

**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT NAIVASHA**

**ELC CASE NO. 101 OF 2024**

**(FORMERLY NAKURU ELC 12 OF 2024)**

**JASON KARANJA MBUGUA & .....1<sup>ST</sup>**

**PLAINTIFF**

**GODFREY WAINAINA CHEGE.....2<sup>ND</sup>**

**PLAINTIFF**

**JOSPHAT KAUNDA MAIKARA.....3<sup>RD</sup>**

**PLAINTIFF**

**JOSEPH KIPLANGAT KILISIO.....4<sup>TH</sup> PLAINTIFF**

**JOSEPH MUNGAI KAMANO.....5<sup>TH</sup>**

**PLAINTIFF**

**EDWIN MAINA.....6<sup>TH</sup> PLAINTIFF**

**WILLIAM KANGETHE THUKU.....7<sup>TH</sup>**

**PLAINTIFF**

**GIBSON MWANGI.....8<sup>TH</sup>**

**PLAINTIFF**

**VERSUS**

**AGRICULTURAL DEVELOPMENT CORPORATION.....1<sup>ST</sup>**

**DEFENDANT**

**LANDS LIMITED.....2<sup>ND</sup>**

**DEFENDANT**

**KAUMBA FENCING MASTERS LIMITED.....3<sup>RD</sup>**

**DEFENDANT**

**NATIONAL YOUTH SERVICE.....4<sup>TH</sup>**

**DEFENDANT**

**ANTHONY LANGAT MOSONIK.....5<sup>TH</sup>**

**DEFENDANT**

**DIRECTOR OF SURVEY.....6<sup>TH</sup>**

**DEFENDANT**

**CHIEF LAND REGISTRAR.....7<sup>TH</sup>**

**DEFENDANT**

**DIRECTOR OF LAND ADMINISTRATION.....8<sup>TH</sup>**

**DEFENDANT**

**HON. ATTORNEY GENERAL.....9<sup>TH</sup> DEFENDANT**

**RULING**

1. Before me for determination are two application both seeking Contempt of Court proceedings against Managing Director and Cooperation Secretary of the Agricultural Development Corporation, Mr. Januaries Kilile employee at the ADC, Mr. Meshack Kemei an employee ADC, the Director General of the National Youth Service and the 5<sup>th</sup> Defendant Respondent wherein the Applicants seek that the above captioned individuals be committed to civil jail for content of court orders issued on the 20<sup>th</sup> March 2025 (sic), 25<sup>th</sup> July 2024 and restated on 20<sup>th</sup> September 2024 respectively.
2. The first twin Applications dated the 28<sup>th</sup> March 2025 are a Notice of Motion brought by the 2<sup>nd</sup>, 3<sup>rd</sup> and 6<sup>th</sup> Plaintiffs respectively pursuant to the provisions of Article 159 (2) (d) of the Constitution, Section 5 (1) of the Judicature Act, and Section 1A, 1B and 3A of Civil Procedure Act and all other enabling provisions of the Law seeking that the Managing Director and Corporation Secretary of the Agricultural Development Corporation, the Director-General of the National Youth Service and the 5<sup>th</sup> Defendant/Respondent be committed to civil jail for a period of six months for contempt of court orders issued on the 20<sup>th</sup> March 2025 (sic). That in the alternative a fine of Kshs. 10,000,000/= be imposed on each of them, or any such other amount as the court may deem fit.
3. The Applicants also sought that in the interim, the Court orders the Defendants/Respondents to recognize the Applicants as the lawful occupants of the parcels of land and to maintain the status quo, refrain from entry and/or interference with the parcels of land which orders should be enforced by the OCS Kongoni Police Station.

4. The said applications were supported by the grounds on the face of it, the Statutory Statement of Facts as well as the Affidavits in Verification of Facts dated the 28<sup>th</sup> March 2024, and sworn by Geoffrey Wainaina Chege, Josphat Kaunda Maikara and Edwin Maina, the 2<sup>nd</sup>, 3<sup>rd</sup> and 6<sup>th</sup> Plaintiffs herein who individually deposed that they were the legal proprietors of the suit parcels of land described as LR Nos. Plot No. 20591/117 EX ADC NDABIBI, Plot No. 20591/98 & 99 EX ADC NDABIBI, Plot No. 20591/114 EX ADC NDABIBI, Plot No. 20591/116 EX ADC NDABIBI, Plot No. 20591/118 EX ADC NDABIBI, L.R 7281/15 and 7281/13 (Originally 7281/12/12).
5. That subsequently, on 20<sup>th</sup> September, 2024, the court granted them orders of status quo to preserve the suit parcels of land as follows;  

*“That an order of status quo is herein issued to be maintained by all the parties in that it must be understood that the Applicants are in occupation of the land parcels...”*
6. That the said court order was extracted and duly served upon the Respondents who affixed their stamps on the same.
7. That nonetheless, on the 19<sup>th</sup> February 2025, the 1<sup>st</sup>, 4<sup>th</sup> and 5<sup>th</sup> Respondent accompanied by a massive battalion of over 50 officers including those of the 4<sup>th</sup> Respondent had invaded their parcels of land and maliciously destroyed all the crops and property therein as evidenced by pictures in annexure marked as GWC3 and EM3, sworn affidavits of two caretakers marked as GWC4 and EM4 and two valuation reports marked as GWC5 and EM5. That them being guilty contempt of court orders, they should be condemned to pay the fine to restore them to their original position.
8. That they had lost all their property and were now living in borrowed shelter alongside their former neighbors and that they had sought the services of a valuation expert to estimate the value of the property that they had lost during the illegal entry and interference.
9. In response and in opposition to the Applicants’ Application, the 1<sup>st</sup> and 2<sup>nd</sup> Defendants filed a Replying Affidavit dated 14<sup>th</sup> July 2025 sworn by

Nicholas Ayugi, the Administrator- Lands Limited (a wholly owned subsidiary of Agricultural Development Corporation) who denied each and every allegation of contempt of court attributed to the 1<sup>st</sup> and 2<sup>nd</sup> Defendants/Respondent and/or their officers or agents as outlined in the applications deponing that the allegations contained in the said applications were not only misleading and exaggerated but also patently false, unsupported by credible or admissible evidence, and appeared to be designed to unfairly portray the 1<sup>st</sup> and 2<sup>nd</sup> Defendants in bad light before the Honourable Court.

10. He confirmed that since the issuance of the orders of 20<sup>th</sup> September 2024, the 1<sup>st</sup> and 2<sup>nd</sup> Defendants had conducted themselves with utmost restraint, discipline and in absolute fidelity to the said orders and had not in any manner or form, directly or indirectly, breached, disobeyed, disregarded or undermined the said orders of the Honourable Court and neither had they entered upon, nor authorized any third party to enter upon the aforementioned parcels of land.
11. That they had not undertaken, facilitated, procured or otherwise sanctioned any activity thereon, including demolition, cultivation, or harassment of alleged occupants, as it had been sensationally claimed.
12. That the assertion that on 19<sup>th</sup> February 2025, the Defendants, accompanied by over 20 armed police officers and 30 other individuals allegedly affiliated to the 4<sup>th</sup> Defendant invaded the properties in question, demolished structures and threatened or violated the rights of the Applicants was not only unfounded and speculative but was also unsupported by any verifiable, photographic, documentary or independent evidence linking such action to the 1<sup>st</sup> or 2<sup>nd</sup> Defendant.
13. That an individual herein mentioned as Mr. Januaris Kilile, was neither a staff of the 1<sup>st</sup> Defendant or 2<sup>nd</sup> Defendant nor was he acting under their instruction or authority on the alleged date and an attempt to associate him with acts of contempt or unlawful conduct, without substantiation or

evidence of delegation, instruction or control by the 1<sup>st</sup> or 2<sup>nd</sup> Defendant was purely malicious and unjustified.

14. That the 1<sup>st</sup> and 2<sup>nd</sup> Defendants continue to maintain a neutral, restrained and respectful posture pending the full determination of the dispute and had not taken any steps or actions which could, even remotely, be construed as contemptuous or in violation of the orders of the Honourable Court.
15. That in the absence of cogent, credible and verifiable evidence demonstrating willful, deliberate and flagrant disobedience of court orders by the 1<sup>st</sup> and 2<sup>nd</sup> Defendants or their agents, the application for contempt was premature, misplaced and ought to be dismissed with costs to the 1<sup>st</sup> and 2<sup>nd</sup> Defendants.
16. The second Application dated 10<sup>th</sup> June 2025 is brought by the 4<sup>th</sup> Plaintiff pursuant to the provisions of Sections 1A, 1B and 3A of the Civil Procedure Act, Order 40 Rule 3, Section 5 (1) of the Judicature Act and Article 159 (2) of the Constitution wherein he sought for the following persons to be held in contempt of the Court Orders issued on 25<sup>th</sup> July 2024 and restated on 20<sup>th</sup> September 2024 and thereafter be committed to civil jail for a period of 6 months.
  - a. The Managing Director Agricultural Development Corporation.
  - b. Mr. Januaries Kilile employee ADC.
  - c. Mr. Meshack Kemei employee ADC.
  - d. The Director General National Youth Service
17. That in the alternative, a fine of Kshs. 10,000,000/= be imposed on each of them, or any such other amount as the court may deem fit. He also sought that in the interim, he be reinstated as the lawful occupant of Plot No. 20591/116 ex ADC Ndabibi pending the determination of the suit and that the O.C.S Kongoni Police Station do supervise the enforcement and observance of the orders issued herein.

18. The Application was premised on the grounds on the face of it and the Supporting Affidavit of equal date sworn by Joseph Kiplangat Kilisio, the 4<sup>th</sup> Plaintiff herein who deponed that vide an order of 7<sup>th</sup> March 2024 and 31<sup>st</sup> July 2024, the court had directed parties to maintain the status quo with the understanding that the Applicants were in occupation of the suit parcels of land being L.R. Nos. Plot No. 20519/117 ex ADC Ndabibi, Plot No. 20591/98 & 99 ex ADC Ndabibi, Plot No. 20591/114 ex ADC Ndabibi, Plot No. 20591/116 ex ADC Ndabibi, Plot No. 20591/118/ex ADC Ndabibi, L.R No. 7281/15 and 7281/13 Original 7281/12/12.
19. That the said orders had been extended by the court from time to time and still subsist to date them having been served upon the Defendants on 12<sup>th</sup> March 2024 and 31<sup>st</sup> July 2024 respectively by Mr. Henry Omega a licensed court process server.
20. That however, despite service of the aforesaid orders, on 17<sup>th</sup> July 2024 the 1<sup>st</sup> and 2<sup>nd</sup> Defendants through officers and/or authorized agents Mr. Januaries Kilile and Mr. Meshack Kemei hired goons and escorted by security officers invaded his land No. 20591/116 ex ADC Ndabibi and proceeded to evict his workers and livestock before proceeding to demolish all the developments he had on the said parcel of land.
21. That whereas he had reclaimed his land and constructed his caretaker's house and continued with his developments thereof, the 1<sup>st</sup> Defendant through its aforesaid agents and hired security officers had returned more forcefully on 25<sup>th</sup> February 2025 and proceeded to totally demolish his structure thereon using a grader/tractor registered to the 1<sup>st</sup> Defendant and had now taken forceful occupation of the land and evicted him. That the 1<sup>st</sup> Defendant was now currently cultivating on the land with impunity using their machinery. He annexed photographic evidence of the destruction as JKK4(a-j) JKK5 (a-k)
22. That the invasion and destruction of development on his land had been on both occasions reported to the local police station, as per annexures JKK6 (a & b) but no action had been taken. That it was apparent that the

1<sup>st</sup> Defendant and its management through its Ag. Managing Director Dr. Wilson Tonui had sanctioned the disobedience of the Honourable Court's Orders.

23. He thus prayed that the Honourable Court stamps its authority and protect the rule of law by citing the following persons who had actively directed the actions of contempt to be jailed for a period of at least 6 months:

- i. Mr. Januaries Kilile
- ii. Mr. Meshack Kemei.
- iii. Dr. Wilson Tonui Ag. Managing Director, ADC.

24. That the integrity of the court's proceedings had been compromised by the contemptuous actions of the cited officers of the 1<sup>st</sup> Defendant hence any further proceeding should be stopped until the contempt was punished and purged. It was thus his prayer that the Honourable Court restores his constitutional right to property and fair administrative action by issuing the contempt of court order sought herein.

25. In response and opposition to the 4<sup>th</sup> Plaintiff's Application, the 1<sup>st</sup> and 2<sup>nd</sup> Defendants vide their Replying Affidavit dated 14<sup>th</sup> July 2025 sworn by Nicholas Ayugi, the Administrator - Lands Limited (a wholly owned subsidiary of Agricultural Development Corporation) denied the allegations herein while replicated the averment as herein above cited in the Application dated 28<sup>th</sup> March 2024, adding that the prayer seeking the involvement of the Officer Commanding Station (O.C.S) Kongoni Police Station to enforce the said orders was misplaced in light of the fact that there had been no material non-compliance by the 1<sup>st</sup> and 2<sup>nd</sup> Defendants to warrant police intervention.

26. He sought for the application to be dismissed as it disclosed no actionable grounds, was founded on hearsay and conjecture, was an abuse of the court process intended to intimidate and scandalize the 1<sup>st</sup> and 2<sup>nd</sup> Defendants. He added that it was disheartening that efforts to

malign public institutions and individual officers was being deployed without substantiation or procedural fairness.

27. In a rejoinder, the 4<sup>th</sup> Plaintiff filed a Further Affidavit dated 3<sup>rd</sup> September 2025 sworn by Joseph Kiplangat Kilisio who reiterated the contents of his Supporting Affidavit stating that the 1<sup>st</sup> and 2<sup>nd</sup> Defendants and their employees and/or agents were fully aware of the Court's orders that had been issued on 3<sup>rd</sup> March 2024 and 25<sup>th</sup> July 2024 but had deliberately acted in violation thereof.
28. That the 1<sup>st</sup> and 2<sup>nd</sup> Defendants actions had amounted to blatant disobedience of lawful court orders and were cultivated to defeat the authority and dignity of the honorable court. That unless the contemnors were punished, they would continue to interfere with their quiet occupation of the suit properties and render the orders of the court nugatory. He thus prayed that the 1<sup>st</sup> Defendant and its employees be cited and punished for contempt of court and that he be granted the reliefs sought in his application.
29. The 3<sup>rd</sup> to 9<sup>th</sup> Defendants did not participate in the two Applications herein.
30. Directions were taken for the disposal of both Applications, dated 28<sup>th</sup> March, 2025 and 10<sup>th</sup> June 2025, by way of written submissions. Only the 2<sup>nd</sup> 3<sup>rd</sup>, 4<sup>th</sup> and 6<sup>th</sup> Plaintiffs/Applicants complied.

### **The 2<sup>nd</sup>, 3<sup>rd</sup> and 6<sup>th</sup> Applicants joint Submissions.**

31. The 2<sup>nd</sup> 3<sup>rd</sup> and 6<sup>th</sup> Plaintiffs (Applicants) filed Joint Submissions dated 18<sup>th</sup> July 2025 to support their identical Applications for contempt of court. The submissions focus on establishing that the Respondents have met the legal threshold for contempt by wilfully disobeying a valid court order.
32. They framed their issues for determination as follows:
  - i. Whether the Applicants have established all the ingredients for the contempt of court.

- ii. Whether they have met the burden of proof in contempt of court proceedings.
33. On the first issue for determination, the Applicants submitted that the court has inherent power to punish for contempt to uphold its dignity and the rule of law, citing Section 5 of the Judicature Act and Section 29 of the Environment and Land Court Act, though this power must be exercised cautiously. They outlined the established legal ingredients for contempt, broken down into sub-issues:
- i. Clarity of the Order; The court order dated 20<sup>th</sup> September 2024 clearly stated that "status quo be maintained by all the parties in that it must be understood that the Applicants are in occupation of land parcel..." and "there should not be any interfering with the parcel of land..." That the order was clear and unambiguous, mandating that the Applicants continue peaceful occupation pending the main suit's determination. The Respondents never complained of ambiguity or applied for review, appeal, or setting aside, making their unilateral non-compliance an act of disobedience.
  - ii. Notice/Knowledge of the Order; that the Defendants were well aware of the order dated 20<sup>th</sup> September 2024 as the same had been duly extracted and served upon them and they had acknowledged receipt by stamping the document, as affirmed by an Affidavit of Service dated 25<sup>th</sup> November 2024. They relied on the decision in the case of **Kenya Tea Growers Association v Francis Atwoli & 5 Others, Petition No. 64 of 2020** to argue that knowledge superseded personal service, and since the Respondents showed knowledge, the strict requirement of personal service is unnecessary.

- iii. Breach of the Order; The Applicants submitted that everyone subject to a court order had an uncompromising obligation to obey it unless it is discharged, even if they believe it to be irregular or void. Reference was made to the decision in **Kenya Tea Growers Association** (supra) **where the court cited the case of Clarke & Others v Chadburn & Others (1985) 1 All E.R (PC), 211.** That the breach was in blatant disregard of the subsisting order when on the 19<sup>th</sup> February 2025, they illegally entered the land, maliciously brought down over fifteen houses, rendering the Applicants and their farmhands homeless. That on the 25<sup>th</sup> March 2025, the Respondents invaded again, using heavy machinery, and destroyed the Applicant's makeshift structures (made from nylons and cartons). That these repeated actions were a clear breach of the court's directive for the Applicants to continue peaceful occupation.
- iv. Wilful Conduct; the Applicants' Submission was that the repeat of the actions over time (19<sup>th</sup> February 2025 and 25<sup>th</sup> March 2025) demonstrated wilful disregard for the court orders for which the court must deal firmly with deliberate disobedience to safeguard its dignity, authority, and the rule of law.

34. On the second issue for determination on the burden of proof, the Applicants' submission was that they acknowledged that the standard of proof in contempt proceedings must be higher than proof on a balance of probability, but not exactly beyond all reasonable doubt as was held in the case of **Mutitika v Baharini Farm Limited [1985] KLR 229, 234.** That the high threshold was necessary due to the potential deprivation of liberty. That the court must certify that:

- i. The acts complained of actually happened.
  - ii. The person alleged to be in contempt committed the act.
  - iii. The person acted with full knowledge of the court's order.
35. That they had discharged this burden by submitting that A valid, unchallenged court order existed prohibiting interference, that the Respondents were fully aware of the order wherein they disregarded the orders on two separate dates being the 19<sup>th</sup> February and 25<sup>th</sup> March 2025 and destroyed property. That the results of the actions are captured in the Supporting Affidavits.
36. The Applicants concluded by submitting that having discharged the burden of proof, they were entitled to the prayers sought in the Application dated 28<sup>th</sup> March 2025. Relying on the court's inherent powers and Order 40 rule 3 of the Civil Procedure Rules, they emphasized that contempt was an affront to judicial authority, and the penalty was necessary to vindicate the court's authority and sustain the rule of law.

#### **4<sup>th</sup> Plaintiff's Submissions.**

37. The 4<sup>th</sup> Plaintiff filed submissions dated 27<sup>th</sup> September 2025 in support of his Notice of Motion dated 10<sup>th</sup> June 2025, seeking to have the 1<sup>st</sup> Defendant and its employees/agents cited for contempt of court. He framed his issues for determination as follows:
- i. Whether the Court orders issued on 25<sup>th</sup> July 2024 were clear, valid, and binding on the parties.
  - ii. Whether the 1<sup>st</sup> Defendant and his employees were aware of the said orders.
  - iii. Whether the 1<sup>st</sup> Defendant and his employees disobeyed or violated the said orders.
  - iv. Whether the Court should exercise its powers to punish the contemnors.
38. On the 1<sup>st</sup> and 4<sup>th</sup> issues for determination, the 4<sup>th</sup> Applicant relied on the provisions of Section 5 (1) of the Judicature Act, Article 159 (1) of the

Constitution, and judicial precedents **Econet Wireless Kenya Ltd v Minister for Information & Communication of Kenya & Another [2005] eKLR** and **Teachers Service Commission v Kenya National Union of Teachers & 2 Others [2013] eKLR** to assert the court's inherent power to punish for contempt.

39. Citing **Lord President Clyde in Johnson v Grant, 1923 SC 789 at page 790** the 4<sup>th</sup> Applicant/Plaintiff argued that the law of contempt exists not to protect the personal dignity of the judiciary, but to uphold the fundamental principles of law and the authority of the court. That disobeying the orders erodes the rule of law.
40. That the orders of 25<sup>th</sup> July 2024 and 3<sup>rd</sup> March 2024 were unequivocal clear and unambiguous for the status quo to be maintained, and there was to be no interference with the Applicant's possession of the suit properties.
41. That the Orders were not optional and it was a legal duty to ensure full compliance. That if a party had difficulties in complying or interpreting the order, they ought to have returned to court for guidance.
42. On the second issue for determination, his submission had been that on the 25<sup>th</sup> July 2024 the orders were made and read in open court and in the presence of counsel for all parties. Relying on case law in **Peter Mahinda Kanyora & 2 Others v Julius Mugo Gachagua [2020] eKLR** the 4<sup>th</sup> Plaintiff submitted that knowledge of a court order by an Advocate was sufficient and is considered service on the client and further that it supersedes personal service Reliance was placed on the decision in the case of **Basil Criticos v Attorney General & 8 others (2012) eKLR**. That knowledge could also be inferred since the 1<sup>st</sup> Defendant was a party to the proceedings where the ruling was delivered in their presence. Furthermore, the Respondents' Replying Affidavit demonstrated their knowledge of the orders of 1<sup>st</sup> December 2020.
43. In regard to the 3<sup>rd</sup> issue for determination, the 4<sup>th</sup> Applicant/Plaintiff submitted that despite being aware of the orders, the 1<sup>st</sup> and 2<sup>nd</sup>

Defendants dispatched employees to the suit land wherein they demolished structures he had erected. That action amounted to a direct and wilful interference with his use, occupation, and possession, which was a clear breach of the court's status quo order. The conduct was also intended to obstruct out-of-court settlement proceedings.

44. The 4<sup>th</sup> Applicant/Plaintiff prayed for the court to find and declare that the 1<sup>st</sup> Defendant and its employees/agents are in contempt of court for wilfully disobeying the orders of 3<sup>rd</sup> March 2024 and 25<sup>th</sup> July 2024 and thereafter cite and punish the 1<sup>st</sup> Defendant and the named agents in accordance with the law, including committal to civil jail or payment of a fine and direct the immediate restoration of the demolished structure or compensation for the damage occasioned. He also sought for costs of the Application.

#### **Determination.**

45. I have considered the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 6<sup>th</sup> Plaintiffs/Applicants applications dated the 28<sup>th</sup> March 2025 and 10<sup>th</sup> June 2025, as well as the 1<sup>st</sup> and 2<sup>nd</sup> Defendants/Respondents' response vide its Replying Affidavit sworn on the 14<sup>th</sup> July 2025. I have also considered the Applicants written submissions, the authorities cited and the applicable law. Lastly, I have also considered the fact that whereas the 4<sup>th</sup> and 5<sup>th</sup> Defendant/Respondents did not participate in the Application despite being mentioned adversely, the 1<sup>st</sup> and 2<sup>nd</sup> Respondents did not file their written submissions as directed by the court.

46. It is now a settled practice under the new constitutional dispensation that filing of written submissions is the norm as written submissions serve the purpose of expedience and amounts to addressing the court on the evaluation of the evidence of each party and analysis of the law. It is therefore trite that a party who fails to file submissions on an application as ordered by the court is deemed as a party who has failed to prosecute/defend the application and therefor that application is liable for

dismissal and or stands unopposed like in the present instance. The filing of submissions having been ordered, and this court having extended time for compliance without compliance, the failure by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents to exercise the leave granted to them to file written submissions clearly demonstrates inertia and inordinate delay, lack of interest and/or seriousness on their part.

47. Vide a ruling delivered by this court the 25<sup>th</sup> day of July 2024, the court had directed as follows;

- i. An order of status quo is herein issued to be maintained by all the parties in that it must be understood that the Applicants are in occupation of land in parcel L.R Nos. Plot No. 20591/117 EX ADC NDABIBI, Plot No. 20591/98 & 99 EX ADC NDABIBI, Plot No. 20591/116 EX ADC NDABIBI, Plot No. 2059/118 EX ADC NDABIBI, L.R 7281/15 and 7281/13 (Originally 7281/12/12) as at the time of filing suit.*
- ii. The Applicants shall also not deal with the said parcels of land adversely.*
- iii. There shall not be any interfering with parcel L.R Nos. Plot No. 20591/117 EX ADC NDABIBI, Plot No. 20591/98 & 99 EX ADC NDABIBI, Plot No. 20591/116 EX ADC NDABIBI, Plot No. 2059/118 EX ADC NDABIBI, L.R 7281/15 and 7281/13 (Originally 7281/12/12) by the Respondents.*
- iv. The 6<sup>th</sup> to 8<sup>th</sup> Respondents are hereby be restrained either by themselves, agents or servants howsoever from altering and/or interfering with MAP/RIM S.A. 37/A. III. A. 9 [1331/1] contained in Folio No. 345, Register No. 39, and/or registering any instrument in favour of the 1<sup>st</sup> to 5<sup>th</sup> Respondents in respect to L.R Nos. Plot No. 20591/117 EX ADC NDABIBI, Plot No. 20591/98 & 99 EX ADC NDABIBI, Plot No. 20591/116 EX ADC NDABIBI, Plot*

No. 2059/118 EX ADC NDABIBI, L.R 7281/15 and 7281/13  
(Originally 7281/12/12)

- v. Such status quo is to be maintained by all parties until the matter is finally heard and determined.
- vi. The cost of the application dated the 27<sup>th</sup> February, 2024 shall be in the cause.

48. This order was amended vide an order of 20<sup>th</sup> September 2024 to include No. Plot No. 20591/114 EX ADC NDABIBI, which had been invertedly left out, as follows;

*“I have considered the application dated the 19th September 2024 vis a vis a ruling delivered by the court on the 25th July 2024 wherein the Court had issued interim orders in relation to land parcels L.R Nos. Plot No. 20591/117 EX ADC NDABIBI, Plot No. 20591/98 & 99 EX ADC NDABIBI, Plot No. 20591/116 EX ADC NDABIBI, Plot No. 2059/118 EX ADC NDABIBI, L.R 7281/15 and 7281/13 (Originally 7281/12/12) thereby inevitably excluding Plot No. 20591/114 EX ADC NDABIBI. In the case of **Nakumatt Holdings Limited vs Commissioner of Value Added Tax [2011] eKLR** it had been held that the court had residual power to correct its own mistakes. Further, that where a mistake is shown to have been committed which is remediable by the court, the same ought to be corrected by the Court in the exercise of its inherent jurisdiction. Thus, flowing from the above decision and the fact that the mistake committed by the court was apparent, the ruling of the court dated the 25th July 2024 is herein corrected and/or reviewed suo moto to include land parcel No. Plot No. 20591/114 EX ADC NDABIBI, so as to accord all the affected parties an opportunity to be heard to ventilate their*

*grievances fairly and justly. The application dated 19th September 2024 is herein allowed in terms of the said order''*

49. The 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 6<sup>th</sup> Plaintiffs/Applicants now bring their application on contempt proceedings against the following:
- i. The Managing Director and Corporation Secretary of the Agricultural Development Corporation- 1<sup>st</sup> and 2<sup>nd</sup> Defendants
  - ii. Mr. Januaries Kilile an employee of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants/Respondents.
  - iii. Mr. Meshack Kemei an employee of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants/Respondents.
  - iv. The Director General National Youth Service- the 4<sup>th</sup> Defendant/Respondent.
  - v. Anthony Langat Mosonik the 5<sup>th</sup> Defendant/Respondent

50. Their complaint being that pursuant to the above court's ruling which was delivered in the presence of the Respondent's Counsel, they had subsequently extracted the order and effected service upon the Respondents wherein 1<sup>st</sup> 4<sup>th</sup> and 5<sup>th</sup> Respondents duly acknowledged receipt. That during the existence of the said orders, on diverse dates being the 17<sup>th</sup> July 2024, 19<sup>th</sup> February 2025, and the 25<sup>th</sup> February 2025, the 1<sup>st</sup>, and 2<sup>nd</sup> Defendants through officers and/or authorized agents Mr. Januaries Kilile and Mr. Meshack Kemei, 5<sup>th</sup> Respondents accompanied by a massive battalion of over 50 officers including those of the 4<sup>th</sup> Respondent while wielding rifles and various weapons invaded their parcels of land and maliciously destroyed all the crops and property therein thereby evicting the Applicants/their workers and livestock. That the 1<sup>st</sup> Defendant had even proceeded to totally demolish structures on the 4<sup>th</sup> Applicant's parcel of land using a grader/tractor registered to the 1<sup>st</sup> Defendant wherein it had now taken forceful occupation of the land.

51. The 1<sup>st</sup> and 2<sup>nd</sup> Defendants/Respondents response through Replying Affidavits dated 14<sup>th</sup> July 2025 sworn by Nicholas Ayugi, the Administrator-Lands Limited (a subsidiary of Agricultural Development Corporation) denied each and every allegation of contempt of court attributed to them and/or their officers or agents as outlined in the Applications. He confirmed that they were aware of the court's order of 20<sup>th</sup> September 2024 wherein the 1<sup>st</sup> and 2<sup>nd</sup> Defendants had conducted themselves with utmost restraint, discipline and in absolute fidelity to the said orders. That the allegation that they had invaded the parcels of land accompanied by over 20 armed police officers and 30 other individuals allegedly affiliated to the 4<sup>th</sup> Defendant wherein they had demolished structures and threatened or violated the rights of the Applicants was not only unfounded and speculative but was also not supported by any verifiable, photographic, documentary or independent evidence linking the 1<sup>st</sup> or 2<sup>nd</sup> Defendant. That further, Mr. Januaris Kilile, was neither a staff of the 1<sup>st</sup> Defendant or 2<sup>nd</sup> Defendant nor was he acting under their instruction or authority. That the application for contempt was premature, misplaced and ought to be dismissed with costs.

52. **The Black's Law Dictionary (Ninth Edition)** defines contempt of court as:-

*“Conduct that defies the authority or dignity of a court. Because such conduct interferes with the administration of justice, it is punishable usually by fine or imprisonment.”*

53. The law guiding the present Application is Order 40 Rule 3(1) of the Civil Procedure Rules which stipulates as follows: -

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

54. Section 29 of the Environment and Land Court Act is clear to the effect that;

*“Any person who refuses, fails or neglects to obey an order or direction of the Court given under this Act, commits an offence, and shall, on conviction, be liable to a fine not exceeding twenty million shillings or to imprisonment for a term not exceeding two years, or to both.”*

55. The court of Appeal in its Judgement of 11<sup>th</sup> April 2025 in the case of **Wekesa & 2 others v Munialo [2025] KECA 679 (KLR)** held as follows;

*“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.*

*Perhaps the most comprehensive of the elements of civil contempt was stated by the learned authors of the book **Contempt in Modern New Zealand**, who succinctly stated: -*

*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;*

*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:(d) the defendant's conduct was deliberate.”*

56. Having said that, from the application and the response, the sworn affidavits, annexures, submissions by Counsel, the applicable law and the decided authorities, the following issues stand out for determination:

- i. Whether there was a valid order of the court issued on 20<sup>th</sup> March 2024, 25<sup>th</sup> July 2024 and restated on 20<sup>th</sup> September 2024.
- ii. Whether the Respondents were served with or made aware of the orders of 20<sup>th</sup> March 2025 and 25<sup>th</sup> July 2024 and restated on 20<sup>th</sup> September 2024.
- iii. Whether the Respondents herein deliberately and willfully failed to comply with the terms of the order and are guilty of contempt of Court orders issued 20<sup>th</sup> March 2025, 25<sup>th</sup> July 2024 and restated on 20<sup>th</sup> September 2024.

57. On the first issue for determination as to whether there had been a valid order issued by the court on the 20<sup>th</sup> March 2025, 25<sup>th</sup> July 2024 and restated on 20<sup>th</sup> September 2024, the Court of Appeal in the case of **Mugah -v- Kunga [1988] KLR 748**, held that in land matters, status quo orders should always be issued for purposes of preserving the subject matter. The court’s practice directions vide Gazette Notice No. 3461/2025 Practice Direction No. 23(I) gives the court the leeway and discretion to make an order for status quo to be maintained until determination of the case. Going by the court’s proceeding, pursuant to and application dated the 27<sup>th</sup> February 2024, on the 7<sup>th</sup> March 2024, the Court issued interim orders of injunction against the Respondents pending the hearing of the Application inter partes. The interim orders were extended on the 3<sup>rd</sup> April

2024 and on the 7<sup>th</sup> May 2024 pending delivery of the ruling on the Application dated the 27<sup>th</sup> February 2024.

58. Subsequently the court delivered its Ruling on the 25<sup>th</sup> July 2024, as herein above stated, in the presence of Counsel for the Plaintiff/Applicant and the 1<sup>st</sup> and 2<sup>nd</sup> Defendants/Respondents. The said Ruling was however rectified on the 20<sup>th</sup> September 2024 to include a parcel of land that had been invertedly left out. I therefore find that indeed vide its ruling of 25<sup>th</sup> July 2024, the court had issued a valid order directing the parties to maintain the status quo which was to be *understood that the Applicants were in occupation of land parcels L.R Nos. Plot No. 20591/117 EX ADC NDABIBI, Plot No. 20591/98 & 99 EX ADC NDABIBI, L.R Nos. Plot No. 20591/114 EX ADC NDABIBI, Plot No. 20591/116 EX ADC NDABIBI, Plot No. 2059/118 EX ADC NDABIBI, L.R 7281/15 and 7281/13 (Originally 7281/12/12) in parcel had been expounded.*

59. On the second issue as to whether the Respondents had been served with or made aware of the said court order, I have perused through the proceedings of the 25<sup>th</sup> July 2024 when the ruling was delivered and find that only the Plaintiff/Applicants' counsel and Counsel for the 1<sup>st</sup> and 2<sup>nd</sup> Defendant/Respondents were present. I have also considered the Affidavit of service sworn on 13<sup>th</sup> March 2024 and 25<sup>th</sup> November 2024 by one Henry Omega a licensed process server herein annexed as annexure JKK2 and GWC2 and which affidavit of service was attached with a WhatsApp extract, I have also seen the returned copy of the Court order of 20<sup>th</sup> September 2024 marked as annexure GWC1, EM1, and JKK1(a) all which confirmed that all Defendants/Respondents herein had been served and therefore made aware of the court order.

60. The Court of Appeal in the **Shimmers Plaza Limited v National Bank of Kenya Limited [2015] eKLR** had held as follows:

*“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).*

*.....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 behoves him/her to report back to the client all that transpired in court that has a bearing on the client’s case.*

*This is the position in other jurisdictions within and outside the commonwealth.”*

61. It can be seen from the above holding which is binding to this court that the Court of Appeal had made a significant finding that relaxed the strict requirement for personal service in contempt proceedings. The court held that jurisprudence had gradually moved beyond the necessity of personal service of orders to focus on whether the alleged contemnor had actual knowledge of the terms of the court order. It held that provided it could be shown that the person alleged to be in contempt was aware of the terms of the court order the same did not vitiate contempt

proceedings. The primary consideration thus shifted to the substantive issue of awareness and willful disobedience of the court's command. I find that the parties herein all had actual knowledge of the terms of the court order and therefore personal service was unnecessary.

62. Lastly as to whether the 1<sup>st</sup>, 2<sup>nd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants/Respondents herein deliberately and willfully failed to comply with the terms of the order issued on the 20<sup>th</sup> March 2024, 25<sup>th</sup> July 2024 and restated on 20<sup>th</sup> September 2024 and are therefore guilty of contempt of Court orders, the Applicants complaint had been that the 1<sup>st</sup>, 2<sup>nd</sup> and 4<sup>th</sup> Respondents through their officers and/or authorized agents namely Mr. Januaries Kilile and Mr. Meshack Kemei, the 5<sup>th</sup> Respondent, hired goons who were escorted by security officers from the 4<sup>th</sup> Respondents and while armed, invaded the suit land not once, but twice which demonstrated the willfulness necessary for contempt and wherein they had destroyed everything on the land, evicted them and had now taken possession and occupation of the land. Their complaint had been supported by pictorial evidence annexed as JKM3, GWC3, EM3, JKK4(a-j) and JKK5 (a-k), sworn affidavits of the caretakers (who were eye witnesses) annexed as JKM 4, GWC4 and EM4, a police abstract annexed as JKK6 and two valuation reports marked as GWC5 and EM5. While there had been a response from the 1<sup>st</sup> and 2<sup>nd</sup> Respondents which basically was a denial of the acts complained of and was unconvincing or insufficient against the detailed and specific allegations of the Applicants, there had been no response from the rest of the Defendant/Respondents who had been cited for contempt being the 4<sup>th</sup> and 5<sup>th</sup> Respondents.

63. A court order to maintain the status quo is a directive to the parties to preserve the current state of affairs and to take no action that would alter the subject matter of the dispute until further directions or until the matter is heard and determined. The act of proceeding with demolition and eviction in the face of such an order is a direct and wilful act of defiance against the court and the rule of law.

64. Romer L.J in **Hadkinson vs. Hadkinson(1952) ALL ER 567** stated 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”*

65. It is therefore mandatory unless and until a Court order is discharged, it ought to be obeyed. Indeed, the Court of Appeal in **Central Bank of Kenya & Another vs. Ratilal Automobiles Limited & Others, Civil Application No. Nairobi 247 of 2006** held that it was a fundamental tenet of the rule of law that Court orders must be obeyed and it is not open to any person or persons to choose whether or not to comply with or to ignore such orders as directed to him or them by a Court of law.

66. In the case of **Awadh vs. Marumbu (No. 2) No. 53 of 2001 (2004) KLR 458**, the Court held that it is the duty of the Court not to condone deliberate disobedience of its orders nor waiver from its responsibility to deal decisively and firmly with the approved contemnors.

67. The Supreme Court of Kenya in **Republic v Ahmad Abolfathi Mohammed & Another [2018] eKLR** held that;

*“The power, to commit a person to jail, must be exercised with utmost care, and exercised only as a last resort. It is of utmost importance, therefore, for the Respondents to establish that the alleged Contemnor’s conduct was deliberate, in the sense that he or she willfully acted in a manner that flouted the Court Order.”*

68. It is therefore trite that contempt of Court proceedings and Applications are subtle and criminal in nature and would impose criminal sanctions if a conviction followed. Having found that the 1<sup>st</sup> ,2<sup>nd</sup> 4<sup>th</sup> and 5<sup>th</sup> Respondents had actual knowledge of the status quo order is therefore sufficient that they were in contempt. The act of demolishing structures

and evicting the Applicants under a status quo order is a clear example of the precise action the court seeks to prevent, and the courts treat such blatant disregard with the utmost seriousness to uphold the dignity and authority of the judicial process.

69. Being mindful that the burden of proof in contempt proceedings is higher than that in a normal civil matter because such proceedings had the potential of impacting the rights of a party who may end up being committed to civil jail, I thus find the Applicant's applications dated the 28<sup>th</sup> March 2025 and 10<sup>th</sup> June 2025 merited.

70. The Managing Director and Corporation Secretary of the Agricultural Development Corporation (ADC), the Director-General of the National Youth Service (NYS) and the 5<sup>th</sup> Respondent Mr Anthony Langat Mosonik, I find, were in blatant, deliberate and intentional violation of the court's dignity, repute and authority wherein their conduct substantially adversely interfered with the substratum of the matter. I thus find them in contempt of the court order of 20<sup>th</sup> March 2024, 25<sup>th</sup> July 2024 and restated on 20<sup>th</sup> September 2024 and will accordingly proceed to punish them.

**Dated and delivered via Microsoft Teams at Naivasha this 20<sup>th</sup> day of November 2025.**



**M.C. OUNDO**

**ENVIRONMENT & LAND COURT- JUDGE**