



**Wambugu (Suing as the administrator of the Estate of Joseph W Mundia) v Rugut & another (Civil Suit 158B of 2005) [2025] KEHC 18603 (KLR) (18 December 2025) (Ruling)**

Neutral citation: [2025] KEHC 18603 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAKURU  
CIVIL SUIT 158B OF 2005  
HI ONG'UDI, J  
DECEMBER 18, 2025**

**BETWEEN**

**ANNIE WAMUYU WAMBUGU (SUING AS THE ADMINISTRATOR OF THE ESTATE OF JOSEPH W MUNDIA) ..... PLAINTIFF**

**AND**

**SOLOMON K RUGUT ..... 1<sup>ST</sup> DEFENDANT**

**DISTRICT LAND REGISTRAR NAKURU ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

1. In the amended Notice of Motion dated 14<sup>th</sup> April 2025 under sections 1A, 1B & 63(e) of the *Civil Procedure Act*, Order 9 rule 9, Order 22 rule 28(1) of the Civil Procedure Rules and all the enabling laws, the plaintiff/applicant prays for the following orders; -
  - i. -ii- Spent.
  - iii. That the 1<sup>st</sup> respondent be cited for contempt of court and be committed to civil jail for a term of six (6) months or until he purges his contempt and comply with the orders of the honourable court issued on 15<sup>th</sup> March, 2013 and 28<sup>th</sup> June 2018 and or he be ordered to purge the contempt on terms this court deems fit.
  - iv. That in lieu of prayer 3 above, the 1<sup>st</sup> respondent be cited for Contempt of court and fined a sum of at least Kshs.300,000/= and that the court do make any such order for the purposes of enforcing the eviction orders and permanent injunction issued by this court.
  - v. That the OCS Olengurone police station ensure compliance with the said orders.
  - vi. That the 1<sup>st</sup> respondents be condemned to pay cost of the application.



2. The said application is premised on the grounds on its face and the affidavit by the plaintiff/applicant sworn on the even date. She deponed that judgment in respect of the suit land was entered in favour of her late husband (plaintiff) on 15<sup>th</sup> March, 2013 and decree issued on 10<sup>th</sup> October, 2013. However, sometime in 2018 the 1<sup>st</sup> respondent attempted to occupy the said land and the court issued further orders on 28<sup>th</sup> June 2018. Further, on or about 1<sup>st</sup> February, 2024 and 1<sup>st</sup> March, 2024 the 1<sup>st</sup> respondent again invaded the suit land, cut down the trees and burnt others without due regard to this court's orders. Thus, it is in the interest of justice that this application is allowed in affirming that this court does not issue orders in vain and that no one is above the law.
3. The respondents did not file any response to the application.
4. The application was canvassed by way of written submissions but only the plaintiff/applicant filed the same. The respondents' submissions are not in the court file or in the CTS portal.
5. The plaintiff/applicant's submission were filed by Willy Maina & Company Advocates on 19<sup>th</sup> January, 2024. Counsel gave a brief introduction of the case and identified one issue for determination which is whether the 1<sup>st</sup> defendant/respondent is liable for contempt of court orders of 10<sup>th</sup> October 2013 and 8<sup>th</sup> May 2014. Counsel submitted that it is trite law that contempt of court refers to any conduct that defies, disrespects, or disobeys the authority, justice, and dignity of a Court. Further, that it is a mechanism used to uphold the rule of law, ensure compliance with court orders, safeguard the integrity of judicial proceedings and maintain public confidence in the judiciary.
6. The court's attention was drawn to the decision in *Koilel & 2 Others v Koilel & another* Civil Appeal E002 of 2021 2022 KEHC 10288 (KLR) (30 June 2022) (Judgment) where the court cited with approval *Kristen Carla Burchell vs Bar Grant Burchell* Eastern Cape Division Case No. 364 of 2005 and reiterated that to succeed in civil contempt proceedings, the applicant has to prove the following;
  - 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 n term so the order
7. Regarding the terms of the order, counsel submitted that the decree issued on the 10<sup>th</sup> October 2013 explicitly decreed that the defendant trespassed into the plaintiff's land. Further, the subsequent orders given on 8<sup>th</sup> May 2014, directed the OCS Olenguruone Police Station to supervise, escort and provide security during the execution and eviction orders issued by the court. In addition, the said orders have never been set aside, stayed or varied so they remain valid and binding to date.
8. On knowledge of the terms of the order by the respondent, counsel submitted that it was clear from the court records that the 1<sup>st</sup> respondent was represented by counsel in these proceedings and the same is reflected in the quorum of 15<sup>th</sup> March 2023. He placed reliance on the decision in *Shimmers Plaza Limited v National Bank Limited* [2015] eKLR where the Court of Appeal considered whether knowledge of a court order or judgment by an advocate of the alleged contemnor would be sufficient for contempt.
9. Lastly, is on failure by the respondent to comply with the terms of the order. Counsel submitted that the supporting affidavit sworn on 14<sup>th</sup> April 2025, demonstrates that the 1<sup>st</sup> respondent trespassed into the suit property and denied the plaintiff /applicant exclusive and quiet possession of the suit property. He did that in total defiance of valid and binding court orders.



10. In conclusion, he urged the court to find the 1<sup>st</sup> defendant/respondent in contempt and to impose appropriate sanctions for disobedience of court orders.

### **Analysis and determination**

11. I have perused carefully the applicant's application, the supporting affidavit, affidavit by the respondent and both parties' submissions. In my opinion one issue arises for determination by this court that is, whether the 1<sup>st</sup> respondent is guilty of contempt of court.
12. According to the Black's Law Dictionary (Ninth Edition) contempt is defined as follows:

“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.”
13. The statutory basis of contempt of court in so far as the High court is concerned is section 5 of the [Judicature Act](#) which provides as follows;
  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.
  2. An order of the High court made by way of punishment for contempt of court shall be appealable as if it were a conviction and sentence made in the exercise of the ordinary original Criminal jurisdiction of the High court.
14. It is an established principle of law that [ See the High Court of South Africa in the case of Kristen Carla Burchell v Barry Grant Burchell (supra) 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.
15. In the instant suit, there is no dispute that indeed on 15<sup>th</sup> March, 2013 and 28<sup>th</sup> June 2018 this court issued an order against the 1<sup>st</sup> defendant/respondent compelling him not to interfere with the plaintiff/applicant's land. There is evidence that the said order is in the knowledge of the 1<sup>st</sup> defendant / respondent since in the two occasions his was represented by his advocates and he was also physically present in court when the last orders were issued. The court while issuing the orders of 28<sup>th</sup> June 2018, informed the 1<sup>st</sup> defendant /respondent that in the event he does not comply he will be arrested and brought to court to answer for the charge of contempt of court. From the photographs annexed in the affidavit in support of the application, there is no doubt that the said orders have not been complied with.
16. On 28<sup>th</sup> June 2018 the 1<sup>st</sup> defendant /respondent informed the court that his workers were not in the farm but from the photographs some workers are seen plucking tea leaves in the suit property. The 1<sup>st</sup> defendant/respondent did not respond to the application explaining the reasons for non-compliance or denying the allegations by the plaintiff/applicant. Thus, the evidence by the plaintiff/applicant remains uncontroverted. Further, the affidavit of service dated 31<sup>st</sup> October 2025 is sufficient proof that he was served.



17. The Court of Appeal in the case of A.B. & Another v R.B., Civil Application No. 4 of 2016 [2016] eKLR cited with approval the Constitutional Court of South Africa's decision in Burchell v. Burchell, Case No.364 of 2005 where it was held:

“Compliance with court orders is an issue of fundamental concern for a society that seeks to base itself on the rule of law. *The Constitution* states that the rule of law and supremacy of *the Constitution* are foundational values of our society. It vests the judicial authority of the state in the court and requires other organs of the state to assist and protect the court. It gives everyone the right to have legal disputes resolved in the courts or other independent and impartial tribunals. Failure to enforce court orders effectively have the potential to undermine confidence in recourse to law as an instrument to resolve civil disputes and may thus impact negatively on the rule of law.”

18. There is no doubt that the elements of contempt as against the 1<sup>st</sup> defendant/respondent have been proved by the plaintiff /applicant to the extent that the orders were clear and the respondent had knowledge of the said orders. It has been repeated time and time again that the courts should not fold their hands and watch helplessly as their orders are disobeyed with impunity. This would be an abdication of its sacrosanct duty of protecting the dignity and authority of the court which duty is bestowed upon it by *the Constitution*. That in itself promotes the rule of law, enhances public confidence on the justice system and protects interest of parties before the court.
19. Consequently, this court finds the 1<sup>st</sup> defendant/respondent guilty of contempt of court orders of 15<sup>th</sup> March 2013 and 28<sup>th</sup> June, 2018.
20. 1<sup>st</sup> defendant/respondent is hereby directed to appear before this court on 12<sup>th</sup> February, 2026 to purge the contempt.
21. Orders accordingly.

**DELIVERED VIRTUALLY, DATED AND SIGNED THIS 18<sup>TH</sup> DAY OF DECEMBER, 2025 IN OPEN COURT AT NAKURU.**

**H. I. ONG'UDI**

**JUDGE**

