



Nduva & 3 others v Ndar & 3 others; Muiruri (Contemnor) (Civil Case 24 of 2017) [2025] KEHC 17381 (KLR) (Civ) (27 November 2025) (Ruling)

Neutral citation: [2025] KEHC 17381 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

CIVIL

CIVIL CASE 24 OF 2017

SN MUTUKU, J

NOVEMBER 27, 2025

**IN THE MATTER OF ST. VINCENT DE PAUL SOCIETY KENYA
REGISTERED TRUSTEES (“THE TRUST”)**

AND

IN THE MATTER OF THE TRUSTEES (PERPETUAL SUCCESSION)

ACT CAP 164 LAWS OF KENYA

AND

THE TRUSTEES RULES, 1948

AND

IN THE MATTER OF THE CIVIL PROCEDURE ACT & CIVIL

PROCEDURE RULES, 2010

AND

IN THE MATTER OF CHANGE OF TRUSTEESHIP WITHIN THE

SOCIETY OF ST. VINCENT DE PAUL SOCIETY KENYA

REGISTERED TRUSTEE

BETWEEN

MICHAEL MUSEMBI NDUVA 1ST PLAINTIFF

MARY GORETTI GITARI MUNYI 2ND PLAINTIFF

URBANUS MUTHAI KINUTHIA 3RD PLAINTIFF

ST. CATHERINE MULLIGAN 4TH PLAINTIFF

AND



JOHN NDAR 1ST DEFENDANT
SUSAN NJERU 2ND DEFENDANT
ISAYA NYABERA 3RD DEFENDANT
REGISTRAR OF DOCUMENTS 4TH DEFENDANT

AND

JAMES MUIRURI CONTEMNOR

RULING

The Applications

1. Before the court for analysis and determination are three (3) applications. The first is the Notice of Motion dated 6.05.2024 (1st application) brought by Michael Musembi Nduva, Urbanus Muthai Kinuthia and St. Catherine Mulligan (the 1st, 3rd and 4th Plaintiffs). It is supported by the grounds laid out on its face and in the affidavit of the 1st Plaintiff. It seeks the orders listed hereunder:
 - i. Spent.
 - ii. Spent.
 - iii. Spent.
 - iv. The Contemnors be and are hereby directed to return the funds relating to the sale of the Suit Property made on 10.08.2023 and received on 15.08.2023 through the firm of Muguku Kimathi & Co. Advocates.
 - v. The Honourable Court do find and hold that the Contemnors are in contempt of the Court Orders by disobeying and defying the Decree issued by the Court on 6.07.2023 arising from the judgment delivered on 6.04.2023 and do direct that:
 - a. The Contemnors are arrested and committed to civil jail for a period not less than six (6) months for contempt of the Decree issued by the Court on 6.07.2023 arising from the judgment delivered on 6.04.2023; and
 - b. The Contemnors be fined such sums of money that this Honourable Court may direct and the amounts be deposited in court.
 - vi. The Honourable Court be pleased to order the Officer Commanding Police Station (OCS) or Officer in Charge of Police Division (OCPD) Eastleigh Police Station and or County Commander Eastleigh Police Station to ensure immediate cessation of any activity by the Contemnors on the Suit Property and enforce the same.
 - vii. The costs of the Application be provided for.
2. The 1st application is brought under Sections 1A, 1B and 3A of the *akn ke act 1924 3 Civil Procedure Act* (CPA); Order 51, Rule 1 of the Civil Procedure Rules (CPR); and Section 5 of the *akn ke act 1967 16 Judicature Act*.
3. In his supporting affidavit, the 1st Plaintiff has stated that he is one of the Trustees of St. Vincent De Paul Society Kenya Registered Trustees (hereafter “the Trust”); that judgment was delivered in



the present suit on 6.04.2023 whereby the Court (Meoli, J) made various orders, including issuing a prohibitory injunction restraining John Ndar and Susan Njeru (the 1st and 2nd Defendants) from acting or purporting to act as Trustees of the Trust; that despite being aware of the judgment by virtue of being served with a copy of the resulting decree, the 1st and 2nd Defendants alongside James Muiruri (the 3rd Contemnor) authorized the sale of properties belonging to the Society of St. Vincent De Paul (“the Society”) known as Plot Nos. L.R. 36 1 156; 36 1 157 and 36 1 158 (the subject properties) to Senimar Engineering Company Limited (the Company) vide a sale agreement dated 10.08.2023 and that such sale was undertaken by the abovementioned parties purportedly on behalf of the Trust.

4. It is the 1st Plaintiff’s averment that the above-referenced sale constitutes an act of contempt of the decree issued on 6.07.2023 pursuant to the judgment delivered in the present suit, which contempt continues to prejudice the Trust; that at the time of undertaking the said sale, neither the 1st nor 2nd Defendant, nor the 3rd Contemnor, was a Trustee to the Trust and that the mentioned parties lacked the capacity or authority to act on behalf of the Trust.
5. The 1st Plaintiff’s averred, further, that the mentioned parties have received the proceeds of the sale through the firm of Muguku Kimathi & Co. Advocates but are yet to remit the said proceeds to the Trust, thereby exposing the Trust to reputational and legal risks and that the above conduct on the part of the 1st and 2nd Defendants as well as the 3rd Contemnor, constitutes a grave disobedience of the court orders in place, thus necessitating the first application.
6. The 1st Defendant has opposed the 1st Application through a Replying Affidavit dated 26.05.2025. He has acknowledged that a sale agreement was entered into in respect of the subject properties but the sale was subsequently rescinded on 22.08.2023 upon the parties becoming aware of the existence of the judgment. That, the allegation that the 1st Defendant, in conjunction with the 2nd Defendant and the 3rd Contemnor are in contempt, cannot hold. That the statements being offered by the Plaintiffs alleging that the sale transaction went through are mere speculation and are misleading to this court. That the 1st Defendant only came to learn of the existence of the decree upon being notified of its existence by his former advocates, by which time the abovementioned sale agreement had already been executed and that he did not receive regular updates from his former advocates regarding the progress of the present suit.
7. It was deposed that the 1st Defendant was previously found in contempt of court following a separate application filed by the Plaintiffs herein. That if the 1st Application is allowed as prayed, the 1st Defendant stands to suffer double jeopardy. Consequently, the 1st Defendant has urged the court to dismiss the 1st Application with costs.
8. The second application is the Notice of Motion dated 26.05.2025 (the 2nd application) brought by the 2nd Defendant under Sections 1A, 1B and 3A of the CPA; Order 1, Rule 10(2), Order 9, Rule 9 and Order 36, Rule 10 of the CPR. It is supported by the grounds set out on its body and in the affidavit of the 2nd Defendant. The application seeks the following orders:
 - i. Spent.
 - ii. That the firm of Karwanda & Associates Advocates be granted leave to come on record and act for the 1st and 2nd Defendants in place of the firms of Moraa Onyiego & Associates Advocates and Muraguri, Muigai & Waweru & Co. Advocates respectively.
 - iii. Spent.
 - iv. Spent.



- v. That the replying affidavit sworn on 26.05.2025 be deemed as duly filed.
 - vi. That this Honourable Court be pleased to grant the 2nd Defendant Applicant leave to file her appeal against the Judgment and Decree of 6.04.2023 out of time.
 - vii. That in the alternative and without prejudice to prayer (vi) above, this Honourable Court be pleased to set aside the Judgment and Decree of 6.04.2023 and re-open the suit for hearing.
 - viii. That the costs of the application be provided for.
9. In her supporting affidavit, the 2nd Defendant has deposed that judgment was entered in the present suit without her knowledge or participation. That she only came to learn of the existence of the suit upon receiving communication from the 1st Defendant sometime on or about 21.05.2025 that the first application had been filed against them.
 10. The 2nd Defendant has deposed that the Plaintiffs herein presented a misrepresentation of facts and falsehoods, including a forgery of the documentation tendered at the hearing of the suit. That consequently, she is aggrieved by the resulting judgment and is desirous of either challenging the same either on appeal or by having it set aside. She thus urges the court to grant the order seeking leave to file an appeal out of time, with an alternative order that the judgment be set aside and the matter be heard afresh.
 11. It is the 2nd Defendant's averment that the delay in timeous filing of the second application was occasioned by factors beyond her control, namely, her former advocates did not inform her on the progress in the suit and further did not serve her with a copy of the judgment and resulting decree.
 12. My reading of the record of the court file shows that there is nothing to indicate that any responses were filed in opposition to the 2nd Application at the time of writing this ruling.
 13. Nevertheless, pursuant to the leave granted by this court on 18.06.2025, the 2nd Defendant swore a further affidavit on 7.10.2024 in support of the 2nd Application. He reiterated, inter alia, that the Plaintiffs misrepresented the facts pertaining to the Trust and misled the court and that the 1st Plaintiff has never been a Trustee to the Trust and has instead been engaged in various acts of forgery and fraud, thereby resulting in the pursuit of criminal charges against him.
 14. The 2nd Defendant has deposed, further, that the 1st Plaintiff has severally forged the personal signature belonging to the 1st Defendant herein, which acts of forgery were confirmed vide a forensic report dated 9.09. 2025 prepared by the Directorate of Criminal Investigations.
 15. It is on the premise of the foregoing averments as well as her earlier averments, that the 2nd Defendant urges that the judgment delivered in the suit be set aside and the matter be re-opened, or that leave be granted to enable her to challenge the said judgment on appeal.
 16. The 3rd application is the Notice of Motion dated 26.05.2025 brought by the 3rd Contemnor (the 3rd Application). The application is supported by grounds stated on the face of it and in the supporting affidavit sworn by the 3rd Contemnor. It is brought under Sections 1A, 1B and 3A of the CPA; Order 1, Rule 10(2), Order 9, Rule 9 and Order 36, Rule 10 of the CPR and seeks the following orders:
 - i. Spent.
 - ii. Spent.
 - iii. Spent.



- iv. That the 3rd Contemnor Applicant be joined into these proceedings as a defendant.
 - v. That the judgment and decree all delivered and dated 6.04.2023 and all consequential orders emanating therefrom be set aside, varied, reviewed and or discharged and this matter be heard de novo.
 - vi. That the costs of the application be provided for.
17. In his supporting affidavit, the 3rd Contemnor has deposed that following the death of Isaya Nyabera (the 3rd Defendant) in the year 2016, he was appointed to replace the said Defendant as a Trustee to the Trust. That while the 3rd Contemnor has since been undertaking his Trustee duties, he was never formally enjoined in the present suit whether as a defendant or an interested party. That the matter proceeded without his knowledge or participation and yet the Plaintiffs, vide the 1st application, are seeking to have him cited for contempt of court alongside the 1st and 2nd Defendants. That contempt proceedings being criminal in nature, he stands to suffer grave prejudice and injustice unless the orders sought herein are granted.
 18. The 3rd Contemnor has deposed, further, that he has never been served with a copy of the judgment and or decree herein and yet it is now being purported that he ought to have complied with the terms thereof. That it is therefore necessary that he be enjoined in the proceedings in place of the 3rd Defendant.
 19. The 3rd Contemnor has supported the sentiments of the 2nd Defendant, that the Plaintiffs herein presented falsified and forged documents in the suit and hence the judgment was obtained through a concealment of facts on the part of the Plaintiffs, thereby making it irregular and that he is satisfied that given the opportunity, he will prove the particulars of fraud and forgery against the Plaintiff herein.
 20. To oppose the 3rd Application, the 1st Plaintiff swore a replying affidavit on 16.06.2025 in which he has deposed that the said application is res judicata by dint of Section 7 of the CPA, since the 3rd Contemnor previously filed a similar application dated 8.09.2023 which was ultimately dismissed by this court vide a ruling delivered on 27.06.2024. That the orders sought in the 3rd application are substantially similar to those previously sought in the abovementioned application and that the 3rd Contemnor is now attempting to re-litigate the same issues before this court.
 21. It is the 1st Plaintiff's assertion that no proper grounds have been established to warrant a re-opening of the present suit, adding that the allegations of fraud and misrepresentation now brought forward against the Plaintiffs remain unsubstantiated; that the 3rd Contemnor was all along aware of the existence of the suit by virtue of his position as Trustee of the Trust, since the year 2021 and that the 3rd Application is an abuse of the court process and ought to be dismissed with costs.
 22. The 3rd Contemnor vide his supplementary affidavit sworn on 7.10.2025, deposed that despite the court's dismissal of his application dated 8.09.2023 which sought leave to be enjoined in the instant proceedings, the Plaintiffs are now intent on dragging him back into the proceedings as a Contemnor. The 3rd Contemnor has faulted the Plaintiffs for seeking adverse orders against him by way of the first application notwithstanding the fact that he is not a party to the suit. That in the circumstances, it is therefore necessary for the third application to be allowed on merit, to enable him to defend his interests as a defendant.

Oral Submissions

23. The three (3) applications were simultaneously argued orally on 14.10.2025 pursuant to the directions given by the court on 18.06.2025.



24. To support the orders sought in the 1st Application, it was submitted that it has been established that the respective Defendants as well as the 3rd Contemnor are in contempt of the judgment and decree issued in the present suit. That, none of the mentioned parties has shown remorse or attempted to purge the contempt. That in addition, the 1st Defendant previously disobeyed a separate court order issued in the present suit.
25. In respect to the 1st Application, Mr. Karwanda submitted that the application cannot be granted for the reason that the sale transaction referenced therein was rescinded following the discovery that judgment had been entered in the present suit, as shown in a letter dated 2.08.2023 annexed to the Replying Affidavit of the 1st Defendant and marked as Annexure “JN-1”, and therefore the sale fell through making the 1st Application unsustainable.
26. Mr. Waigwa, counsel for the Plaintiffs, submitted in respect of the 2nd Application that he has maintained that the 2nd Defendant was at all material times aware of the suit by virtue of having been represented by competent firms of advocates at all material times. That the 2nd Defendant filed documents in the suit while her former advocates participated in the hearing by undertaking a cross-examination of the 1st Plaintiff. That in the circumstances, the 2nd Defendant cannot be heard to purport lack of prior knowledge of the existence of the suit and judgment at all material times. That consequently, this court ought to decline to grant the order seeking to set aside the judgment.
27. Mr. Waigwa submitted, further, that the 3rd Contemnor’s advocate was equally aware of the judgment at all material times prior and that the issue of enjoinder was earlier determined by the court, thereby making the 3rd Application res judicata before this court.
28. In a rejoinder, Mr. Karwanda reiterated his earlier submissions that the 1st Application lacks merit since the sale transaction in respect of the subject properties had been cancelled at the time of filing the aforesaid application. In counsel’s view, the 1st Application further cannot be sustained since no orders in the judgment were made against the 3rd Contemnor. Lastly, counsel has restated his earlier submissions that the 2nd Defendant was never heard in the suit and hence the second application is merited.
29. Regarding the 2nd Application, Mr. Karwanda, counsel for the 1st and 2nd Defendants as well as the 3rd Contemnor, argued that the 2nd Defendant having not participated in the hearing of the main suit, was unaware of delivery of the judgment. That consequently, she seeks to have the matter re-opened to enable her defend the claim made against her, in tandem with the principle of natural justice.
30. Counsel argued, further, that the 2nd Defendant was unable to tender crucial documents as exhibits but has now annexed them to the 2nd Application. That the annexed documentation was unavailable at the time of hearing but proves relevant in demonstrating that the Society had been delinked from any control by the Council of France and that the 1st Plaintiff had forged the signature of the 1st Defendant in an attempt at claiming Trusteeship of the Trust. Counsel urged that the 2nd Application, being unopposed be allowed as prayed.
31. In respect of the 3rd Application, Mr. Karwanda, submitted that that the 3rd Contemnor was never a party to the suit and was only introduced by the Plaintiffs vide the 1st Application. That notwithstanding the fact that the 3rd Contemnor had previously applied to be enjoined in the suit as an interested party, which application was opposed by the Plaintiffs and ultimately dismissed by the court on 27.06.2024, the Plaintiffs have now dragged him into the present proceedings. Counsel denied that the 3rd Application is res judicata.



32. It is counsel's submission that the 3rd Contemnor has a right to participate in the proceedings as a defendant since he is a Trustee to the Trust. Counsel therefore supports the 3rd Application.
33. In respect of the 2nd and 3rd applications, it is counsel's submission that both applications seek a similar order to the effect that the judgment and all consequential orders be set aside to pave way for hearing of the suit de novo.

Analysis and Determination

35. I have carefully read and considered the three applications and the grounds set out in support of the respective applications as well as the facts stated in the affidavit material supporting and opposing the applications, and the oral arguments presented by the respective counsels.
36. I have opted to begin with considering the 2nd Application. The orders sought thereunder are four (4)-fold in nature. Order (ii) of that application seeks leave of the court to enable the firm of Karwanda & Associates Advocates to come on record and act for the 1st and 2nd Defendants in place of the firms of Moraa Onyiego & Associates Advocates and Muraguri, Muigai & Waweru & Co. Advocates respectively.
37. The 2nd Application is anchored on Order 9, Rule 9 of the CPR which stipulates that:

“When there is a change of advocate, or when a party decides to act in person having previously engaged an advocate, after judgment has been passed, such change or intention to act in person shall not be effected without an order of the court—

 - (a) upon an application with notice to all the parties; or
 - (b) upon a consent filed between the outgoing advocate and the proposed incoming advocate or party intending to act in person as the case may be.”
38. The record of the court shows that the 1st and 2nd Defendants were at all material times represented by different firms of advocates. The record further shows that Mr. Karwanda-advocate, has indicated on 28.05.2025 that he was unable to obtain the consents from the respective firms to enable him take over from them, thereby necessitating the prayer for leave to come on record.
39. I have noted that the firm of Karwanda & Associates Advocates filed a notice of change of advocates dated 26.05.2025. There is no opposition to that prayer and therefore I am inclined to grant prayer (ii), which I hereby do.
40. In respect to prayer (v) of the 2nd Application which seeks to have the Replying Affidavit sworn by the 1st Defendant on 26.05.2025 in response to the 1st A application, deemed as duly filed, I have noted from the record of the court that parties attended court on 8.05.2025 when the 1st Defendant was directed to respond to the 1st Application within 14 days thereof. That when the matter came up for hearing on 28.05.2025, Mr. Waigwa, counsel for the Plaintiffs, indicated that the Replying Affidavit by the 1st Defendant had been filed outside the directed timelines and sought to have the same struck out for late filing.
41. In response, Mr. Karwanda advocate for the 1st and 2nd Defendants indicated that the said Replying Affidavit was filed on 27.05.2025 and explained that the delay in complying with court orders was occasioned by challenges in obtaining a consent from the 1st Defendant's erstwhile advocates to enable his firm come on record in good time.



42. I have considered this issue. I note that the Plaintiffs have not demonstrated the prejudice, if any, that would befall them if the Replying Affidavit is admitted, and consequently, I will and do hereby grant prayer (v) as sought.
43. Prayer (vi) of the 2nd Application seeks leave of this court, to enable the 2nd Defendant lodge an appeal out of time against the judgment delivered by this court on 6.04.2023 and the resulting decree issued on 6.07.2023.
44. Under Section 7 of the *akn ke act 1977 15 Appellate Jurisdiction Act*, Cap. 9 Laws of Kenya, the High Court has the discretion to extend the time required to either give notice of intention to appeal to the Court of Appeal or to grant leave to appeal out of time, even where such time may have already expired.
45. The principles to be applied in considering the subject of extension of time were considered by the Supreme Court in the case of *Nicholas Kiptoo Arap Korir Salat v Independent Electoral and Boundaries Commission & 7 others* [2014] eKLR and shall be addressed by the court, hereunder.
46. The first and second principles have to do with the extent of delay in filing the appeal and whether the explanation behind such delay is reasonable. Noting that the intended appeal lies with the Court of Appeal, Rule 75(2) of the Court of Appeal Rules dictates that a notice of appeal should be filed within 14 days of the judgment or order being appealed against.
47. In the present instance, upon establishing that the judgment in the present suit was delivered on 6.04.2023 the 2nd Defendant ought to have filed her notice of appeal within 14 days of that date. From the court's perusal of the record and proceedings, there is nothing to indicate that the same was ever filed.
48. Suffice it to say that, it is noteworthy that the second application was brought slightly over two (2) years from the date of delivery of the judgment in this suit. It is clear that there has been quite an inordinate delay in moving this court.
49. Concerning the explanation for the delay, the 2nd Defendant has by way of her supporting affidavit stated that the delay was occasioned by the fact that she did not participate at all, in the suit, prior to the judgment. That consequently, judgment was delivered without her involvement.
50. In contrast, the Plaintiffs through their advocate, have maintained that the 2nd Defendant was aware of the existence of the suit by virtue of being represented by competent firms of advocates at all material times. That she cannot therefore claim to have had no knowledge of the suit or consequent judgment.
51. From a perusal of the record and as earlier mentioned, it is apparent that the 2nd Defendant was represented by a competent firm of advocates at all material times and was therefore reasonably expected to be aware of the progress in the suit. It is also apparent that while the 2nd Defendant did not personally attend court during the course of the suit proceedings or call any evidence, her advocate participated in the hearing of the suit by cross-examining the 1st Plaintiff. The record further shows that the 1st and 2nd Defendants through their advocates, filed written submissions in the suit. Furthermore, it is apparent from the court record that while judgment was delivered in the absence of the parties herein, directions had been given for the parties to be notified of the same through their respective advocates.
52. As a result, the averments and arguments by the 2nd Defendant that she did not, at all, participate in the suit proceedings cannot hold water. Moreover, no credible material has been tendered to show any diligent efforts on the part of the 2nd Defendant in following up on the progress of the suit through her former advocates, in any event.



53. From the foregoing, I am not satisfied that the explanation given for the prolonged delay in filing an appeal against the judgment is viable in the circumstances.
54. The third principle touching on whether the appeal is arguable cannot be determined by this court since it is the preserve of the Court of Appeal.
55. On whether the Plaintiffs stand to be prejudiced in the circumstances was not specifically addressed by the parties.
56. Suffice it to say that, upon my finding that there was inordinate and inexplicable delay, I hereby decline prayer (vi) of the 2nd Application seeking leave to appeal out of time.
57. The 2nd Defendant has in the alternative, sought order (vii) to the effect that this court be pleased to set aside the judgment delivered in the suit and all consequential orders, and to reopen the suit for hearing de novo.
58. Section 3A of the CPA reserves the inherent power of the court “to make such orders as may be necessary for ends of justice or to prevent abuse of the process of the court.” The Court of Appeal in *Rose Njoki King’au & Another v Shaba Trustees Limited & Another* [2018] eKLR stated thus:
- “Also cited was Section 3A of the *akn ke act 1924 3 Civil Procedure Act* which enshrines the inherent power of the Court to make such orders as may be necessary for ends of justice or to prevent abuse of the process of the Court. In *Equity Bank Ltd versus West Link Mbo Limited* [2013], eKLR, Musinga, JA stated inter alia, that, by “inherent power” it means that “Courts of law exist to administer justice and in so doing, they must of necessity balance between competing rights and interests of different parties but within the confines of law, to ensure that the ends of justice are met. Inherent power is the authority possessed by a Court implicitly without its being derived from *akn ke act 2010 constitution the Constitution* or statute. Such power enables the judiciary to deliver on their constitutional mandate.....inherent power is therefore the natural or essential power conferred upon the court irrespective of any conferment of discretion.”
59. The Supreme Court went further in *Board of Governors, Moi High School Kabarak and another v Malcolm Bell* [2013] eKLR, to add the following:
- “Inherent powers are endowments to the court as will enable it to remain standing as a constitutional authority and to ensure its internal mechanisms are functional. It includes such powers as enable the Court to regulate its intended conduct, to safeguard itself against contemplation or descriptive intrusion from elsewhere and to ensure that its mode of disclosure or duty is consumable, fair and just.” (sic)
60. From a reading of the above-cited judicial authorities, it is clear that the grant or refusal to set aside or vary an order, judgment or any consequential decree or order, is discretionary, wide, and unfettered. However, such discretion must be exercised judicially. In addition, the onus is on an applicant to tender credible material upon which the court can be convinced to exercise its discretion in his or her favor.
61. In the case of *Shah v Mbogo & Another* [1967] E.A 116 the rationale for the discretion was spelt out in the following manner:
- “The discretion to set aside an ex-part judgment is intended to be exercised to avoid injustice or hardship resulting from accident, inadvertence or excusable mistake or error but it is not



designed to assist a person who has deliberately sought whether by evasion or otherwise to obstruct or delay the cause of justice.”

62. I have considered the arguments presented by the parties in respect of this prayer as contained in this ruling. My considered view is that I have not come across any cogent material to support the assertions by the 2nd Defendant. As earlier established, the said Defendant was represented by a competent firm of advocates and had every opportunity to participate in the suit and to challenge the evidence by the Plaintiffs, and in fact did, through cross-examination and written submissions by her advocate. It is clear from the record that in delivering judgment, the court considered all the relevant material placed before the court in arriving at the decision.
63. Further, upon perusing the documentation annexed to the 2nd Defendant’s further affidavit, namely, a copy of the Forensic Report dated 9.09.2025 prepared by the Directorate of Criminal Investigations and a copy of the Exhibit Memo (Annexure “SN-4”), this court has not come across any credible material to indicate that the said documents could not have reasonably been obtained during the pendency of the suit.
64. Regarding the documents annexed to the 2nd Defendant’s supporting affidavit to the 2nd Application, it is apparent that Annexure “SN-1” being a copy of a Trust Deed was filed in the suit, while Annexure “SN-1” constituting an obituary notice confirming the death of Mary Goretti Gitari Munyi (hereafter the 2nd Plaintiff) was earlier brought to the attention of this court.
65. In view of all the foregoing circumstances therefore, I am of the view that the material adduced to support the prayer for setting aside the judgment to pave way for fresh hearing, is not sufficient to warrant a grant of the said order. Consequently, prayer (vii) of the 2nd Application is declined.
66. From the foregoing, the 2nd Application partially succeeds as indicated in this ruling.
67. Turning to the 1st Application, I have considered the prayers sought in it. I have considered prayer (iv) of the 1st Application which seeks to have the alleged Contemnors directed to return the funds relating to the sale of the subject properties. It is apparent from the material tendered, that the 1st and 2nd Defendants received Kshs 1,500,000 through the firm Muguku Kimathi & Co. Advocates on 14.08.2023 in respect of the sale of the suit properties as evidenced in annexure marked “MMN4” in a letter dated 14.08.2023 as well as a funds transfer application form dated 18.08.2023.
68. I have not seen any material, either in the court record or evidence adduced in the course of this application demonstrating that the funds received, as shown above, were refunded to the purchaser. In the absence of any contrary material therefore, the court is persuaded to grant the aforesaid order (iv), which I hereby do.
69. I have considered prayer (v) of the 1st Application. The power of this court to punish for contempt of court donated to it under Section 5 of the *akn ke act 1967 16 Judicature Act*, Cap. 8 Laws of Kenya which provides thus:

“(1) The High Court and the Court of Appeal shall have the same power to punish for contempt of court as is for the time being possessed by the High Court of Justice in England, and that power shall extend to upholding the authority and dignity of subordinate courts...”



70. That provision was re-affirmed in the case of *Kyoga Hauliers Limited v Long Distance Truck Drivers & Allied Workers Union* [2015] eKLR where the Court of Appeal reasoned that:
- “The power to deal with contempt of court is provided for under Section 5(1) of the *akn ke act 1967 16 Judicature Act*, Section 63(c) of the *akn ke act 1924 3 Civil Procedure Act* and Order 40 Rule 31 of the Civil Procedure Rules. Of importance in the determination of this issue is however Section 5(1) of the *akn ke act 1967 16 Judicature Act*, since Section 63(c) of the *akn ke act 1924 3 Civil Procedure Act* and Order 40 Rule 31 of the Civil Procedure Rules are concerned with disobedience of an order of temporary injunction and resultant consequences which are punishment in the form of imprisonment or attachment and sale of the contemnor’s property.”
71. That said, the Court of Appeal in the case of *Christine Wangari Gachege v Elizabeth Wanjiru Evans & 11 Others* [2014] eKLR held that in punishing contempt, the court exercises ordinary criminal jurisdiction. The Supreme Court of Kenya in *Republic v Ahmad Abolfathi Mohammed & Another* (2018) eKLR reiterated the legal position that the standard of proof in contempt proceedings is higher than that in civil cases, given the consequence that contempt proceedings may result in the imprisonment of a contemnor.
72. The guiding principles in determining whether there has been contempt of court orders were expressed in *Pinnacle (K) Travel and Safaris Limited v Omar Faruk Osman & 5 others* [2017] eKLR and echoed in the case of *Samuel M. N. Mweru & Others v National Land Commission & 2 others* [2020] eKLR as follows:
- a. That the order was clear, unambiguous and binding on the defendant.
 - b. That the defendant had knowledge of or proper service of the terms of the order.
 - c. That the defendant acted in breach of the terms of the order.
 - d. That the defendant’s conduct was deliberate.
73. On the first principle, it remains undisputed that judgment was delivered in the present suit on 6.04.2023 where various orders were issued, including a permanent prohibitory injunction restraining the 1st and 2nd Defendants from acting as and or purporting to act as the Trustees of the Trust herein; an order directing the 1st and 2nd Defendants to vacate office with immediate effect and to hand over all official documents, seal of the Trust and the office to the Plaintiffs being the newly elected Trustees of the Trust; and a further order directing the 1st and 2nd Defendants to hand over the original Certificate of Incorporation and the Official Seal of the Trust forthwith to the Plaintiffs. To my mind, the above orders are clear and unambiguous in nature.
74. Regarding the second principle, the 1st Plaintiff, vide his supporting affidavit to the 1st Application, has averred that service of a copy of the judgment decree was duly effected upon the 1st and 2nd Defendants, while the 3rd Contemnor was aware of the existence of the judgment and resulting decree.
75. As pertains to the 1st Defendant, the record shows that an affidavit of service was sworn by process server Lemerketto Isaya on 9.10.2023, the contents of which are that upon receipt of the decree resulting from the judgment and a letter dated 29.09.2023, the process server proceeded to effect service upon the 1st Defendant on 6.10.2023 in Eastleigh. That the 1st Defendant accepted service but declined to sign on the process server’s copy. In the absence of any contrary evidence therefore, the court is satisfied that it has been sufficiently established that the 1st Defendant was duly served in person, with a copy of the decree.



76. As pertains to the 2nd Defendant, there is nothing credible on the record to ascertain service upon her in person. The record shows that process server Ngundo Mulevu swore an affidavit of service on 19.10.2023 in which he deposed that he effected service of an application dated 8.09.2023 upon the 1st and or 2nd Defendants' erstwhile firm of advocates through their email addresses.
77. Suffice it to say that, the court is of the view that the issue of service has not satisfactorily been established as relates to the 2nd Defendant.
78. In respect to the third and fourth principles, the 1st and 2nd Defendants have unanimously argued that while it is true that they entered into the sale agreement in respect of the subject properties (vide a Sale agreement dated 10.08.2023 between the Trust and the Company, which is marked as Annexure "MMN-1" to the 1st Plaintiff's supporting affidavit), the same was ultimately rescinded, prior to filing of the 1st Application. The 1st Defendant has annexed a copy of letters dated 22.08.2023 and 31.08.2023 as Annexures "JN-1" and "JN-2" to support the above averments.
79. Upon consideration thereof and in the absence of any material to indicate otherwise, I hold the view that any contemptuous acts on their part were subsequently purged through rescission of the sale transaction, prior to the 1st Application being filed.
80. In the circumstances, and especially upon a consideration of the preceding cancellation of the sale transaction coupled with the high standard of proof required in contempt of court claims, I see no reason to hold the 1st and 2nd Defendants in contempt of the decree resulting from the judgment delivered in the suit at this juncture. Prayer (v) of the 1st Application is hereby declined.
81. Similarly, no cogent material has been tendered to indicate that the 1st and 2nd Defendants are undertaking any activities on the subject properties, in order to necessitate grant of prayer (vi) seeking to have the intervention of the Officer Commanding Police Station (OCS) or Officer in Charge of Police Division (OCPD) Eastleigh Police Station and or County Commander Eastleigh Police Station, as sought in order (vi). Consequently, prayer (vi) also fails. It is hereby declined.
82. As relates to the 3rd Contemnor, however, upon the court's careful study of the record and more particularly the judgment and resulting decree, there is nothing to indicate that the terms of the said decree applied or extended to the 3rd Contemnor, in order for a claim for contempt of court to be sustained against him. It is a general legal principle that in order for a person to be found in contempt of court, the relevant court order or decree ought to be directed at such person.
83. In the premises, it is my finding that the orders for contempt sought against the 3rd Contemnor automatically collapse.
84. Consequently, I find that 3rd Application brought by the 3rd Contemnor and which was prompted by the first application, inevitably falls. The court sees no reason to consider its merits and proceeds to strike it out.
85. Consequently, I make the following orders:
 - a. The Notice of Motion dated 6.05.2025 partially succeeds.
 - b. In view of a) above, the 1st and 2nd Defendants be and are hereby directed to return Kshs 1,500,000 paid as deposit relating to the sale of the subject property made on 10.08.2023 and received on 14.08.2023 through the firm of Muguku Kimathi & Co. Advocates within 60 days from the date of this ruling.



- c. The Notice of Motion dated 26.05.2025 and brought by the 1st and 2nd Defendants partially succeeds.
- d. In view of c) above, the firm of Karwanda & Associates Advocates be granted leave to come on record and act for the 1st and 2nd Defendants in place of the firms of Moraa Onyiego & Associates Advocates and Muraguri, Muigai & Waweru & Co. Advocates respectively.
- e. Further to d) above, the replying affidavit sworn on 26.05.2025 by the 1st Defendant be and is hereby deemed as duly filed.
- f. The Notice of Motion dated 26.05.2025 and brought by the 3rd Contemnor is hereby struck out.
- g. Each party shall bear their own costs of the respective applications.
- h. Parties are at liberty to apply.

DATED, SIGNED AND DELIVERED THIS 27TH NOVEMBER 2025.

S. N. MUTUKU

JUDGE

In the presence of:

Ms Kioko for Mr. Waigwa for Plaintiffs

Mr. Karwanda for 1st, 2nd Defendants and the 3rd Contemnor

