcel of land, to be exercised from Parcel Number Nkuene/Nkumari/2465, a fact he knew not to be true.
3. On 11/1/2024 both the accused person and the complainant entered into a consent which was recorded by the court as follows:-

“By consent the accused Elias Gichuru Muriithi ID No. 27832626 do transfer Nkuene/Nkumari/5015 to the complainant Riungu James Pius ID No. XXXXXXXX as it is at the date of this consent.

On the other hand, the complainant herein, Riungu James Pius ID No. XXXXXXXX do transfer Abothoguchi/Gatie/1738 to the accused Elias Gichuru Muriithi ID No. 27832626.



As Nkuene/Nkumari/5015 has a building, the complainant Riungu James Pius do build and or construct a house on the said parcel of land i.e Abothuguchi/Gatie/1738 of the same type, size and value with the one existing on Nkuene/Nkumari/5015.

Further the complainant to ascertain water supply is also installed on the said parcel of land i.e Abothuguchi/Gatie/1738.

Mention on 17/4/2024 to confirm compliance and for withdrawal”

4. On 17/4/2024 the prosecutor told the court that the complainant had complied with courts orders but the accused had failed to comply.
5. The court ordered the accused to get a report from structural engineer to the court within 30 days and placed a mention on 15/5/2024.
6. On 15/5/2024 the accused told the court that his family asked him not to avail the report from the structural engineer as ordered by the court.
7. The consequently made a finding that:-

“Given that the accused person has elected not to obey the court directive to avail a report from the structural engineer to enable this matter move forward and has also failed to comply with orders issued by consent on 11/1/2024, I hereby find him in contempt of court orders, the accused person is hereby jailed for a period of three months”

8. The appellant dissatisfied with the conviction and sentence, appealed to this court on the following grounds: -
  1. The learned Magistrate erred in law and fact by conducting the proceedings in chambers when the court was not properly constituted and in the absence of both the accused and the prosecution.
  2. The learned Magistrate erred in law and fact by recording a consent between the appellant and the complainant contrary to the wishes of the appellant.
  3. Learned Magistrate erred in law and fact by recording a consent between the appellant and the complainant without confirming from the appellant.
  4. The learned Magistrate erred in law and facts by recording a consent between the appellants and the complainant devoid of any proposition from the prosecution/complainant and therefore in essence usurping the role of prosecution in the proceedings.
  5. The learned Magistrate erred in law and fact by ordering the appellant to transfer LR NO. Nkuene/Nkumari/5015 to the complainant without a properly execution written agreement/ consent Contrary to Section 3 (3) of the Law of contract Act, Cap 23.
  6. The learned Magistrate erred in law and fact by ordering the appellant to transfer LR.No. Nkuene/Nkumari/5015 to the complainant in exchange of Abothuguchi/Gitie/1738 devoid of Spousal and Land Control Board consents.
  7. The learned Magistrate erred in law and fact by ordering/awarding Civil remedies in Criminal proceedings and further without jurisdiction of the Environment and Lan Court.
  8. The learned Magistrate erred in law and fact by ordering the appellant to transfer Nkuene/ Nkumari/5015 to the complainant in exchange of LR NO. Abothuguchi/Gitie//1738.



9. The learned Magistrate erred in law and fact making orders, which were not reflective of the facts presented by the parties.
  10. That the learned Magistrate erred in fact and law by convicting and sentencing the appellant to 3 months imprisonment for contempt of court be set aside.
9. The appeal was canvassed by way of written submission, but only the respondent filed its submissions.
  10. Having weighed the circumstances leading to the impugned sentence, grounds of the appeal and submissions, the issues which stand out for determination are:-
    - i. Whether the finding of contempt was properly made; and
    - ii. Whether the sentence imposed was just and proportionate.
  11. On the first issue, contempt of court is a quasi-Criminal offence aimed at safeguarding the authority and dignity of the court. The Applicable provisions of the law are Section 5 of the *judicature Act* (Cap8), read with Article 159 (1) of *the Constitution* and the *Civil Procedure Act*, as well as the common law principles developed through case law.
  12. The elements that need to be established are:-
    1. The existence of a valid court order.
    2. Knowledge of that order by the alleged Contemnor; and
    3. Willful disobedience of the order.
  13. The standard of proof is higher than a balance of probabilities, though not as high as beyond reasonable doubt.
  14. The record of the trial court vividly shows that on 18/4/2024 in presence of the Contemnor, the Court issued an order to him to avail a report from structural engineer within 30 Days. On 15/5/2024 when the matter was mentioned the Contemnor had not availed the report. He explained that his family asked him not to avail the report. The court jailed him to 3 months imprisonment for failure to comply with that order and also the consent order of 11/1/2024.
  15. From the proceedings, on 17/4/2024 when the Prosecutor alleged that the complainant had complied with the Court's orders but the accused had failed to, the record does not show that the accused was given a chance to explain why he had not complied, and even thereafter, he was not given a chance to explain before the sentence was meted on 15/5/2024.
  16. He was only given a chance to explain why he had not availed a report from the structural engineer. However, when the order was made to him on 18<sup>th</sup> April, 2024 he was given 30 days to avail the report. The matter was however mentioned on 15/5/2024 after lapse of 27 days.
  17. Fair hearing is a fundamental constitutional guarantee and a cornerstone of justice.
  18. Article 50 (2)(k) of *the Constitution* of Kenya states:-
    - (2) Every accused person has the right to a fair trial, which includes the right-
      - (k) to adduce and challenge evidence;
  19. In this case as earlier noted the appellant was not given a chance to respond to the allegation that he had not complied with the Consent order to 11<sup>th</sup> January, 2024. He was therefore condemned unheard.



For the order of 18/4/2024 he was unfairly condemned as the time allowed to him to avail the report, of 30 days, had not lapsed by the time he was sentenced on 15<sup>th</sup> of May, 2024.

20. Given the foregoing, I do find the appeal merited. The appellant is hereby acquitted and should be set free unless otherwise lawfully held. Matter be mentioned before the trial court on 4<sup>th</sup> November 2025 for hearing directions.

**DATED AND DELIVERED AT MERU THIS 28<sup>TH</sup> OCTOBER, 2025**

**S.M. GITHINJI**

**JUDGE**

Apperances:-

Mr. Miriti for the Appellant.

Ms. Adhi for the state.

Appellant also present.

