



**Maigwa v Magige & another (Miscellaneous Civil Application
7 of 2020) [2025] KEELC 7959 (KLR) (17 November 2025) (Ruling)**

Neutral citation: [2025] KEELC 7959 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MIGORI
MISCELLANEOUS CIVIL APPLICATION 7 OF 2020
FO NYAGAKA, J
NOVEMBER 17, 2025**

BETWEEN

DANIEL MWITA MAIGWA APPLICANT

AND

MAROA RIOBA MAGIGE 1ST RESPONDENT

RIOBA BURUME 2ND RESPONDENT

RULING

(On whether the 1st Respondent is in Contempt of Court)

The Application

1. The Applicant herein filed a Notice of Motion dated 6th March 2025. He brought it under Certificate of Urgency. He brought it under sections 3, 3A, 1A, 1B and 3A of the *Civil Procedure Act*; Order 40 Rule 3 and Order 51 of the Civil Procedure Rules as well as Sections 5, 25, 27 and 28 of the *Contempt of Court Act*, no. 46 of 2016 (sic).
2. It is worth of note a this very early instance that the *Contempt of Court Act*, Act. No. 46 of 2026 was declared unconstitutional vide the Judgment of Mwita J. in Kenya Human Rights Commission v Attorney General & another [2018] KEHC 9656 (KLR), delivered on 9th November 2018. It is therefore invalid.
3. Nevertheless, this Court proceeds as provided for under Order 51 Rule 10(1) and (2) of the Civil Procedure Rules that applications should not be defeated on account of quoting wrong provisions or failure to cite correct ones, and Article 159(2)(d) of *the Constitution* on determining matters based on substance rather than on technicalities. The applicant seeks orders that:



- a. The honorable court be pleased to punish for contempt, the 1st respondent for deliberately and in total disregard of court order dated 28th June 2021 and find him liable to be detained in civil jail for a term not exceeding 6 months.
 - b. In the alternative, thus court does impose a fine of an amount it deems fit upon the contemnor.
 - c. That the court do compel the 1st respondent to pay Kshs. 56,500/= used as survey fees.
 - d. That the executive officer of the court do execute mutation forms and any other necessary documents for subdivision of land parcel no. L.R BUKIRA/BWISABOKA/155 measuring approximately 113 ha to subdivide the suit property to the applicant
 - e. Costs of the application be provided.
4. The application is grounded on several grounds as outlined on the face of it. Specifically, it contends that the parties entered a consent agreement and the same was adopted as a n order of the court on 28th June, 2021. The agreement stipulated that the suit property belongs to three proprietors, being the parties herein. He also maintains that the suit property was to be apportioned in the following terms: 9/20 share thereof was to be apportioned to the applicant and the 1st respondent while 1/10 of the suit property was to be apportioned to the 2nd respondent. In the aforesaid order, the applicant avers that the court ordered the land be surveyed so as to proportionately reflect the individual share of each proprietor. The parties were also ordered to share the survey fees equally.
 5. The applicant maintains that he solely incurred Kshs. 113,000/=, being the entire surveyor's fees as well as security offered by the police during the survey exercise. Further, that the parties were directed by the court to share the cost by half. He maintained that the 2nd respondent not only refused to pay for the surveyor's fees as ordered by the court but also declined to execute mutation forms for purposes of subdividing the suit property.
 6. Further, the applicant avers that the 1st respondent had since encroached onto his (applicant's) portion of the suit property and is farming it in utter disregard of the court order. He adds that the 1st respondent had demolished (sic) beacons on the suit property to the detriment of the applicant and other purchasers of the suit land. These actions, the applicant maintains, amount to contempt of court which is likely to expose this court to unwarranted ridicule.
 7. The application was supported by a Supporting Affidavit sworn by the applicant and which application reiterates the contents of the application which I need not reproduce. I must, however, point out that the applicant has annexed a copy of the court order dated 28th June, 2021, a copy of an official search for the suit property, and copies of photographs depicting the alleged encroachment by the 1st respondent.

The Response

8. The application was opposed by the 2nd Respondent. He filed a Replying Affidavit sworn on 20th January 2025. He vehemently denied being in contempt of court. He maintained that the consent order dated 28th June 2021 was entered into by his advocate who was on record previously and without his knowledge. He averred that he was not agreeable with the terms of the order as his actual land was way smaller than was consented upon.
9. The 1st Respondent also maintained that the said order did not restrain him from accessing the suit land but rather directed the Surveyor and Land Registrar, Kuria East and West to visit the suit land for purposes of partitioning the land. He maintains that there is no evidence of partition the suit property



- as the applicant did not produce evidence on the specific portions of the suit land held by the respective parties.
10. Further to the above, the 1st Respondent avers that the survey report filed in court was never adopted as an order of the court. To him, it therefore remained an ordinary document with no effect hence the reason he did not execute the mutation forms. He annexed a copy of proceedings to demonstrate the fact of the said report was never adopted as an order of the court.
 11. The 1st Respondent also depones that the court ordered that the parties herein share the survey fees equally. He added that there was no way he would be required to pay Kshs. 56,500/= since there are three proprietors of the suit property.
 12. The 1st Respondent depones that he believes his counsel's advise that orders of the court must be certain, succinct and specific and that the same must not be blanketly executed. He also depones that contempt of court is criminal in nature hence requiring proof above the balance of probability standards which the applicant has not established in the instant application.
 13. Lastly, he deponed that that the 2nd Respondent was deceased, which fact is the subject of an appeal his counsel yet to file at the Court of Appeal in Kisumu.
 14. On the basis of the above stated grounds, the 1st Respondent prayed that the applicant's application be dismissed and costs be awarded to him.

The Applicant's Further Affidavit

15. The Applicant, in response to the Replying Affidavit, filed a Further Affidavit he swore on 12th May, 2025. He deposed that the parties voluntarily entered into a consent agreement dated 28th June, 2021 and it was adopted as an order of the court. He also reiterated that the court order mandated that the suit property be partitioned to reflect the individual shares of each party as per the register and the parties consented to contribute the survey fees in equal proportions. Despite this agreement, he maintained, the 1st Respondent had refused to pay his share of the surveyor's fees.
16. The applicant also clarified that a survey was conducted pursuant to the order of the Court dated 28th June, 2025, and a survey report filed in court on 12th January 2022. He deponed that the order did not mandate that the survey report be adopted as an order of the court. The applicant also deopned that the 1st Respondent had never challenged the survey exercise. Additionally, contrary to his current position concerning the survey report, the 1st Respondent was present when the survey was conducted. He even participated in the same exercise. He annexed a copy of the survey report as annexure marked DMM-2 to evidence these averments.
17. The applicant deponed further that this court declined to set aside the court order dated 28th June 2021. He attached an order of this court dated 26th October, 2023 to support his averment.
18. In addition to the aforestated the applicant also deponed that an appeal does not operate as a stay, and that, absent a stay of execution, the 1st Respondent is bound to obey this court's order which has not been set aside. He reiterated that the 1st Respondent had neither paid his part of the survey fees nor signed the mutation forms to necessitate the subdivision of the suit property as ordered by the court.
19. The applicant further clarified that the 2nd Respondent is the legal administrator of the Estate of the late Rioba Burume and annexed a certificate of confirmation grant marked DMM-4.



20. Finally, the applicant deponed that the 1st Respondent is not apologetic for his contempt, and that such acts of contempt were frustrating to him as well as other beneficiaries and the 1st Respondent was reluctant on obeying the said court order.

The Parties' Submissions

21. The applicant filed his written submissions in support of the application dated 12th May 2025. He framed two issues for determination, being- whether 1st respondent is in contempt of court orders, and whether the court should grant the orders as sought.
22. The applicant relied on the authority of *Katsuri Limited v Kapurch and Depa Shah (2016) eKLR* to expound on the test that must be met by a party when proving contempt of court. Accordingly, the applicant submitted that the terms of the order must be clear, unambiguous and binding on the defendant; the defendant must have had knowledge or notice of the order; the defendant must have acted in breach of the terms of order; and the defendant's conduct must have been deliberate.
23. Further, the applicant relied on several authorities to demonstrate that court orders must be respected, including the Indian case in *T.V. Gadavarman Thiru Mulpad v Ashok Khol & another [2001] SC* and *Econet Wireless Kenya Limited v Minister for Information and Communications of Kenya & another [2005] KEHC 1767 (KLR)*.
24. The applicant submitted that the 1st Respondent deliberately encroached into his portion of land after the survey had been conducted by the applicant. He maintains that the 1st respondent refused to pay the survey fees which he now submits to be Kshs. 36,650/=.
25. On the allegation that the 1st Respondent was not aware of the consent order, the applicant submitted that the 1st respondent was represented by counsel when the order was made. As such, he submits that the 1st Respondent should be taken to have known of the existence of the order of this court.
26. The applicant relied on *Samuel M.N. Mweru & others v National Land Commission & 2 others [2020] eKLR* to argue that the court should seek to enforce its order even where the respondent thinks that the order in question was irregular provided the order has not been discharged.
27. The applicant cites several legal provisions, including Section 29 of the *Environment and Land Court Act* that provide for contempt of court and submits that his application has met the requisite threshold for establishing contempt of court on the part of the respondent.
28. He urged that the court allows the application.
29. The 1st Respondent on his part filed his submissions dated 9th June, 2025. He denied being in contempt of court and maintained that the applicant had not established its case to the requisite standard of proof in accordance with the Kenyan law on contempt of court.
30. The 1st Respondent relied on Section 34 of the *Contempt of Court Act*, Act No. 46 of 2016, to argue that the contempt of court proceedings should not be instituted 6 months after the occurrence of the action complained of yet the applicant has not disclosed when the alleged contempt took place.
31. Equally, the 1st Respondent submitted that the applicant paid for the survey fees in 2021 yet failed to institute the contempt proceedings then. He argued that limitation of time goes to the jurisdiction of the court and relied on several authorities to advance this proposition, including *Kenya Human Rights Commission v Attorney General & another [2018] eKLR*.



32. It was the 1st Respondent's submission that there was no evidence produced by the applicant to demonstrate that in deed, the applicant had asked the 1st respondent to pay his part of the survey fees but declined to do so.
33. As to whether the application has met the threshold for grant of contempt of court orders, the 1st Respondent relied on several authorities to argue that the standard of proof required in contempt of court proceedings is higher than the balance of probabilities standard. He maintained that applicant has not met this threshold since the applicant has not disclosed the exact date when the alleged contempt of court occurred. Equally, he submits that the photograph annexed on the applicant's affidavit bear no date stamp as to determine when the land was tilled. Lastly, the 1st respondent submits that there is no evidence that he tampered with the beacons and concludes that the applicant failed to prove that the acts of contempt took place after the issuance of the court order.
34. On the basis of the foregoing, the 1st Respondent urged this court to dismiss the applicant's application with cost the 1st Respondent.

Issues, Analysis and Determination

35. It is my considered opinion that the issues that arise for determination in the instant application are as follows:
- a. whether the 1st respondent should be held in contempt of court; and
 - b. who should bear the costs of the application
36. I have carefully analyzed the application in its entirety, the 1st respondent's Replying Affidavit, the applicant's Further Affidavit as well as the submissions filed by both parties.
37. Contempt of court has been defined in the been defined in the Black's Dictionary (11th edition) as:
- “Conduct that defies the authority or dignity of a court or legislature. Because such conduct interferes with the administration of justice, it is punishable usually by fine or imprisonment.”
38. The law on contempt of court in Kenya is set out in several statutes, including the *Judicature Act* as well as the various statutes establishing the various courts in our court system. The courts have also added their weight on this subject in various judicial pronouncements.
39. Section 29 of the *Environment and Land Court Act* grants this court the power to punish contemnors and provides as hereunder:
- 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.
40. I must also state that the parties relied on the provisions of the *Contempt of Court Act*, no 46 of 2016. They even submitted on it. This court worries that legal counsel fell into the trap of the many who do not follow on or keep abreast of the developments of the law. In Kenya Human Rights



Commission v Attorney General & Another [2018] eKLR 9656, the High Court declared the said Act unconstitutional and pronounced itself as hereunder:

“A declaration is hereby issued that the entire *contempt of court Act* No 46 of 2016 is invalid for lack of public participation as required by Articles 10 and 118(b) of *the constitution* and encroaches on the independence of the Judiciary”.

41. Therefore, reliance on the provisions of the invalid Act or law is a misconception.
42. That said, I now turn to the issues for determination in the instant application. As to whether the 1st respondent should be held in contempt of court, it is necessary to set out the test that should guide this court in answering this question. In Samuel M.N Mweru & others v The National Land Commission & 2 others, Nairobi (HC) Miscellaneous Civil Application No. 443 of 2017, the High Court determined as follows:
 - “40. 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.
 46. Perhaps the most comprehensive of the elements of civil contempt was stated by the learned authors of the book *Contempt in Modern New Zealand*
 47. 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”.
 43. The applicant must prove all the above requirements to the requisite standard, that is a standard higher than the balance of probabilities threshold applied in civil proceedings but below the proof beyond a reasonable doubt standard adopted in criminal cases. This position has been affirmed by the supreme in *Republic v Ahmad Abolfathi Mohammed & another* SC Criminal Application No. 2 of 2018 [2018] eKLR as well as *Stephen Maina Githiga & 5 others v Kiru Tea Factory Company Limited*, Supreme Court Petition no. 12 of 2019.
 44. Therefore, what is the 1st Respondent’s position in regard to the allegations by the applicant about disobedience of this court’s orders? I now analyze whether each of the four (4) above-stated requirements have been met.



a. whether the terms of the court order dated 28th June 2021 were clear, unambiguous and binding on the 1st respondent

45. I have carefully considered and analyzed the court's order dated 28th June 2021. The applicant maintains that the parties entered an agreement as to how the suit property would be shared among the three proprietors and how costs arising out of the process would be shared among the proprietors. This agreement was adopted as an order of the court on 28th June 2021. The 1st respondent on his part does not deny the existence of the said order; he however argues that the said order was entered into by his then advocate on record, and without his knowledge.
46. I have examined the said order and I find nothing that can be used to challenge its validity. The order was issued by a court of competent jurisdiction, is properly executed and dated. The 1st Respondent who had employed counsel who entered into the consent at the time cannot be heard to say that the lawyer entered into the consent without his knowledge or authority. That is a mere denial. To the extent that the counsel had instructions and authority to conduct the 1st Respondent's case, he had the authority to compromise it in the best manner in favour of his client. This he did. Therefore, the 1st Respondent's arguments against the validity and binding nature of the consent is neither here nor there.
47. As to the terms of the order, I must also add that the same are clear and unambiguous. Although the 1st respondent in his Replying Affidavit stated that court orders must be "certain, succinct and specific and that the same must not be blanketly executed", he did not exactly point out that which was not succinct and specific about the order. Thus, the first limb or condition was fulfilled. For the avoidance of doubt, the order is set out in the following terms:
1. That L.R NO. BUKIRA/BWISABOSA/155 has three stakeholders
 - i. 1/10 belongs to Rioba Burume
 - ii. 9/20 belongs to Daniel Mwita Magaigwa
 - iii. 9/20 belongs to Maroa Rioba Magige
 2. The said land to be proportionally partitioned to reflect the individual shareholding per the certified copy of the register on record.
 3. The land surveyor and the Land Registrar Kuria East and West sub-counties do visit the said land with a view to partitioning the same in accordance with the sections occupied by the respective shareholders currently.
 4. The parties who have purchased portions of the same land from any of the beneficiaries to benefit from their respective sellers out of their shareholding thereof.
 5. The parties herein to share equally the registrar's and surveyor's costs.
 6. The Land Registrar and the Surveyor to file a report (s) and sketch map within 60 days of this date.
 7. The OCS Kehancha Police Station to provide security during the exercise in number three (3) herein above and be served by the applicant's counsel.
 8. Mention to confirm compliance for direction on 27th September 2021.
48. The second limb of the test in the first sub-issue is whether the order was binding upon the 1st Respondent. Since it was addressed to all the parties in the suit, it is my determination that the order is



binding upon the 1st Respondent in the same way as it was to the other parties in this suit. Courts have time and again emphasized that court orders must be obeyed and that a party cannot decide whether or not to obey a court order. This court is not prepared to depart from that position.

49. In *Shimmers Plaza Limited v National Bank of Kenya Limited*, Civil Appeal 33 of 2012) [2015] KECA 945 (KLR) (Civ), the Court of Appeal observed as hereunder concerning obedience of court orders:

We reiterate here that court orders must be obeyed. Parties against whom such orders are made cannot be allowed to trash them with impunity. Obedience of Court orders is not optional, rather, it is mandatory and a person does not choose whether to obey a court order or not...The courts should not fold their hands in helplessness and watch as their orders are disobeyed with impunity left, right and centre. This would amount to abdication of our sacrosanct duty bestowed on us by *the Constitution*. The dignity, and authority of the Court must be protected, and that is why those who flagrantly disobey them must be punished, lest they lead us all to a state of anarchy. We think we have said enough to send this important message across.

50. Equally, in *DT. Dobie Company (Kenya) Limited v Joseph Mbaria Muchina & another* [1980] KECA 3 (KLR), the court cited the case of *Hadkinson v Hadkinson* [1952] 2 All ER p 567 where the court expressed itself 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.”

51. The 1st Respondent argued that the order is not binding on him since the consent agreement that was later adopted as an order of the court was entered into by his advocated who was on record at the time. Nothing can be far from the truth, even as I have explained above that the plaintiff employed counsel who compromised the matter on his behalf as he did.

52. In *Habo Agencies Limited v Wilfred Odhimbo Musingo* [2015] KECA 987 (KLR), the court determined that a party cannot just blame his advocate for all manner of transgressions in the course of litigating his case since a litigant has the obligation of following up on his matters. The court expressed itself as follows:

It is not enough for a party in litigation to simply blame the advocate on record for all manner of transgression in the conduct of litigation. courts have always emphasized that parties have a responsibility to show interest in and to follow up their cases even when they are represented by counsel.

53. Further, in *SMN v ZMS & 3 others*, Civil Appeal no. 205 of 2015, the Court of Appeal cited *Kenya Commercial Bank Ltd vs Specialised Engineering Co. Ltd* [1982] KLR 485 where it was held that:

A consent order entered into by counsel is binding on all parties to the proceedings and cannot be set aside or varied unless it is proved that it was obtained by fraud or collusion or by an agreement contrary to the policy of the court or where the consent was given without sufficient material facts or in misapprehension or ignorance of such facts in general for a reason which would enable the court to set aside an agreement. 2. A duly instructed advocate has an implied general authority to compromise and settle the action and the client cannot



avail himself of any limitation by him of the implied authority to his advocate unless such limitation was brought to the notice of the other side.

54. On the basis of the foregoing, I find and hold that that the terms of the order dated 28th June, 2021 were clear, unambiguous and binding upon the 1st Respondent.

b. Whether the 1st respondent had knowledge or proper notice of the order

55. Despite the 1st Respondent arguing that he had no knowledge of the order of the court, the consent that agreement having been allegedly entered by his counsel on record and without his knowledge. I reiterate my finding that the 1st Respondent cannot feign ignorance of the order solely on account of having been represented by his counsel from whom he was expected to obtain information concerning the order. He neither stated that the counsel on record acted without instruction nor did he allege fraud on the part of the advocate.

c. Whether the 1st Respondent acted in breach of the terms of the order

56. The 1st Respondent did not abide by the terms of the order. Instead, he has resorted to giving justification for not obeying the order. He maintained that he could not abide by the terms of the order as his portion of land was smaller. He also argued that the order did not restrict him from accessing any portion of the suit property and that there are no distinctive parcels of land that can be said to belong to a specific proprietor. The 1st Respondent continues to argue that he intends to file an appeal at the Court of Appeal, which appeal is premised on the fact that the 2nd Respondent is deceased.
57. As earlier on noted, a party cannot decide whether or not to abide by the orders of a court. If indeed the 1st respondent was aggrieved by the order, he should have adopted legal mechanisms for purposes varying or setting aside the same order. I also note that the court declined to set aside the order on 26th October 2025 when the 1st Respondent attempted to do so. In the circumstances, the order 28th June, 2021 remains binding upon the 1st respondent. The argument that the 1st Respondent cannot obey the order because he is yet to file an appeal is very misguided. In any event there is no stay of execution of the order said to have been disobeyed.
58. Order 42 rule 6(2) of the Civil Procedure Rules provides that an appeal does not operate as stay of execution. The provision provides as hereunder:

No appeal or second appeal shall operate as a stay of execution or proceedings under a decree or order appealed from except in so far as the court appealed from may order but, the court appealed from may for sufficient cause order stay of execution of such decree or order, and whether the application for such stay shall have been granted or refused by the court appealed from, the court to which such appeal is preferred shall be at liberty, on application being made, to consider such application and to make such order thereon as may to it seem just, and any person aggrieved by an order of stay made by the court from whose decision the appeal is preferred may apply to the appellate court to have such order set aside”

59. The argument that the land has not has not been subdivided hence the 1st Respondent could not encroach into the applicant’s land does not hold water. The court order dated 28th June, 2021 mandated that the land was to be partitioned in accordance with the sections currently occupied by the respective shareholder. This implies that the parties herein occupy sections of the suit property that are already specific to each one of them and it would not be difficult to establish whether a party is encroaching into another’s portion, the absence of the formal subdivision notwithstanding.



60. In addition to the above stated, the 1st Respondent has admitted to refusing to execute the mutation forms, hence the reason the subdivision of the suit property has not taken place. He cannot therefore be heard to say that absence formal subdivision grants him the license to utilize each and every part of the suit property. I concur with the applicant that failing to execute the said mutation forms on account of the survey report not being adopted as an order of the court is one of the many flimsy excuses advanced by the 1st respondent for purposes of avoiding the court order. The court order never directed the said report be adopted as an order of the court.
61. The 1st Respondent also argued that there was no evidence that the applicant asked him to pay the survey expenses, which he argues should not be half the total cost since there are three parties. I note from the survey report presented by the applicant that the 1st respondent attended the survey exercise and was therefore aware of the same. Having found that he had knowledge of the order, it is my finding that the 1st respondent knew that he ought to have contributed towards the survey expenses but did not do so. I say so because the 1st respondent, of the court order had an obligation to contribute to the survey fees and the applicant was never obligated by the court to demand such payment from the 1st respondent as the latter suggests in his argument that the applicant never approached him for the same.
62. In the circumstances, I find that the actions of the 1st Respondent were in clear breach of the order of the court dated 28th June 2021.

d. Whether the actions of the 1st respondent were deliberate

63. The 1st Respondent has advanced several flimsy excuses as to why he could not obey the order of the court dated 28th June 2021. I say the excuses are flimsy because none of these excuses holds water. As noted by the applicant, the 1st Respondent is not remorseful for his actions; he shows no willingness at all to obey the order. In the circumstances, I find and hold that his actions are deliberate and cannot be excused. As earlier noted, there is no excuse whatsoever for failing to obey a clear and unambiguous order of the court.
64. In the conclusion I find and hold that the applicant has proved his case to the required standard. Accordingly, I find him guilty of contempt of court and convict him accordingly.
65. As to who should bear the costs of the application, Section 27 of the Civil Procedure Act provides that costs follow events and are awarded at the discretion of the court. The said section specifically provides that:

Subject to such conditions and limitations as may be prescribed, and to the provisions of any law for the time being in force, the costs of and incidental to all suits shall be in the discretion of the court or judge, and the court or judge shall have full power to determine by whom and out of what property and to what extent such costs are to be paid, and to give all necessary directions for the purposes aforesaid; and the fact that the court or judge has no jurisdiction to try the suit shall be no bar to the exercise of those powers:

Provided that the costs of any action, cause or other matter or issue shall follow the event unless the court or judge shall for good reason otherwise order.

66. The applicant, having succeeded in his application, is hereby awarded the costs of this application.
67. The final disposition is follows:
 - a. The 1st Respondent is found guilty of contempt of this court's orders issued on 28th June 2021 and is convicted accordingly.



- b. The 1st Respondent is given only six (6) days to purge the contempt, by
- i. Refunding the Applicant the equivalent of the half of the sum of Ksh 113,560, that is to say, KShs 56,500/=.
 - ii. Executing his part on the mutation forms in issue for further processing.
 - iii. Vacating forthwith the part of the applicant's suit land which the said Respondent was found through the survey as having encroached.
- c. The 1st Respondent is directed to attend court personally on 25th November 2025 at exactly 08:30 AM for mitigation and sentencing, in default of which, a warrant of arrest shall issue automatically against him, for his apprehension through the Officer Commanding Station (OCS) nearest police station to his home.

68. It is so ordered

**RULING DATED, SIGNED AND DELIVERED VIRTUALLY VIA THE TEAMS PLATFORM
THIS 17TH DAY OF NOVEMBER, 2025.**

HON. DR. IUR NYAGAKA

JUDGE

In the presence of,

Court Assistant: Md. Lola

Mr. Singei Advocate for the Applicant

Mudeyi for the 3rd Respondent

Plaintiff (present in open court)

Brother to Maroa Rioba, by name Stephen Boke (ID No. noted), (Present)

