

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT GARISSA
ELCJR CASE NO. E001 OF 2023

**ABDULLAHI SHEIKH AHMED.....APPLICANT/DECREE
HOLDER**

VERSUS

**MANDERA COUNTY GOVERNMENT.....RESPONDENT/JUDGMENT
DEBTOR**

AND

**CECM FINANCE, MANDERA COUNTY GOVERNMENT,
THE COUNTY SECRETARY.....1ST
CONTEMNOR**

**COUNTY GOVERNMENT OF MANDERA.....2ND
CONTEMNOR**

RULING

1. This Ruling relates to the Notice of Motion application dated 13th June 2025, brought by the contemnors (hereinafter **“the Applicants”**). In the said application, the Applicants seek the following orders:

1) [Spent].

2) That this Honourable Court be pleased to stay execution of the warrant of arrest and sentencing orders issued on 28th April 2025, and any consequential orders emanating therefrom, including the sentencing hearing scheduled for 3rd June 2025, pending the

hearing and determination of this application inter parties.

- 3) That the contempt application and all resultant orders issued on 28th April 2025 be struck out for having been filed in ELC JR No. E001 of 2023 rather than in the originating suit, Garissa ELC No. 27 of 2020, contrary to Section 5 of the Judicature Act and Rule 81.4 of the English Civil Procedure Rules as adopted in Kenya.
- 4) That this Honourable Court be pleased to declare and discharge the Applicants from liability for contempt of Court.
- 5) That, without prejudice to the foregoing and in the alternative, this Honourable Court be pleased to issue an order of joint survey between the plaintiff/deGREE decree-holder and the defendant/judgment-debtor to ascertain the existence, acreage, and location of the property known as LR No. 13139/680, Mandera Municipality, to ensure proper execution of the judgment in Garissa ELC No. 27 of 2018, *Abdullahi Sheikh Ahmed v Mandera County Government*, dated 27th September 2020.

6) That the costs of this application be provided for.

2. The application is supported by the Affidavit of Ibrahim Mohamed Adan, the CECM Finance of Mandera County Government, sworn with the authority of his Co-Applicant. He deponed that on 28th April 2025, this Court found them in contempt of Court and directed their arrest and production for sentencing, with warrants of arrest to be executed by the OCPD Mandera East.

3. He contended, however, that the contempt proceedings culminating in those orders were fundamentally flawed and unconstitutional. First, he stated that they were never personally served with the Notice to Show Cause dated 7th March 2025, the Judgment and decree in Garissa ELC No. 27 of 2018, or any related summons. In his view, this failure to serve deprived them of the right to be heard and rendered the process defective.

4. Secondly, he argued that the contempt proceedings were instituted in the wrong forum. He noted that the

application giving rise to the contempt finding was filed in ELC JR No. E001 of 2023, instead of the originating suit, Garissa ELC No. 27 of 2018, which had issued the judgment and decree. He contended that contempt proceedings are not standalone suits and, under **Section 5 of the Judicature Act and Rule 81.4 of the English Civil Procedure Rules**, must be filed in the same cause where the judgment or order was made. He therefore maintained that the proceedings were incompetent, incurably defective and a nullity ab initio, and that the resultant orders were void for want of jurisdiction.

5. Thirdly, he contended that the decree in question relates to LR No. 13139/680 Manderu Municipality, a property which, according to a due diligence report dated 11th April 2024, is non-existent and founded upon fraudulent documentation. He argued that the decree was therefore ambiguous, conditional, and incapable of lawful execution, and that proceeding to punish them for non-compliance would violate their rights under **Articles 47, 50 and 159 of the Constitution**. He added that, in the alternative,

the court ought to direct a joint survey of the property to establish its existence, acreage and location before enforcement.

6. Fourthly, he argued that the decree holder had not exhausted the terms of the judgment. According to him, the judgment required the decree holder to first seek eviction before pursuing monetary compensation, but instead, the decree holder opted to initiate contempt proceedings prematurely.

7. He further averred that compliance with the decree would, in any event, require the disbursement of public funds, which must follow lawful budgetary and procurement processes under the **Public Finance Management Act** and the **County Governments Act**. He stressed that as County Officers, they lacked unilateral authority to release such funds, and doing so would expose them to personal liability for violating constitutional and statutory safeguards on the prudent use of public resources. He argued that enforcing a decree founded on a forged or

non-existent title would itself contravene **Articles 201 and 227 of the Constitution.**

8. Finally, he observed that their imminent sentencing for contempt would cripple the operations of Mandera County Government, which serves a large population, and would, in effect, punish them for disobeying an unclear, irregular, and unlawful decree. For these reasons, he urged the court to set aside the orders of 28th April 2025, discharge them from contempt, and, in the alternative, order a joint survey of the suit land.

9. The Applicants also raised a Notice of Preliminary Objection dated 16th June 2025, challenging the competence and jurisdiction of the contempt proceedings.

The objection was anchored on four grounds:

1) That the contempt application was incurably defective for having been instituted in the wrong forum, namely, ELC JR No. E001 of 2023, instead of the Originating suit, Garissa ELC No. 27 of 2020, where the decree sought to be enforced had been issued.

2) That consequently, this Court lacked jurisdiction to entertain, hear, or issue contempt orders relating to a decree arising from a different matter, and as such, the contempt proceedings and all consequential orders were null and void ab initio.

3) That under Section 5 of the Judicature Act (Cap 8 Laws of Kenya) and Rule 81.4 of the English Civil Procedure Rules, which govern contempt proceedings in Kenya, such proceedings must be instituted within the cause where the impugned order or judgment was issued.

4) That continued reliance on and enforcement of the impugned contempt orders, including any sentencing proceedings, would amount to an unconstitutional exercise of judicial power, offend the principles of fair trial, legality, and due process under Articles 47 and 50 of the Constitution, and occasion a gross miscarriage of justice.

10. The decree-holder, through his Replying Affidavit sworn on 4th August 2025, opposed the application. He

asserted that he properly instituted ELC JR No. E001 of 2023 to enforce the Judgment and decree delivered in Garissa ELC No. 27 of 2018, invoking **Order 53 and Order 29 Rule 3 of the Civil Procedure Rules**, together with **Section 21 of the Government Proceedings Act**, which governs the enforcement of orders against Government entities. He refuted the Applicants' reliance on **Section 5 of the Judicature Act and Rule 81.4 of the English Civil Procedure Rules**, maintaining that contempt proceedings against Government officers need not be filed in the primary suit, and that the proceedings herein were properly before this Court. In his view, this Court had and still has jurisdiction to punish the contemnors for failure to satisfy the decree issued on 27th September 2020.

11. The decree-holder emphasized that the Judgment required the Judgment-debtor to pay the decretal sum within four months, failing which they would be in contempt. He recalled that the Judgment was delivered in the presence of the contemnors' then Advocate, who even

wrote a letter dated 6th December 2023, copied to his Counsel, advising compliance with the decree. Despite this, the contemnors deliberately refused to pay, compelling him to move the Court for contempt proceedings by way of a Notice to Show Cause dated 9th April 2024.

12. The Decree holder asserted that the Notice to Show Cause was duly served on both the contemnors and their Advocates. On the date scheduled for its hearing, the contemnors' Advocate instead applied for review of the Judgment and decree of 27th September 2020. That application for review/setting aside was heard and was dismissed, after which the Notice to Show Cause was heard. The contemnors, though served, failed to contest the proceedings. Summons were subsequently issued commanding them to attend Court, but they again failed to appear. On 25th February 2025, the Court found the contemnors in contempt and ordered them to pay the decretal sum; failing to do so, they were to be arrested and presented for sentencing. It was only after this point

that they changed Advocates and filed the present application.

13. The decree-holder added that before commencing contempt proceedings, he had attempted to evict the Judgment-Debtor, but this was frustrated by the contemnors' refusal to vacate. He disputed claims that the Judgment of 27th September 2020 was ambiguous or incapable of enforcement, describing them as mere ploys to disobey and undermine the authority of the Court. In his view, the questions of ownership, existence, and location of the suit property had already been canvassed and conclusively determined during the trial and in the unsuccessful application for review. The contemnors were simply seeking a **“second bite of the cherry.”**

14. The decree-holder insisted that the decree was lawful, clear, and binding, and that the contemnors have wilfully disobeyed it. He described the present motion as an afterthought, frivolous, vexatious, and an abuse of the Court process, advanced only to delay justice and deny

him the fruits of his judgment. He therefore urged the Court to dismiss the application with costs.

15. The Decree Holder filed submissions dated 15th September 2025 in opposition to both the Preliminary Objection and the application. He framed five issues for the Court's consideration.

1) Whether there existed court orders dated 28th April 2025 or a Notice to Show Cause dated 7th March 2025 as alleged by the Applicants.

16. Counsel submitted that no such orders or notice exist. He clarified that the relevant order was made on 27th September 2023, when this Court directed the contemnors to pay the decretal sum within four months, failure to which they would be deemed in contempt. According to Counsel, the Applicants' reliance on non-existent dates was misleading, and the present application should fail on that basis alone.

2) Whether this Court has jurisdiction to entertain contempt proceedings in this matter.

17. Counsel maintained that the present proceedings were properly instituted for the enforcement of a judgment and decree against the County Government of Mandera, which is a Government entity. He relied on **Order 29 Rule 3 of the Civil Procedure Rules** and **Section 21 of the Government Proceedings Act**, which provide the procedure for enforcing decrees against Government, noting that Government is shielded from ordinary execution processes. Counsel argued that the Applicants' contention that contempt could only be pursued in the originating suit was baseless. He submitted that **Section 5 of the Judicature Act** vests the High Court and Court of Appeal with jurisdiction to punish for contempt without prescribing the particular form, forum, or procedure for institution. In his view, neither **Section 5 nor Rule 81.4 of the English Civil Procedure Rules** required that contempt proceedings be filed in the primary suit.

3) Whether the Court should declare and discharge the Applicants from liability for contempt.

18. Counsel submitted that the contemnors had acted in open defiance of the decree of 27th September 2020 and the subsequent enforcement order of 27th September 2023. He maintained that they had wilfully failed to satisfy the judgment despite having notice of the same, including through their advocate on record, who had even communicated the Court's directions in writing. In his view, the Applicants had not provided any cogent reason to justify discharge from liability, and their continued failure to purge the contempt warranted punishment.

4) Whether the Court should order a re-survey of the suit property.

19. On this issue, counsel submitted that questions concerning the existence, location or acreage of the suit property were raised during the hearing of the main suit and rejected by the trial Court. The Applicants had also pursued review of the Judgment, which was dismissed. He argued that the present request for a joint survey was simply a disguised attempt to re-open the case, contrary to the principle of finality of litigation. He further contended that this Court, being functus officio, lacked

jurisdiction to re-examine or alter the judgment of 27th September 2020.

5) Whether the contemnors' conduct amounts to abuse of court process.

20. Counsel submitted that the Applicants had persistently and wilfully refused to obey the decree and the enforcement order, and instead had resorted to filing multiple applications to delay and frustrate execution. This conduct, he argued, amounted to a clear abuse of the Court process and demonstrated contempt for the authority of the Court.

21. In conclusion, Counsel urged the Court to dismiss both the application and the Preliminary Objection, affirm the finding of contempt, and proceed to punish the contemnors in accordance with the law so as to vindicate the authority of the Court and allow the Decree Holder to enjoy the fruits of his judgment.

22. The 1st and 2nd Contemnors filed their written submissions dated 24th September 2025. They identified five issues for determination.

23. On the first issue, whether the contempt application was filed in the proper forum and whether this Court has jurisdiction to entertain it, counsel submitted that **Rule 81.4 of the English Civil Procedure Rules** provides that a committal application must be made in the proceedings in which the judgment or order was made. In Counsel's view, contempt proceedings are not free-standing; they cannot be initiated in collateral causes but must be anchored in the file where the decree emanated. It was argued that in the present case the decree arose from Garissa ELC No. 27 of 2018, yet the contempt proceedings were launched in ELC JR No. E001 of 2023. Counsel contended that this was a fundamental jurisdictional error rendering the application incompetent ab initio.

24. On the second issue, whether the contempt application met the procedural requirements on form and service, counsel submitted that the applicants were never personally served with the Notice to Show Cause, the decree in Garissa ELC No. 27 of 2018, or the contempt application. Nor was there any order dispensing with service. It was submitted that these omissions rendered the proceedings incurably defective from inception.

25. On the third issue, whether the applicants were proper parties to cite for contempt in light of the **Public Finance Management Act** (PFMA) and the **County Government Act**, counsel argued that **Sections 102-104 of the County Government Act** and **Sections 10, 11 and 149 of the PFMA** designate departmental chief officers as the accounting officers of their respective departments. It was these officers, not the applicants, who bore responsibility for budgeting, prioritizing decrees, initiating requisitions, processing payments, and accounting for expenditure. Counsel maintained that the CECM for Finance merely played a supervisory and policy

role over the County Treasury. The proper party to be cited should therefore have been the Chief Officer of the Department of Technical and Vocational Training. To hold otherwise, Counsel submitted, would amount to compelling the applicants to act ultra vires and expose them to personal liability under **Section 149 of the PFMA.**

26. On the fourth issue, Counsel addressed whether the decree was ambiguous and unlawful. It was argued that the decree in Garissa ELC No. 27 of 2018 was conditional, providing that the County Government either surrender the land within six months or, in the alternative, pay compensation. Counsel submitted that the two limbs were sequential rather than concurrent, such that eviction or surrender had to precede compensation. In their view, this process was not adhered to, and enforcement proceedings based on such an ambiguous decree could not stand.

27. Finally, on the issue of public interest, Counsel submitted that enforcing a decree grounded in a disputed and

fraudulent title, through contempt proceedings commenced without jurisdiction, would not only squander taxpayers' resources but also erode the rule of law. Compelling the applicants to pay Kshs. 11,730,733.33/- on the basis of a forged parcel, it was argued, would deplete the County's limited resources and expose them personally to surcharge under **Section 149 of the PFMA**. Counsel urged the Court to find that public interest weighed heavily against enforcing the current contempt orders, as doing so would sanction unlawful expenditure and undermine confidence in public financial governance.

28. I have carefully considered the application dated 13th June 2025, the Supporting Affidavit, the Preliminary Objection filed contemporaneously therewith, the Replying Affidavit sworn by the Decree Holder, and the parties' written submissions. From the record, the following issues arise for determination:

1) Whether the contempt proceedings were properly instituted in ELC JR No. E001 of

2023 as opposed to Garissa ELC No. 27 of 2018.

2) Whether the Applicants were properly cited and served in accordance with the procedural requirements governing contempt of Court.

3) Whether the Applicants are entitled to stay of execution and discharge from the contempt proceedings.

4) Whether the decree issued in Garissa ELC No. 27 of 2018 is ambiguous, conditional, or otherwise unenforceable.

5) Whether the Applicants should be discharged from liability for contempt and whether the application is merited.

Whether the contempt application was filed in the proper forum and whether this Court has jurisdiction to entertain it

29. The 1st and 2nd Contemnors argued that the contempt proceedings were incurably defective for having been

instituted in ELC JR No. E001 of 2023 instead of Garissa ELC No. 27 of 2018, the suit from which the decree emanated. They placed reliance on **Rule 81.4 of the English Civil Procedure Rules**, applicable in Kenya through **Section 5(1) of the Judicature Act (Cap 8)**, which provides:

“A committal application must be made in the proceedings in which the judgment or order was made.”

30. It was their submission that contempt proceedings are not free-standing. They must be anchored in the very suit that gave rise to the decree, otherwise parties are exposed to double jeopardy, uncertainty is created, and due process undermined. On that basis, they contended that this court lacked jurisdiction and the proceedings were incompetent ab initio.

31. The Decree Holder, however, defended the choice of forum. Counsel submitted that execution of decrees against the Government, including County Governments,

is governed by a special statutory regime. Reliance was placed on **Order 29 rule 2 of the Civil Procedure Rules**, which states:

2. Rules to apply to proceedings by or against the Government [Order 29, rule 2]

1) Except as provided by the Government Proceedings Act (Cap.40) or by these Rules

—

(a) these Rules shall apply to all civil proceedings by or against the Government; and

(b) Civil proceedings by or against the Government shall take the same form as civil proceedings between subjects and shall, if no special form is applicable, take the form of a suit instituted by a plaintiff.

2) No order against the Government may be made under—

(a) Order 14, rule 4 (Impounding of documents);

(b) Order 22(Execution of decrees and orders);

(c) Order 23(Attachment of debts);

- (d) Order 40(Injunctions); and**
- (e) Order 41(Appointment of receiver).**

32. Counsel further cited **Section 21(4) of the Government Proceedings Act, Cap 40**, which provides:

“Save as aforesaid, no execution or attachment or process in the nature thereof shall be issued out of any such court for enforcing payment by the Government of any such money or costs as aforesaid, and no person shall be individually liable under any order for the payment by the Government, or any Government department, or any officer of the Government as such, of any money or costs.”

33. It was submitted that these provisions insulate the Government from the ordinary processes of execution and attachment, thereby compelling decree holders to seek enforcement through Judicial Review proceedings by way of mandamus or related reliefs. That is why the Decree Holder instituted ELC JR No. E001 of 2023 to facilitate satisfaction of the decree in Garissa ELC No. 27 of 2018.

34. The courts have consistently affirmed this position. In **Republic v Permanent Secretary, Ministry of State for Provincial Administration and Internal Security ex parte Fredrick Manoah Egunza [2012] eKLR**, the Court held:

“...Unlike in other civil proceedings, where decrees for the payment of money or costs had been issued against the Government in favour of a litigant, the said decree can only be enforced by way of an order of mandamus compelling the accounting officer in the relevant ministry to pay the decretal amount as the Government is protected and given immunity from execution and attachment of its property/goods under Section 21(4) of the Government Proceedings Act.”

35. Against this backdrop, I am persuaded that although **Rule 81.4 of the English Civil Procedure Rules** requires committal applications to be made in the same cause where the order was issued, that requirement must be read in harmony with the statutory framework governing enforcement against government entities. The filing of contempt proceedings in ELC JR No. E001 of 2023, a file that arose solely for purposes of enforcing the judgment in

Garissa ELC No. 27 of 2018, was not a jurisdictional defect but a statutory necessity.

36. Accordingly, I find that this Court is properly seized of jurisdiction, and the objection raised by the 1st and 2nd Contemnors on this ground is without merit.

Whether the contempt application met the procedural requirements on form and service

37. The Applicants contended that the contempt proceedings were incurably defective due to a lack of personal service. They maintained that they were never served with the decree in Garissa ELC No. 27 of 2018, the contempt application, or the Notice to Show Cause dated 7th March 2025, and that no order of the Court ever dispensed with service. They argued that since contempt proceedings are quasi-criminal in nature, strict compliance with the procedural requirements on service is mandatory, and failure to meet this threshold renders the proceedings a nullity.

38. The Decree Holder, however, submitted that the record tells a different story. First, the Judgment of 27th September 2020 was delivered in the presence of the contemnors'

Advocate on record. That Advocate subsequently wrote a letter dated 6th December 2023, copied to the Respondent's Counsel, expressly advising the contemnors to comply with the Court's directions. The decree holder, therefore, maintained that the contemnors knew of the decree from the very outset.

39. This Court is persuaded that the objection on want of service is without merit. Three strands of evidence demonstrate that the Applicants had knowledge of the decree and the contempt proceedings and that the decree and contempt proceedings were in fact served on the Applicants Counsel on record.

40. First, the Judgment of 27th September 2020 was delivered in the presence of counsel for the Applicants. A party who is represented by Counsel is deemed to have notice of the Court's decision, and such knowledge is imputed to the client. The record further shows that their Advocate subsequently advised them, by a letter dated 6th December 2023, to comply with the Court's directions.

41. Second, the Applicants have at all material times been represented by Advocates who have attended Court, including in the instant contempt application. Continued legal representation is a strong indicator of knowledge of the orders in issue.

42. Third, there is on record an Affidavit of Service sworn by Abdikadir Abdullahi Abdi, confirming that the Applicants were personally served with the summons and supporting documents and that they acknowledged receipt. This Affidavit was not controverted and forms part of the evidence before Court.

43. The jurisprudence on contempt is clear that personal service, though desirable, is not the only avenue by which a contemnor may be shown to have knowledge of a Court order. In the case of **Justus Kariuki Mate & Another v. Martin Nyaga Wambora & Another [2014] eKLR**, the Court of Appeal held that:

“The trial Court was correct in holding that the law as then was in contempt of court had since

changed; the law as it stands today is that knowledge of an order is sufficient for purposes of contempt proceedings.”

44. Applying the above principle, the Applicants had knowledge of the decree and the contempt application through their Advocates, through direct service as deponed in the Affidavit of Service, and by their required personal attendance in Court on 28th April 2025, which they ignored. Their disobedience was therefore deliberate. The objection on service cannot stand and is hereby rejected.

Whether the Applicants were proper parties to the contempt proceedings

45. The Applicants submitted that they were wrongly cited. They contended that under **Sections 102-104 of the County Governments Act** and **Sections 10, 11 and 149 of the Public Finance Management Act (PFMA)**, the Accounting Officer of a County Department is the Chief Officer of that Department. It is the Chief Officer who prepares budgets, prioritizes decrees, initiates requisitions, processes payments, and accounts for expenditure.

46. They argued that the CECM Finance only exercises supervisory and policy functions over the County Treasury and does not have the statutory mandate to settle decrees. Accordingly, if any Officer were to be cited for contempt, it should have been the Chief Officer of the Department of Technical and Vocational Training, since the decree in Garissa ELC No. 27 of 2018 concerned land held under that docket.

47. They further argued that to compel the CECM Finance to pay directly would expose them to personal liability and surcharge under **Section 149 PFMA**, which criminalizes the expenditure of public funds outside statutory procedure. In their view, citing them for contempt was contrary to law and unfair.

48. Upon review of the record, it is clear that the 1st and 2nd Applicants were the very parties cited for personal arrest and committal to Civil Jail. Summons were issued against them, and the Affidavit of Service sworn by Abdikadir Abdullahi

Abdi confirms that both were personally served with the summons and other related documents, which they acknowledged by signing. They were required to attend Court on 28th April 2025 to answer to the charge of contempt, but failed to do so. It was on this basis that the Court found them in contempt and ordered that warrants of arrest do issue for their production in Court for sentencing.

49. It follows that whether they were the **“right”** officers to be cited is no longer an open question at this stage. Having been served and afforded an opportunity to appear before the Court, the Applicants could have raised a Preliminary Objection or sought to demonstrate misjoinder before the contempt finding was made. They did not. They equally have not sought to set aside the subsisting orders of 28th April 2025, finding them in contempt.

50. The Court, therefore, takes the view that once a party has been summoned, served, and found in contempt, the proper course is to challenge that order directly through review, setting aside, or Appeal. It is not available to the contemnors

to reopen the question of their joinder by way of collateral attack in the present application.

51. Accordingly, the Court finds that the Applicants, having been duly summoned and found to be in contempt, cannot now avoid liability on the basis that other County Officers ought to have been summoned. That argument comes too late in the day.

Whether the Applicants are entitled to stay of execution and discharge from the contempt proceedings

52. The instant application does not constitute a fresh contempt application. The Applicants were already cited in the original proceedings, duly served, and a finding of contempt entered against them. Summons were directed to them specifically, and when they failed to attend, the Court on 28th April 2025 proceeded to hold them in contempt. That finding has not been set aside on review, nor overturned on Appeal. It therefore remains valid and binding.

53. It follows that the Applicants' liberty is presently at stake not because of defective proceedings, but because of their own default in obeying summons and orders of the Court. Whether they were the correct officers to be cited was an issue they ought to have raised at the time of service or by way of objection. Having failed to do so, and having been found in contempt, that question is not for determination at this stage having already been determined.

54. On the material before this Court, the Applicants have not demonstrated any incurable defect that would render the contempt proceedings null and void. Their claim that they were wrongly cited does not in itself vitiate the contempt already entered, especially since they have not moved the Court to review or set aside the finding of 28th April 2025. What remains pending is sentencing, and unless and until the contempt order is vacated, the Applicants remain liable.

55. To grant a discharge at this stage would set an undesirable precedent where contemnors, having ignored summons and failed to attend Court, could later evade

responsibility by belatedly disputing their citation. Such an approach would undermine the authority of the Court and embolden parties to disregard Court orders with impunity, contrary to the Constitutional imperative in **Article 10(2)(a)** that upholds the rule of law as a national value. This Court cannot sanction such conduct.

56. The prayer for stay and discharge of the warrants of arrest therefore, lacks merit and is declined.

Whether the decree was ambiguous and unenforceable.

57. The applicants argued that the decree issued in Garissa ELC No. 27 of 2018 was ambiguous and conditional. According to them, the judgment directed that the County Government either:

- 1) surrender the land within six months, or**
- 2) in the alternative, pay compensation.**

58. They submitted that these two limbs are sequential, not concurrent and meant that the County was first required to

surrender or be evicted, and only upon failure would the fall back of compensation arise. They argued that this procedure was not followed, hence the decree was not capable of enforcement in contempt proceedings. They further contended that contempt proceedings are quasi-criminal and therefore any ambiguity in the decree must be resolved in favour of the alleged contemnors.

59. The decree holder submitted that there is no ambiguity in the decree. The orders were clear and binding, requiring compliance by the County Government either by surrendering the land or paying compensation. They argued that if the applicants considered the decree ambiguous, the proper recourse would have been to apply for clarification or review in the originating suit, not to disregard compliance. They maintained that until varied or set aside, a decree of the Court must be obeyed.

60. It is a settled principle that a party cannot disobey a Court order on the ground that it is irregular, ambiguous or unlawful unless the order has been set aside or varied.

61. In the present case, the decree provided two alternative modes of satisfaction: surrender of land or payment of compensation. The Applicants interpreted them as sequential, but nothing in the wording of the Judgment (as read in its entirety) suggests that surrender must precede compensation. Even if the applicants genuinely believed there was ambiguity, their obligation was to move the court in Garissa ELC No. 27 of 2018 for interpretation or variation. They did not do so. Instead, they chose non-compliance.

62. The Applicants cannot rely on the alleged ambiguity of the decree as a defence to contempt. The decree was clear enough to bind them, and in any event, they never sought clarification or review. The decree holder was clear that he was pursuing satisfaction of the decree by way of being compensated and there was no ambiguity in regard to that.

Whether the contemnors' conduct amounts to abuse of the Court process

63. The decree holder submitted that the applicants have persistently failed to comply with the decree of 27th

September 2020 and the enforcement order of 27th September 2023. Instead of obeying the orders, they have filed multiple applications aimed at delaying, avoiding, and undermining the lawful execution of the Judgment. Counsel maintained that this pattern of conduct demonstrated open disregard of the authority of the Court and constituted to abuse of the Court process. He urged the Court to decline the invitation to indulge the contemnors any further and instead proceed to enforce compliance.

64. The Applicants argued that they are not abusing the process of the Court but rather exercising their Constitutional right to challenge proceedings they consider a nullity. They submitted that the contempt proceedings, having been initiated in the wrong forum and against wrong parties, are incurably defective, and that their challenge is a legitimate effort to defend their liberty and uphold the Constitution. They maintained that raising objections to jurisdiction and due process cannot amount to abuse, but is, in fact, consistent with the principles of legality under **Articles 47 and 50 of the Constitution.**

65. In the present case, the record reveals that the Applicants were found in contempt on 28th April 2025 after failing to attend Court despite having been duly served. Summons had been issued to them directly, and they did not move the Court to set aside or vary those orders. Instead, they returned with the instant application, re-arguing issues of jurisdiction, service, and propriety of parties, while the contempt finding still stood. The instant application was definitely filed by the Applicants to derail the execution process that was in motion. That it did but did not take away the necessity to have the decree settled.

66. As I have found the Applicants Notice of Motion dated 16th June 2025 and the Preliminary objection of the same to be devoid of merit, I order the same dismissed with costs to the Respondent.

67. As I on 25th June 2025 ordered the warrants of arrest against the contemnors to be lifted, I direct that this matter be mentioned on 27th January, 2026 for further directions.

**RULING DATED, SIGNED AND DELIVERED VIRTUALLY AT
KERUGOYA THIS 13TH DAY OF NOVEMBER 2025.**

J. M. MUTUNGI

ELC - JUDGE

ORIGINAL