



Fresco Bushlands (K) Limited v Agricultural Development Corporation & another (Environment and Land Case 40 of 2022) [2025] KEELC 7549 (KLR) (4 November 2025) (Ruling)

Neutral citation: [2025] KEELC 7549 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ENVIRONMENT AND LAND CASE 40 OF 2022
FM NJOROGE, J
NOVEMBER 4, 2025**

BETWEEN

FRESCO BUSHLANDS (K) LIMITED PLAINTIFF

AND

AGRICULTURAL DEVELOPMENT CORPORATION 1ST DEFENDANT

SWIFT AUCTIONEERS 2ND DEFENDANT

RULING

1. The Plaintiff's Notice of Motion dated 5th February 2024 is for determination. The application was brought under Sections 5(1) of the *Judicature Act*, Cap 8, section 3 and 3A of the *Civil Procedure Act* and Order 50 Rule 1 of the Civil Procedure Rules. The Plaintiff sought the following reliefs: -
 1. That this honourable court be pleased to find that the 1st Defendant/respondent is in contempt of the order emanating from the ruling issued by Hon. Lady Justice M. A Odeny on 26th June 2023 directing that stock taking of the Plaintiff/applicant's cattle held by the 1st Defendant be conducted in the presence of the Plaintiff/applicant;
 2. That the honourable court be pleased to issue summons against the 1st Defendant/contemnor's board members namely Abdillahi Alawy, Wilson Tunoi, Ms. Joyce Muchena, Iya Jillo Gababo, John Gitari, Brenda Engomo, MS. Sophie Sang, Elisha Mwei, Tom Atingo, George Kariuki, Nicodemus Mwonga, Rodgers Karumpu, to appear in person before this Court to show cause why they should not be cited and/or punished for contempt orders for failure to comply with Court Order issued by this court on 26th June 2023;
 3. That members of the board of the 1st Defendant namely Abdillahi Alawy, Wilson Tunoi, Ms. Joyce Muchena, Iya Jillo Gababo, John Gitari, Brenda Engomo, MS. Sophie Sang, Elisha Mwei, Tom Atingo, George Kariuki, Nicodemus Mwonga, Rodgers Karumpu, be detained in prison for a term not exceeding six (6) months or such other periods as the court may deem fit



for disobeying and breaching the court order issued by the court on 26th June 2023 for stock taking of the Plaintiff's cattle;

4. That in alternative, the 1st Defendant be barred from participating in this matter until the contempt of court order of 26th June 2023 is purged;
 5. That any other necessary and/or consequential orders the court may deem expedient in the interest of justice;
 6. That the costs of this application be provided for.
2. The Application is premised on the grounds set out at the foot of the Motion and is supported by an affidavit sworn on 5th February 2024 by Bare Muhamed, the Plaintiff's Operations Manager. He deposed that in July 2022, the 1st Defendant illegally seized the Plaintiff's herd comprising 774 head of cattle and moved them to undisclosed locations. He further stated that pursuant to this Court's orders of 26th June 2023 directing a stock-taking exercise to be conducted in the presence of the Plaintiff, the Plaintiff's Advocates wrote several follow-up letters but the 1st Defendant failed to facilitate compliance and instead obstructed the process. He deposed that the 1st Defendant's Corporation Secretary, one Rodgers Karampu, had dismissed the Court orders as "irrelevant things", and that the 1st Defendant was in willful breach of the Court's directions to the prejudice of the Plaintiff.
 3. He also stated that by a letter dated 8th January 2024, the 1st Defendant sought to know the Plaintiff's availability for stock-taking while at the same time asserting that the 774 cattle had already been auctioned and none remained. The Plaintiff's Advocates proposed 20th January 2024 for the exercise, which proposal was not acknowledged though the 1st Defendant later indicated informal approval. On 20th January 2024, the Plaintiff's representatives attended Kulalu Ranch but the 1st Defendant's officials failed to attend, did not indicate the venue, and eventually closed their offices without facilitating the exercise. He deposed that the conduct of the 1st Defendant and its Board showed no intention to comply with the Court's orders and urged that they be punished for contempt. He annexed documents marked "BM-3" in support of the foregoing averments.
 4. The 1st Defendant opposed the Plaintiff's Motion through a Replying Affidavit sworn on 25th March 2024 by Nicholas Ayugi, the Lands Administrator of the 1st Defendant. He deposed that the orders of 26th June 2023 clearly directed that the stock-taking of the disputed cattle be conducted at Galana Ranch, where the animals were allegedly held. He asserted that on 20th January 2024 at 9:00 a.m., the 1st Defendant's Corporation Secretary, counsel and field representatives were present at the designated Galana site prepared to implement the order, but the Plaintiff failed to attend.
 5. He stated that the Plaintiff later alleged attendance at Kulalu offices, yet no evidence of such presence was exhibited and no communication was made to alter the agreed venue. Given that the Plaintiff itself contended that the animals were held at Galana Ranch, the deponent argued that their attendance at Kulalu was illogical and suggested bad faith. He further deposed that a report dated 6th February 2024 on the exercise had been filed in court (NA-1).
 6. He contended that the attempt to cite the Board of Directors for contempt was baseless as the Board did not handle operational enforcement of court orders. He averred that the Plaintiff was forum-shopping and abusing the process, and that any failure to conduct the exercise resulted solely from the Plaintiff's non-attendance. He urged the Court to dismiss the application with costs.
 7. Bare Muhamed, swore a Supplementary Affidavit on 11th April 2025 reiterating the contents of the earlier Affidavit in support of the contempt application and disputed the veracity of Nicholas Ayugi's



depositions. He asserted that the Plaintiff's advocate travelled for the stock-taking exercise on 20th January 2024 as evidenced by the gate pass already on record, whereas the 1st Defendant exhibited no proof of presence despite alleging compliance. He further averred that the 1st Defendant's letter of 8th January 2024 directed parties to Kulalu Ranch without identifying a specific venue and that the Plaintiff's proposal of 20th January 2024 at 9:00 a.m. was never responded to. Due to delayed communication from the 1st Defendant, the Plaintiff requested commencement at 10:30 a.m.

8. He deposed that unavoidable setbacks delayed movement from Kulalu to Galana, and that attempts to reach the 1st Defendant's agents by phone were unsuccessful; that upon entry at Galana, the Plaintiff signed the visitor's register which the 1st Defendant ought to have produced if indeed its Nairobi officers were present. Security personnel allegedly informed them that the Senior Complex Manager was away. The deponent contended that Mr Ayugi did not attend the exercise and lacked knowledge of the actual arrangements, and concluded that the 1st Defendant, despite knowledge of the orders of 26th June 2023, willfully frustrated compliance to defeat the purpose of the stock-taking exercise.

Submissions

Plaintiff's Submissions

9. The Plaintiff filed written submissions dated 18th March 2025 in support of the Notice of Motion. Relying on Order 40 Rule 3 of the Civil Procedure Rules, 2010, the Plaintiff argued that breach of an injunctive order attracts attachment or committal. The Plaintiff cited the definition of contempt in Black's Law Dictionary (9th Edition) and relied on Republic v County Chief Officer, Finance & Economic Planning, Nairobi County [2018] eKLR for the principle that court orders are not made in vain. The Plaintiff further placed reliance on OGM (suing as father of KGW) v FG & Another [2020] eKLR on the four elements for proof of contempt, submitting that the order of 26th June 2023 was clear and binding, that the 1st Defendant had knowledge, having even filed an application dated 1st August 2023 to set aside the order, and that the breach was deliberate.
10. To demonstrate knowledge and breach, the Plaintiff referred to a chain of correspondence exchanged between counsel, annexed to the supporting affidavit of Bure Muhammed and marked BM-3, showing requests for dates and the aborted site visit of 20th January 2024 when the 1st Defendant's officers allegedly locked offices and absconded. The Plaintiff also referred to the 1st Defendant's stated position that it would not "waste resources" on the exercise and would instead file a report.
11. The Plaintiff invoked Hon. Basil Criticos v Attorney General & 8 Others [2012] eKLR on the obligation to obey orders even if they were believed to be irregular, and Samuel M. N. Mweru & Others v National Land Commission & 2 Others [2020] eKLR on the inherent contempt jurisdiction of the Court. The Plaintiff further cited B v Attorney General [2004] 1 KLR 431 on the undesirability of making orders in vain. On the basis of the foregoing facts, authorities and annexures, the Plaintiff urged the Court to hold the 1st Defendant and its Board Members in contempt and to impose punitive sanctions to vindicate the authority of the Court.

1st Defendant's Submissions

12. The 1st Defendant framed four issues, namely: whether it was in contempt of the said orders; whether the legal threshold for contempt proceedings had been met; whether the application amounted to an abuse of process; and whether the Board of Directors could be held liable.
13. On the first issue, the 1st Defendant asserted that the order of 26th June 2023 was clear and required a stock-taking exercise to be conducted at Galana-Kulalu Ranch, the alleged location of the livestock.



It was contended that on 20th January 2024 at 9:00 a.m., the 1st Defendant's officers, including the Corporation Secretary and field personnel, availed themselves at the designated Galana-Kulalu Ranch cattle station ready to implement the order. The Plaintiff, however, failed to attend the said location, and instead alleged that it presented itself at the Kulalu offices. The 1st Defendant emphasized that it had no operational or functional offices in Kulalu, those having been closed in the 1990s, and that all Galana-Kulalu Ranch matters were handled from the Galana offices. It was the 1st Defendant's position that the Plaintiff neither communicated any change in venue nor justified attending a different location, and that the failure to carry out the stock-taking was attributable solely to the Plaintiff's non-attendance.

14. Relying on *Mutitika v Baharini Farm Ltd* [1985] KLR 229, the 1st Defendant invoked the principle that no person may be cited for contempt unless the order alleged to have been breached was clear and unambiguous, and that knowledge and deliberate disobedience must be demonstrated. The 1st Defendant maintained that it complied fully and that the Plaintiff, being the defaulting party, could not shift blame.
15. On the requisite threshold, the 1st Defendant cited the quasi-criminal nature of contempt proceedings and the elevated standard of proof articulated in *Mutitika v Baharini Farm Ltd* (supra) and in *Teachers Service Commission v Kenya National Union of Teachers & 2 Others* [2013] eKLR, where Ndolo J held that an applicant must prove knowledge of the order and willful disobedience. The 1st Defendant argued that there was neither willfulness nor disobedience on its part.
16. On the inclusion of the Board of Directors, the 1st Defendant averred that the Board was not involved in operational implementation of the order, had no demonstrated knowledge thereof, and could not in law be held liable for execution of operational directives. The attempt to cite them was characterized as malicious and an abuse of the court process.
17. Lastly, the 1st Defendant contended that the application, though presented under the guise of enforcement, was a tactical step intended to discredit the 1st Defendant and divert attention from the Plaintiff's own non-compliance. It was argued that the application constituted an abuse of process and amounted to forum shopping.
18. The 1st Defendant accordingly urged the Court to find that it had complied with the order of 26th June 2023, that the threshold for contempt had not been met, to dismiss the Motion with costs, and to find that the Plaintiff was estopped from alleging contempt arising from its own non-compliance.

Analysis And Determination

19. The issues for determination in the present application are:
 - i. Whether the 1st Defendant is in contempt of this Court's orders issued on 26th June 2023;
 - ii. Whether the 1st Defendant's board members are in contempt of court;
 - iii. Who shall bear the costs of the application?
20. The Black's Law Dictionary (9th Edition) defines contempt of Court as follows: -

“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.”



21. The law guiding the present Application is Order 40 Rule 3(1) of the Civil Procedure Rules which reads: -

In cases of disobedience, or of breach of any such terms, the Court granting an injunction may order the property of the person guilty of such disobedience or breach to be attached, and may also order such person to be detained in prison for a term not exceeding six months unless in the meantime the Court directs his release.

22. Section 29 of the *Environment and Land Court Act* is clear that: -

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.

23. It is also an established principle of law as it was held in the case of Samuel M. N. Mweru & Others v National Land Commission & 2 others [2020] eKLR that in order to succeed in civil contempt proceedings, an 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.

24. Further, in *Gatharia K. Mutikika v Baharini Farm Ltd* [1985] KLR 227 the Court held that: -

“A 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... Recourse ought not to be heard to process contempt of court in aid of a civil remedy where there is any other 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..... applying the test that the standard of proof should be consistent with the gravity of the alleged contempt... it is competent for the court where contempt is alleged to or has been committed, and or an application to commit, to take the lenient course of granting an injunction instead of making an order for committal or sequestration, whether the offender is a party to the proceedings or not.”

25. It follows therefore, contempt proceedings being quasi-criminal in nature, a corporate entity such as the 1st Defendant cannot itself be held in contempt. Any allegation of contempt must be directed at a specific natural person. Having said that, it behoves this court to determine whether the 1st Defendant's board members should be held in contempt.

26. The Plaintiff urged that the cited Board members must have been aware of the impugned orders because the 1st Defendant, through its agents, previously moved the Court by an application seeking to set aside or vary the said orders. However, that proposition was not supported by any specific evidence linking the individual Board members to the said application or demonstrating that they had personal knowledge of the order and thereafter participated in, directed, or sanctioned the alleged disobedience.



In my view, mere corporate challenge to an order, without more, does not in law translate into personal culpability of each director.

27. In any event, even if knowledge could be inferred from the fact of the earlier challenge to the order, the Plaintiff did not go further to demonstrate the second limb of the test, namely, that any particular Board member participated in, authorized, or acquiesced in the conduct complained of. Contempt being quasi-criminal, liability cannot arise by association, inference, or corporate position alone; it must be founded upon proven personal knowledge coupled with willful disobedience by the person cited.
28. It follows therefore that, on the material placed before the Court, the Plaintiff has not satisfied the evidential threshold required to ground personal liability on the individual Board members. The invitation to commit them to contempt thus collapses.
29. The outcome is that the application dated 5th February 2024 is unmerited. It is hereby dismissed with costs.

DATED, SIGNED AND DELIVERED AT MALINDI ON THIS 4TH DAY OF NOVEMBER, 2025.

MWANGI NJOROGE

JUDGE, ELC, MALINDI.

