



**Mutiria (Suing for and on Behalf of the Estate of Eunice Wangeci Mutiria) v Nduki & 2 others
(Environment and Land Case E005 of 2024) [2025] KEELC 5637 (KLR) (30 July 2025) (Ruling)**

Neutral citation: [2025] KEELC 5637 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KERUGOYA
ENVIRONMENT AND LAND CASE E005 OF 2024**

**JM MUTUNGI, J
JULY 30, 2025**

BETWEEN

**ASENATH WAWIRA MUTIRIA PLAINTIFF
SUING FOR AND ON BEHALF OF THE ESTATE OF EUNICE WANGECI
MUTIRIA**

AND

**JOYCE WANGITHIA NDUKI 1ST DEFENDANT
THE LAND REGISTRAR KIRINYAGA COUNTY 2ND DEFENDANT
THE HONOURABLE ATTORNEY GENERAL 3RD DEFENDANT**

RULING

1. Before the Court is an application dated 7th October 2024, filed by the 1st Defendant/Applicant, seeking to have the Plaintiff/Respondent cited and punished for contempt of Court. The Applicant seeks the following orders:
 1. The Honourable Court be pleased to cite the Plaintiff/Respondent for Contempt of Court by her disobedience of the court order issued on 8th July 2024 on upholding Status Quo.
 2. The Honourable Court be pleased to cite the Plaintiff/Respondent for contempt and commit her to civil jail for a term of six [6] months and/or until she purges her contempt by depositing in court Kshs 1,000,000 the sale value for all the trees cut, felled and sold on or about 23rd September 2024 and further disclosing the proper, actual and current financial account for the said sale.
 3. The application is premised on grounds set out on the body of the application and the Supporting Affidavit sworn on 7th October 2024.



2. The 1st Defendant/Applicant avers that the parties on 8th July 2024 entered a consent before the Court that the parties were to maintain the status quo in regard to land parcel Kabare/Nyangati/118 registered in the name of the 1st Defendant. The 1st Defendant averred that the orders of maintenance of the status quo meant that none of the parties was to deal with the suit land in a manner that was prejudicial to the interest of the other party pending the hearing and determination of the suit. The 1st Defendant further avers that the Plaintiff in disobedience and defiance of the status quo orders issued on 8th July 2024, on or about 23rd September 2024 deliberately and willfully cut and felled over 50 trees in the suit land with an estimated value of Kshs 1,000,000/- in utter disregard of the Court order.
3. The 1st Defendant further averred that the Plaintiff's conduct and acts were intentional and deliberate and urged that the Plaintiff be held to be in contempt of Court and punished.
4. The Plaintiff/Respondent in response to the application asserted that the 1st Defendant's application lacked any merit and was merely a delaying tactic to the final determination of the suit. The Plaintiff averred that she never understood the "status quo order" to mean she could not cultivate, farm, reside or collect firewood for fuel. She averred that she and her siblings relied on the suit land and that they eked out their living and subsistence by carrying out activities in the suit land. She admitted they felled the trees after obtaining approvals and permits for tree felling from the relevant authorities and did not consider there was anything wrong in cutting the trees as her family had routinely done the same during the lifetime of her deceased mother. The Plaintiff thus contended that she had not willfully and deliberately disobeyed the Court Order of status quo as alleged by the 1st Defendant. The Plaintiff asserted that she had a beneficial interest over the suit land, the same having been family land and they having resided and utilized the suit land over all the years. She urged that the contempt application be dismissed with costs.
5. The 1st Defendant following the Plaintiff's Replying Affidavit filed a further Affidavit sworn on 11th November 2024 in response. The 1st Defendant averred that the Plaintiff having admitted the existence of the order entered into by consent, the Plaintiff cannot plead misunderstanding and /or ignorance of the Law. The consent order was entered into in the presence of the Plaintiff's Advocate who ought to have explained the Plaintiff the contents of the Court order. The 1st Defendant further asserted the value of the felled trees could not be Kshs 100,000/- admitted by the Plaintiff but was worth Kshs 1,400,500/- as per the valuation report annexed as "JWN4" to the further Affidavit. The 1st Defendant reiterated that the Plaintiff's actions were willful and deliberate and were in disobedience of a valid Court Order and urged that the Plaintiff be held to be in contempt and punished.
6. The application was canvassed by way of submissions as per the Court's directions. The 1st Defendant/Applicant filed her submissions dated 20th March 2025. She reiterated the Court order of parties to maintain the status quo was agreed upon by the parties, but the Plaintiff deliberately ignored and refused to comply with the order. She contended the Plaintiff's actions were willful and malicious and in disobedience of the Court order and therefore contemptuous deserving punishment for the disobedience to be meted out to the Plaintiff.
7. The Plaintiff/Respondent in her written submissions dated 8th April 2025 submitted that the order of status quo did not specify the acts that could not be undertaken and that her understanding was that they [Plaintiff and her siblings] could continue utilizing the suit land, in the same manner that they had been using the land. It was her contention that she did not construe the order to bar felling of trees on the land which they had routinely done. She contended it was not her intention to deliberately disobey the Court order and she expressed remorse if she may have misconstrued the Court order.



8. I have carefully considered the application, the Respondent's Replying Affidavit, and the parties' written submissions. The key issue for determination is whether the Respondent's conduct constitutes contempt of Court punishable by the Court.
9. The Black's Law Dictionary, 9th Edition, defines contempt of court as behaviour that challenges the authority or dignity of a Court. This conduct interferes with the administration of justice and can result in penalties such as fines or imprisonment. Section 5 of the *Judicature Act*, in conjunction with Section 29 of the *Environment and Land Court Act*, serves as the guiding law on contempt of court, following the declaration by the Court that the *Contempt of Court Act* was unconstitutional.
10. Section 5[1] of the *Judicature Act* provides that:

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.
11. Section 29 of the Environment and Land Court 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
12. In the English case of *Steward Robertson v Her Majesty's Advocates* [2007] HCA C63, the Court stated that contempt of Court occurs when a person's conduct demonstrates willful defiance or disrespect towards the Court or when it intentionally challenges or undermines the authority of the Court or the rule of law, regardless of whether the proceedings are Civil or Criminal.
13. Obedience and compliance with Court orders is not optional; it is essential for maintaining the dignity, authority, and rule of law. The court must vigilantly protect these principles by responding firmly to anyone who deliberately disobeys Court orders or seeks to disrupt the Judicial process or bring the Court into disrepute by their actions. Individuals who are dissatisfied with a Court's order have legal avenues to challenge it; therefore, defiance of the Court should never be considered an option.
14. The standard of proof for contempt of Court is higher than the standard of proof on a balance of probabilities in Civil cases. In the case of *Ochino & Another v Okombo & Others* [1989] eKLR, the Court of Appeal held that the Court will only punish as contempt a breach of injunction, if satisfied that the terms of the injunction are clear and unambiguous and that the Defendant had proper notice of the terms and that breach of the injunction had been proved beyond reasonable doubt [see *Mwangi Magondu v Nairobi City Commission CACA No. 95/88*]. Similarly, in *Samuel M. N. Maweu & Others v National Land Commission* [2020] eKLR, it was clarified that for a person to be found guilty of contempt of Court, the applicant must prove the following ingredients:-
 1. The terms of the order were clear, unambiguous and binding on the citees.
 2. The citees had knowledge of or proper notice of the terms of the order.
 3. The citees acted in breach of the terms of the order.
 4. The conduct was willful and deliberate.



15. In the case of *North Tetu Farmers Co. Ltd v Joseph Nderitu Wanjohi* [2016] eKLR, Justice Mativo stated as follows:

“Writing on proving the elements of civil contempt, learned authors of the book *Contempt in Modern New Zealand* have authoritatively stated as follows: -

“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 - [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 [d] the Defendant's conduct was deliberate.”

16. Applying the above principles to the circumstances in the instant matter the Court has to satisfy itself that the status quo order said to have been breached was clear and unambiguous; that the Respondent had proper notice of the terms of the order; and, that there was willful and deliberate disobedience of the said order.

17. The Applicant's application is premised on the disobedience of the Court order said to have been issued on 8th July 2024 ordering that the parties maintain status quo. There is no record of an order having been issued on 8th July 2024. There was no extracted order annexed to the Supporting Affidavit. The record of the Court, however, indicates that on 11th April 2024 the Court issued inter alia the following order:-

“That the parties shall maintain and observe the prevailing status quo and specifically no party shall undertake any developments of a permanent nature, sell, charge and/or transfer pending the hearing and determination of the suit.”

18. As a prelude to the issue of the order, the parties were in agreement what was in issue in the suit was the ownership of the suit land and consequently agreed that the status quo order could be issued by consent. The Plaintiff in her Supporting Affidavit to the Notice of Motion application dated 20th February 2024 pursuant to which the status quo order was issued deponed that her and her siblings have lived on suit land since they were born and that the 1st Defendant had never been to the land to lay claim to it though the abstract of title indicates the land was transferred to her on 9th September 2013. It is that transfer the Plaintiff contends was fraudulent and prays for its annulment.

19. The Plaintiff/Respondent has asserted she never understood the order to be barring them from utilizing the land as they had always been doing including harvesting trees. The Court order identified the specific acts that the parties could not do which included; any developments of a permanent nature, sale, charge and/or transfer. The order did not specifically bar the cutting of any trees and hence the loophole. It was not brought to the Court's attention that there were any mature trees, and if there were any, to whom they belonged given there was contestation of the ownership of the land.

20. The “status quo”, was not expressly defined by the parties, and the Court in delineating the actions that the parties were barred from doing, was an effort in defining what the status quo entailed. Given the circumstances I am not able to hold that the status quo order was clear and/or unambiguous and that the content of the order included barring the cutting of trees, particularly as the order spelled out the actions that it specifically barred the parties from doing.

21. It is conceivable that an order of status quo would ordinarily extend to an action such as not interfering with flora and fauna of the land subject of the order, but ideally an order of status quo ought to



define and specify the activities that it prohibits and/or describe the status quo to be maintained. In an application for contempt of Court, where the standard of proof is analogous to proof beyond a reasonable doubt as in Criminal cases, it would be difficult as in the instant case to find contempt proved, when the Respondent claims he/or she misconstrued the order and that there was no willful and deliberate intention to disobey the Court order. If there was room for misconstruing the order, then it means the order was not clear and unambiguous and that the terms and content of the order were not understood by the Respondent.

22. While it is not denied that trees in this case were harvested by the Plaintiff, if the 1st Defendant considers it appropriate she could seek leave to amend the defence to plead a counterclaim to claim the value of the harvested trees in the event she is the successful party in the suit.
23. For the reasons that I have advanced hereinabove, I find contempt of Court not proved to the required standard. I accordingly dismiss the Applicant's application dated 7th October, 2024 but given the attendant circumstances, I order that each party shall bear their own costs of the application.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY AT KERUGOYA THIS 30TH DAY OF JULY 2025.

J. M. MUTUNGI

ELC - JUDGE

