

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT KISUMU**  
**CONSTITUTIONAL PETITION NO.15 OF 2019**

**BETWEEN**

**SIMONASH INVESTMENT LTD.....**  
**.....PETITIONER**

**VERSUS**

**KENYA NATIONAL HIGHWAYS AUTHORITY.....1<sup>ST</sup>**  
**RESPONDENT**

**NATIONAL LAND COMMISSION.....2<sup>ND</sup>**  
**RESPONDENT**

**HONOURABLE ATTORNEY GENERAL.....3<sup>RD</sup>**  
**RESPONDENT**

**RULING**

**Background**

On 21<sup>st</sup> December 2022, judgment was entered for the Petitioner herein against the Respondents for a total sum of Kshs. 2,000,000/- together with the costs of the petition. On 9<sup>th</sup> November 2023, the Petitioner's costs were assessed by the taxing officer at Kshs. 181,820/-. On 26<sup>th</sup> March 2024, warrants of attachment and sale of the Respondents' movable properties were issued by the Deputy Registrar of the court to the auctioneers appointed by the Petitioner for the recovery of the total decretal sum of Kshs. 2,184,320/-. On 2<sup>nd</sup>

April 2024, the said auctioneers attached several motor vehicles owned by the 1<sup>st</sup> Respondent.

The 1<sup>st</sup> Respondent opposed the attachment through a Notice of Motion application dated 16<sup>th</sup> April 2024. The 1<sup>st</sup> Respondent argued that the execution levied against the 1<sup>st</sup> Respondent was in contravention of the provisions of Section 68 of the Kenya Roads Act 2007 as read with the Section 21 (4) of the Government Proceedings Act, Chapter 40 Laws of Kenya which prohibits execution against the properties of the government and its agencies/departments without following the mandatory procedure set out therein. The 1<sup>st</sup> Respondent argued that it was an agency/department of the Government of Kenya undertaking road construction, regulation, and supervision of proper use of roads and national highways for and on behalf of the Government of Kenya using public funds. The 1<sup>st</sup> Respondent averred that it was established under the Roads Act 2007, as a corporate body with the exclusive mandate and responsibility to manage, develop, rehabilitate, and maintain national roads in Kenya.

The 1<sup>st</sup> Respondent averred that it had already appealed against the said judgment of the court delivered in favour of the Petitioner on 21<sup>st</sup> December 2022, which appeal was pending determination before the Court of Appeal at Kisumu in Kisumu Civil Appeal No. E093 of 2024, Kenya National Highways Authority v. Simonash Investment Ltd.& 2 others. The 1<sup>st</sup> Respondent averred that all its properties remain the property of the Government of Kenya within the meaning of section 21 (4) of the Government Proceedings Act, Chapter 40, Laws of Kenya, and is exempt from execution of any judgment save through an order of mandamus which would not issue where there is a pending appeal against that judgment like in this case. The Petitioner opposed the application.

In a ruling delivered on 2<sup>nd</sup> October 2024, the court allowed the Petitioner's application and lifted the attachment on its goods. The court found that the 1<sup>st</sup> Respondent is an agency or a department of the Government of Kenya, and is protected against execution by the provisions of Section 68 of the Kenya Roads Act 2007, which provides that no attachment or execution can be levied against the property of the 1<sup>st</sup> Respondent. The court observed that Section 68 of the said Act provides that where there is a monetary judgment against the 1<sup>st</sup>

Respondent, the Director-General of the 1<sup>st</sup> Respondent should settle the same out of the revenue of the 1<sup>st</sup> Respondent. The court found the mode of execution adopted by the Petitioner against the 1<sup>st</sup> Respondent unlawful as it was contrary to the express provisions of the said Act. In the ruling, the court stated further as follows in part:

**“The Petitioner was supposed to call upon the Director-General of the 1<sup>st</sup> Respondent to satisfy the judgment debt and in default, it could initiate the recovery of the same through an application for judicial review for an order of mandamus to compel the said Director-General to perform his statutory duty under Section 68 of the Act. In Kenya National Examination Council v. Republic ex parte Geoffrey Gathenji Njoroge & 9 others [1997] eKLR, the court sated as follows:**

**“...an order of mandamus will compel the performance of a public duty which is imposed on a person or body of person by a statute and where that person or body of persons has failed to perform the duties to the detriment of a party who has a legal right to expect the duty to be performed.”**

**If the Petitioner had sought an order of mandamus and the same was issued and defied by the Director-General of the 1<sup>st</sup> Respondent, the Petitioner could take out contempt of court proceedings against him. This is the procedure for execution against the Government or Government organs or bodies against which execution is prohibited by the establishing Act**

**or the Government Proceedings Act, Chapter 40 Laws of Kenya. See, Five Star Agencies Limited v. National Land Commissions & Another, Nairobi Civil Appeal No. E290 of 2023 consolidated with Kenya National Highways Authority v. Five Star Agencies Limited & Another, Nairobi, Civil Appeal No. E328 of 2023.**

### **The Application before the court**

What is now before the court is the Petitioner's application brought by way of Notice of Motion dated 23<sup>rd</sup> April 2025, in which the Petitioner has sought the following orders;

1. Spent.
2. Spent.
3. Spent.
4. THAT the honourable court be pleased to give an order citing the Director General of the 1<sup>st</sup> Respondent for contempt of court by his disobedience of the judgment of this honourable court of 21<sup>st</sup> December 2022 and the decree of 24<sup>th</sup> January 2024.
5. THAT the honourable court be pleased to give an order citing the Senior Legal Officer of the 1<sup>st</sup> Respondent, Mr. Lawrence Muruti, for contempt of court by their disobedience of the judgment of

this honourable Court of 21<sup>st</sup> December 2022 and the decree of 24<sup>th</sup> January 2024.

6. THAT the honourable court be pleased to give an order citing the 1<sup>st</sup> Respondent's Director General and the Senior Legal Officer for contempt of court and committing them to civil jail for a term of six (6) months and/or until they purge the contempt by duly compensating the Applicant/Decree Holder, or until they restore the Applicant/Decree Holder's property to status quo ante by making good the damage done to the suit property and by removing any structures/development done/or erected by the 1<sup>st</sup> Respondent on the suit property at their cost and in such a manner as the court may direct.
7. THAT in the alternative to prayer 6 above, the honourable court be pleased to give an order citing the 1<sup>st</sup> Respondent's Director General and the Senior Legal Officer for contempt of court and fining each one of them the amount of at least Kshs. 1,000,000/- for such contempt.
8. THAT the honourable court be pleased to give an order to the 1<sup>st</sup> Respondent's Director General to cause to be paid to the Applicant/Decree Holder the decretal sum together with all

accrued interest and taxed costs within thirty (30) days following service of this order upon the 1<sup>st</sup> Respondent, and in default of such payment the 1<sup>st</sup> Respondent's Director General to appear before this Honourable Court to show cause why he should not give written permission to the Petitioner pursuant to Section 68(b) of the Kenya Roads Act to attach the 1<sup>st</sup> Respondent's property in execution of the decree of this court made herein on 7<sup>th</sup> November 2024.

The application, which is supported by the affidavit of the Petitioner's Director, Richard Otieno Sikuku, sworn on 23<sup>rd</sup> April 2025, was brought on several grounds. The Petitioner averred that judgment was entered herein against the 1<sup>st</sup> Respondent/Judgement Debtor on the 21<sup>st</sup> December 2022, and a decree was issued on 24<sup>th</sup> January 2024. The Petitioner averred that in a blatant disregard of the said judgment and decree, the 1<sup>st</sup> Respondent had again trespassed onto the Petitioner's parcel of land, Title No. Kisumu/Kanyakwar "A"/80 (hereinafter referred to as "the suit property"). The Petitioner averred that the 1<sup>st</sup> Respondent was engaged in the demolition of parts of the building on the suit property and was continuing with the road and drainage constructions in a show of might and power. The Petitioner

averred that unless stopped by the court, the 1<sup>st</sup> Respondent would arbitrarily acquire the Petitioner's land contemptuously, without due process, without compensation, and in total disregard of the judgment and decree of the court.

The Petitioner averred that the 1<sup>st</sup> Respondent was in contempt of court, and its Director General and the Senior Legal Officer should be summoned to show cause why they should not be punished for contempt and/or committed to jail. The Petitioner averred that it was an act of impunity for the 1<sup>st</sup> Respondent to disregard the judgment and decree of the court while their appeal was pending. The Petitioner averred that the 1<sup>st</sup> Respondent was hellbent on destroying the subject matter in dispute to render the unambiguous judgment of the court and the entire appeal process nugatory, unenforceable, and a mockery.

The Petitioner averred that the 1<sup>st</sup> Respondent had no reason or justification to trespass and use the suit property in light of the existing court orders, which had not been set aside, and against which no stay had been granted. The Petitioner averred that the 1<sup>st</sup> Respondent was condemned to pay punitive damages of Kshs.

1,000,000/- and general damages of Kshs. 1,000,000/-. The Petitioner averred that it was also awarded costs of the suit, which were assessed at Kshs. Kshs. 181,820/-. The Petitioner averred that the Director General of the 1<sup>st</sup> Respondent had refused and/or wilfully neglected to settle the decretal sum despite the express provisions of Section 68 of the Kenya Roads Act providing that the payment be made promptly and without delay.

In his affidavit in support of the application, the Petitioner's director stated that the 1<sup>st</sup> Respondent had trespassed onto the Petitioner's suit property and started demolishing parts of the building standing thereon. He stated that the 1<sup>st</sup> Respondent was also continuing with the road and drainage construction. He annexed to his affidavit photographs of the activities he claimed were being undertaken by the 1<sup>st</sup> Respondent on the suit property. He stated that unless stopped and restrained by the court, the 1<sup>st</sup> Respondent would arbitrarily acquire the suit property without due process, compensation, and in total disregard of the judgment and decree of the court. He stated that the 1<sup>st</sup> Respondent was in contempt of court,

and its Director General and the Senior Legal Officer who had the conduct of the matter should be summoned to show cause why they should not be punished for the contempt and/or committed to jail.

### **The Reply to the application**

The 1<sup>st</sup> Respondent opposed the application through the affidavit of Lawrence Maruti sworn on 2<sup>nd</sup> May 2025, in support of the 1<sup>st</sup> Respondent's Notice of Motion application dated 2<sup>nd</sup> May 2025, and a supplementary affidavit sworn by Robert Itambo, on 3<sup>rd</sup> September 2025. The 1<sup>st</sup> Respondent averred that in the exercise of its statutory mandate, it was undertaking the dualling/ construction and rehabilitation of the Kisumu Boys Roundabout-Mamboleo Junction Road [AI]. The 1<sup>st</sup> Respondent averred that the suit property is adjoining or sharing a common boundary with the said road under construction and rehabilitation. The 1<sup>st</sup> Respondent averred that the suit property is located on the right-hand side of the road on the way to Kakamega from Kisumu, at the junction of the Kisumu - Kakamega Road and Migosi - Kenya Re road. The 1<sup>st</sup> Respondent averred that in the course of the exercise its aforesaid mandate, the 1<sup>st</sup> Respondent was sued by the Petitioner in this case on allegations that it had

threatened to trespass onto the suit property and to demolish a portion of the building standing thereon. The 1<sup>st</sup> Respondent averred that the portion of the structure on the suit property which had been marked for demolition, was within the road reserve, onto which the Petitioner had encroached, the previous registered owner having been duly compensated for the same sometime in 1983.

The 1<sup>st</sup> Respondent averred that judgment was entered by this court against the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents, jointly and severally, on 21<sup>st</sup> December 2022, in favour of the Petitioner, for general and punitive damages of Kshs.2,000,000/-, plus costs of the suit, which were assessed at Kshs. 181,820/- on 9<sup>th</sup> November 2023. The 1<sup>st</sup> Respondent averred that it appealed against the said judgment, which appeal was pending determination before the Court of Appeal at Kisumu in Kisumu Civil Appeal No. E093 of 2024.

The 1<sup>st</sup> Respondent averred that in the present application for a temporary injunction and contempt, the temporary injunction is sought to restrain the 1<sup>st</sup> Respondent from trespassing onto the suit property, demolishing parts of the building thereon, and continuing with the road and drainage construction. The 1<sup>st</sup> Respondent averred

that before this suit was filed and throughout the entire period of litigation herein and even after judgment was entered in the matter, the 1<sup>st</sup> Respondent has not demolished any part of the Petitioner's building, and does not intend to do so. The 1<sup>st</sup> Respondent averred that it had constructed the water drainage channel for the said road, entirely on the 1<sup>st</sup> Respondent's road reserve, without interfering with, or trespassing, at all, into the suit property. The 1<sup>st</sup> Respondent averred that each of the parties has a legitimate claim of right of ownership of their respective parcels of land adjacent to one another, sharing a common boundary with one another's parcels of land. The 1<sup>st</sup> Respondent averred that, still, it is equally likely that there is indeed a boundary dispute between the parties, with the Petitioner alleging that the 1<sup>st</sup> Respondent has encroached upon its parcel of land and the 1<sup>st</sup> Respondent equally alleging that it is the Petitioner who is wrongfully claiming a portion of the road reserve as allegedly falling within the suit property.

The 1<sup>st</sup> Respondent averred that this boundary dispute between the parties was neither addressed nor otherwise resolved in the judgment of the court delivered herein on 21<sup>st</sup> December 2022, even though a similar case filed earlier by the same Petitioner against the same

Respondents over the same parcel of land with the same allegations of alleged threat of trespass by the same road construction had been struck out by this court on the ground, among others, that the same had been filed prematurely before a boundary dispute resolution had been undertaken by the Land Registrar, as contemplated under the provisions of Sections 18 and 19 of the Land Registration Act 2012. The 1<sup>st</sup> Respondent referred to the ruling by this court delivered on 30<sup>th</sup> January 2019 in Kisumu ELC No. 109 of 2019, Simonash Investment Ltd. v. Kenya National Highway Authority, Solel Boneth International Holdings AG Ltd, & Honourable Attorney General.

The 1<sup>st</sup> Respondent averred that in the said ruling, the court found that the dispute between the parties was one of a boundary dispute involving the two parcels of land which share a common boundary, that is, the suit property and the road reserve abutting the Kisumu Boys Roundabout - Mamboleo Junction Road [A1], with each of the parties claiming that the other is encroaching or otherwise trespassing on the other's portion of land. The 1<sup>st</sup> Respondent averred that the court made a further finding that the boundary dispute had not been presented for determination before the Land Registrar under Section 19 (1), (2) and (3) of the Land Registration Act 2012, as read

with Section 18 (1) and (3) thereof, and as such, it lacked jurisdiction to hear and determine the suit.

The 1<sup>st</sup> Respondent averred that the said ruling was never appealed and as such still stands. The 1<sup>st</sup> Respondent averred that in the face of this unresolved boundary dispute, the Petitioner had no basis for its allegation that the 1<sup>st</sup> Respondent had trespassed onto the suit property by the construction of the water drainage channel, as alleged or at all. The 1<sup>st</sup> Respondent averred that the contempt alleged against the 1<sup>st</sup> Respondent has no legitimate basis.

The 1<sup>st</sup> Respondent averred that although the Petitioner had in this petition specifically sought an order of a permanent injunction against the Respondents for the same purposes as it now seeks in the present application against the Respondents, the court had declined to grant that order in its judgment of 21<sup>st</sup> December 2022. The 1<sup>st</sup> Respondent averred that it appeared that the Petitioner was seeking to have the 1<sup>st</sup> Respondent held in contempt of an alleged order of a permanent injunction which does not exist at all.

## **The Submissions**

The application was argued by way of written submissions. The Petitioner filed submissions dated 30<sup>th</sup> July 2025. The Petitioner submitted that the application was not opposed. The Petitioner submitted that the 1<sup>st</sup> Respondent, which had not filed a replying affidavit or grounds of opposition, sought leave to file a supplementary affidavit, which was granted, but the 1<sup>st</sup> Respondent never filed the supplementary affidavit. The Petitioner submitted that the judgment and decree of this court were served upon the 1<sup>st</sup> Respondent. The Petitioner submitted that the judgment and the decree were binding upon the 1<sup>st</sup> Respondent and its officers. The Petitioner submitted that the 1<sup>st</sup> Respondent had disobeyed the decree of the court, which disobedience had been demonstrated in the photographs attached to the affidavit in support of the application. The Petitioner submitted that any person who commits an act of contempt is liable for punishment. The Petitioner cited several cases in support of its submissions, some of which I will refer to later in the ruling.

The 1<sup>st</sup> Respondent filed submissions dated 4<sup>th</sup> September 2025. The 1<sup>st</sup> Respondent framed two issues for determination by the court: first, whether the Petitioner has made a contempt case against the

two officers of the 1<sup>st</sup> Respondent, and if so, what should be the appropriate punishment to be imposed by the court, and secondly, whether the Petitioner is entitled to the enforcement of the decree issued herein as sought in the application. On the first issue, the 1<sup>st</sup> Respondent submitted that the Petitioner failed to prove the alleged contempt to the required standard. The 1<sup>st</sup> Respondent submitted that the Petitioner had not demonstrated that there was an order issued by the court restraining the alleged activities complained of. The 1<sup>st</sup> Respondent averred that, in any event, the Petitioner had not proved that it was engaged in any of the acts alleged to constitute the contempt of court.

On the second issue, the 1<sup>st</sup> Respondent submitted that the prayer for enforcement of the decree, although sought in the application, was not pursued by the Petitioner in its submissions, and appeared to have been abandoned. The 1<sup>st</sup> Respondent submitted that the court in its earlier ruling explained the procedure for execution against the 1<sup>st</sup> Respondent. The 1<sup>st</sup> Respondent submitted that the Petitioner had not followed that procedure. The 1<sup>st</sup> Respondent submitted that even if the Petitioner were to follow that procedure, execution against the 1<sup>st</sup> Respondent may not be permitted in view of the 1<sup>st</sup> Respondent's

pending appeal to the Court of Appeal against the decree of this court. The court was urged to dismiss the application.

### **Analysis and Determination**

I have considered the Petitioner's application together with the affidavit filed in support thereof. I disagree with the Petitioner that the application was not opposed. When the application first came up on 25<sup>th</sup> June 2025, the 1<sup>st</sup> Respondent's advocate informed the court that they had filed an affidavit in support of their application dated 2<sup>nd</sup> May 2025, which the 1<sup>st</sup> Respondent wished to rely on also in opposition to the present application. In the said affidavit, the deponent stated that he had sworn the affidavit in support of the said application dated 2<sup>nd</sup> May 2025 and the present application. On the same date, the 1<sup>st</sup> Respondent's advocate, having realised the deficiency in the said earlier affidavit, sought leave of the court to file a further affidavit to supplement the same, which leave was granted. The 1<sup>st</sup> Respondent filed the supplementary affidavit, albeit outside the time the court had granted. The issue that the Petitioner should have raised is that of the late filing of the affidavit, rather than treating the affidavit as non-existent. The affidavit is on record, although filed late, and the

court cannot ignore it. If the Petitioner had an issue with it, the court should have been moved to expunge it from the court record. I have therefore also considered the affidavits filed by the 1<sup>st</sup> Respondent in opposition to the application, and the submissions filed by the advocates for the parties. As correctly submitted by the 1<sup>st</sup> Respondent, having regard to the prayers left for consideration by the court, the application raises only two issues for determination by the court, namely, whether a case for contempt of court has been made against the 1<sup>st</sup> Respondent's officers sought to be punished, and whether the Director General of the 1<sup>st</sup> Respondent should be compelled to settle the decretal amount awarded to the Petitioner in the judgment delivered herein on 21<sup>st</sup> December 2022.

On the first issue, the following is my view: In Hardkinson v. Hardkinson [1952] ALL ER 567, the court stated that:

**“It was the plain and unqualified obligation of 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 was discharged and disobedience of such order would as a general rule result in the person disobeying being in contempt and punishable by committal or attachment and in an application**

**to the court by him not being entertained until he had purged his contempt.”**

In Econet Wireless Kenya Ltd v. Minister for Information & Communication of Kenya & Another [2005] 1 KLR 828, the court cited the case of Gulabchand and Popatlal Shah & Another, Civil Application No. 39 of 1990, in which the Court of Appeal stated that:

**“...It is essential for the maintenance of the rule of law and order that the authority and the dignity of our Courts are upheld at all times. The Court will not condone deliberate disobedience of its orders and will not shy away from its responsibility to deal firmly with proved contemnors...”**

In Micheal Sistu Mwaura Kamau v. Director of Public Prosecutions & 4 others [2018] eKLR, the Court of Appeal explained the law on contempt of court as follows:

**“It is trite that to commit a person for contempt of court, the court must be satisfied that he has willfully and deliberately disobeyed a court order that he was aware of. That is made absolutely clear by section 4 of the Contempt of Court Act and the ruling of the Supreme Court in Republic v. Ahmad Abolfathi Mohammed & Another (supra). Secondly, as this Court emphasized in Jihan Freighters Ltd v. Hardware & General Stores Ltd and in A.B. & Another v. R. B. [2016] eKLR, to sustain committal for contempt of court, the order of the**

**court that is alleged to have been deliberately disobeyed must be clear and precise so as to leave no doubt as to what a party was supposed to do or to refrain from doing. Lastly, the standard of proof in committal proceedings is higher than proof on a balance of probabilities, though not as high as proof beyond reasonable doubt. (See *Mutitika v. Baharini Farm (supra)* and *Republic v. Ahmad Abolfathi Mohammed & Another (supra)*.)”**

In *Shimmers Plaza Limited v. National Bank of Kenya Limited* [2015] eKLR, the court stated as follows:

**“We now revisit the issue of service. Was there service of the order said to have been disobeyed on the respondent? There is no dispute that no formal order was extracted and personally served on the respondent and an affidavit of service filed to that effect. In that respect, this case can be distinguished from *Justus Kariuki Mate & Another vs Hon. Martin Wambora* (Wambora case) supra cited by learned counsel for the applicant. On the other hand however, this Court has slowly and gradually moved from the position that the order along with the penal notice must be personally served on a person before contempt can be proved. This is in line with the dispensations covered under 81.8 (1) (supra). Kenya's growing jurisprudence right from the High court has reiterated that knowledge of a court order suffices to prove service and dispense with personal service for the purposes**

**of contempt proceedings. For instance, Lenaola J in the case of Basil Criticos Vs Attorney General and 8 Others [2012] eKLR pronounced himself as follows:-**

**“...the law has changed and as it stands today knowledge supersedes personal service....where a party clearly acts and shows that he had knowledge of a Court Order; the strict requirement that personal service must be proved is rendered unnecessary”**

**This position has been affirmed by this Court in several other cases including the Wambora case (supra). It is important however that the court satisfies itself beyond any shadow of a doubt that the person alleged to be in contempt committed the act complained of with full knowledge or notice of the existence of the order of the Court forbidding it. The threshold is quite high as it involves possible deprivation of a person’s liberty.**

**....Would the knowledge of the judgment or order by the advocate of the alleged contemnor suffice for contempt proceedings? We hold the view that it does. This is more so in a case such as this one where the advocate was in Court representing the alleged contemnor and the orders were made in his presence. There is an assumption which is not unfounded, and which in our view is irrefutable to the effect that when an advocate appears in court on instructions of a party, then it behooves him/her to report back to the client all**

**that transpired in court that has a bearing on the client's case."**

It is on the foregoing principles that the limb of the Petitioner's application seeking to find the two officers of the 1<sup>st</sup> Respondent in contempt of court is to be considered. From the Petitioner's application, the facts constituting contempt of court by the 1<sup>st</sup> Respondent are stated as follows: A judgment was entered herein against the 1<sup>st</sup> Respondent on the 21<sup>st</sup> December 2022, and a decree was issued on 24<sup>th</sup> January 2024. In disregard of the said judgment and decree, the 1<sup>st</sup> Respondent trespassed on the suit property, Title No. Kisumu/Kanyakwar "A"/80, and engaged in the demolition of parts of the building standing thereon, and the construction of the road and drainage next to the building. The Petitioner had a duty to demonstrate that the decree of the court issued on 24<sup>th</sup> January 2024 had restrained the 1<sup>st</sup> Respondent from engaging in the acts said to be constituting the contempt of court on the part of the 1<sup>st</sup> Respondent, and that the 1<sup>st</sup> Respondent engaged in the said acts in disobedience of the decree. I have perused the judgment of the court delivered on 21<sup>st</sup> December 2022 and the decree extracted therefrom. Among the prayers the Petitioner had sought in its petition

was an order of a permanent injunction restraining the respondents from trespassing on the suit property. As correctly submitted by the 1<sup>st</sup> Respondent, the order was not granted by the court. The 1<sup>st</sup> Respondent cannot disobey an order that is not in existence. Even if such an order existed, I am not satisfied from the evidence placed before the court in the form of photographs that the activities that the 1<sup>st</sup> Respondent's employees or agents were engaged in amounted to trespass on the suit property, whose boundary has been held by the court to be general and has not been fixed as provided by the law. I therefore find the contempt alleged against the 1<sup>st</sup> Respondent not proved.

On the second issue, I have at the beginning of this judgment set out the finding I made in the 1<sup>st</sup> Respondent's application seeking to set aside the warrants of attachment and sale that had been issued against it in execution of the decree issued herein. In the ruling, I did set out the procedure that should be followed in the execution of the monetary decree against the 1<sup>st</sup> Respondent. The judgment of the court was against the 1<sup>st</sup> Respondent and not its Director General. The Director General cannot therefore be found in contempt of court for failure to settle the decretal amount unless the court has made an

order directing him/her to make the payment in the discharge of his statutory duty and he has willfully refused to comply. From my earlier ruling, the Petitioner is aware of the procedure for enforcing the performance of statutory/public duties. It is not necessary to repeat the same. For the foregoing reasons, I am unable to compel the Director General of the 1<sup>st</sup> Respondent to settle the decretal amount owed herein to the Petitioner.

### **Conclusion**

In view of the above findings, the Petitioner's application dated 23<sup>rd</sup> April 2025 fails in its entirety. The application is dismissed. Since the 1<sup>st</sup> Respondent filed its supplementary affidavit and submissions out of time, I will deny it the costs of the application. Each party shall bear its costs.

**Delivered and signed at Kisumu on this 13<sup>th</sup> day of November 2025**

**S. OKONG'O  
JUDGE**

Ruling delivered virtually through Microsoft Teams Video Conferencing Platform in the presence of:

Mr. Okoyo for the Petitioner

Mr. Ragot for the 1<sup>st</sup> Respondent

Ms. Jumba for the 2<sup>nd</sup> Respondent

N/A for the 3<sup>rd</sup> Respondent

Ms. Anne-Court Assistant

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