



Mufumala v Situma (Being sued as the Legal Representative of the Estate of Tolokwa Malele – Deceased) (Environment and Land Case E001 of 2022) [2025] KEELC 8237 (KLR) (27 November 2025) (Ruling)

Neutral citation: [2025] KEELC 8237 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT BUNGOMA
ENVIRONMENT AND LAND CASE E001 OF 2022
EC CHERONO, J
NOVEMBER 27, 2025**

BETWEEN

GEORGE WALUBENGO MUFUMALA APPLICANT

AND

VERSUS SIMON WERUNGA SITUMA (BEING SUED AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF TOLOKWA MALELE – DECEASED) RESPONDENT

(Being sued as the Legal Representative of the Estate of Tolokwa Malele – Deceased)

RULING

1. The Applicant’s Notice of Motion dated 27th day of March, 2023 seeks orders that the Respondent herein be cited and punished for alleged contempt of this Court’s orders issued on 19 July 2022.
2. The Applicant states that the Court preserved the status quo over land parcel West Bukusu East Siboti 865, restraining the Respondent, his servants or agents from interfering with the 4 acres occupied by the Applicant pending the hearing and determination of the suit.
3. It is alleged that despite service of the order, the Respondent entered the land, cut down trees and cultivated the same in violation of the Court’s directives. The Applicant relies on the affidavit of a process server and photographs annexed to the supporting affidavit.
4. The Respondent did not file any response to the application.

Issues for Determination

5. This Court considers the following issues commend for determination;
 - (iii) Whether the application meets the legal threshold for contempt.



- (ii) Whether the Applicant has proved willful disobedience of that order;
- (i) Whether the Respondent had knowledge of the Court order of 19 July 2022;

The Law

6. The *akn ke act 2016 46 Contempt of Court Act*, 2016 having been declared unconstitutional in Kenya Human Rights Commission v Attorney General & Another (2018) eKLR, contempt proceedings are now anchored on:
 - (a) Section 5(1) of the *akn ke act 1967 16 Judicature Act*;;
 - (c) Section 63(c) of the *akn ke act 1924 3 Civil Procedure Act*
 - (b) Order 40 Rule 3 of the Civil Procedure Rules
7. The governing test was set out in *Kristen Carla Burchell v Barry Grant Burchell* (2012) eKLR, to the effect that an applicant must establish:
 - (i) the existence of a valid court order;
 - (iii) willful disobedience of the order.
 - (ii) knowledge of the order by the alleged contemnor;
8. The standard of proof for contempt is higher than on a balance of probabilities but below proof beyond reasonable doubt, as stated in *Mutitika v Baharini Farm Ltd* (1985) KLR 229.
9. Because contempt proceedings threaten a person's liberty, courts must exercise this jurisdiction with great caution (see *Republic v Ahmad Abolfathi Mohammed & Another* (2018) eKLR).

Legal Analysis And Determination.

A. Existence of a Valid Court Order

10. There is no dispute that on 19 July 2022, this Court issued an order preserving the status quo over the suit property. This requirement is therefore satisfied.

B. Proof of Knowledge of the Order

11. The process server's affidavit of service indicates that service was allegedly effected through the Respondent's wife, MERCY, who declined to sign the return copy.
12. The Applicant has not provided evidence showing that the Respondent personally received the order or that his wife actually communicated the contents to him.
13. Knowledge cannot be presumed where evidence presented is inconclusive. In *Nyamongo & Another v Kenya Posts & Telecommunications Corp* (1995–1998) 2 EA 173, the Court held that knowledge must be proved clearly and not inferred from mere assumptions.
14. While the Court of Appeal in *Shimmers Plaza Ltd v National Bank of Kenya* (2015) eKLR stated that personal service is not mandatory where knowledge is demonstrated, the Applicant in this case has not sufficiently shown that the Respondent became aware of the order.
15. This Court therefore finds that knowledge of the order has not been proved to the required standard.



C. Proof of Willful Disobedience

16. The Applicant alleges that the Respondent cultivated the land and cut down trees. However:
 - (i) The photographs annexed lack dates and contextual linkage to the Respondent;
 - (iii) The property is under dispute and occupation issues remain contested, making attribution of the alleged acts unclear.
 - (ii) There is no independent evidence – from neighbours, chiefs, police or other witnesses – confirming the Respondent’s involvement;
17. The Court of Appeal in *Samuel M. N. Mweru & Others v National Land Commission & 2 Others* (2020) eKLR emphasized that willful disobedience must be proved with clarity and precision.
18. On the evidence presented, this Court is not satisfied that the Respondent deliberately and knowingly disobeyed the Court order.

Disposition

19. Contempt is a quasi-criminal jurisdiction, and courts must act only on clear and unequivocal evidence. The Applicant has not demonstrated knowledge of the order on the part of the Respondent nor established willful disobedience.
20. The Notice of Motion dated 27th day of March 2023 is therefore without merit and the same is dismissed.
21. For avoidance of doubt, the parties shall continue to abide by the existing status quo order of 19 July 2022 until the suit is heard and determined.
22. Costs of this application shall abide the outcome of the main suit.
23. It is so ordered.

READ, DELIVERED AND SIGNED AT BUNGOMA THIS 27TH DAY OF NOVEMBER, 2025

HON. E.C CHERONO

ELC JUDGE

In the presence of;

1. Applicant-present
2. Respondent-present.
3. Bett C A.

