

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT VIHIGA**  
**SUCCESSION CAUSE NO 97 OF 2021**  
**IN THE MATTER OF THE ESTATE OF PILA MUSA ANG'AHA ALIAS**  
**PILA ANG'AHA**

**ANNE WAKA OYALO.....**  
**PETITIONER**

**VERSUS**

**DAMARIS ONEA OKINDA.....OBJECTOR**

**RULING**

**INTRODUCTION**

1. In her Notice of Motion dated and filed on 24<sup>th</sup> March 2025, the Petitioner herein sought orders that the Objector herein be committed to civil jail for a period of six (6) months or fined Kshs 200,000/= only or both for contempt of court.
2. She swore an affidavit in support of the said application on 24<sup>th</sup> March 2025. She averred that L.R No West Bunyore/Emusire/1053 (hereinafter referred to as the "subject land") was surveyed on 3<sup>rd</sup> November 2022 and a Surveyor's Report dated 8<sup>th</sup> November 2022 filed in this court. She added that on 16<sup>th</sup> December 2024, this court made an order directing the Objector herein to remove/clear maize until where the toilets where she was running a clinic had reached to give her clear access, by 24<sup>th</sup> December 2024 but that the Objector did not respect the said order as the maize was still growing as at 3<sup>rd</sup> January 2025 after which she took her sweet time to harvest the same at the surprise of the villagers to whom she bragged that she was immune to orders.

3. She stated that the said order was served upon the OCS, Embali Police Station who acknowledged service but due to their own administrative commitment, he could not provide security to her to effect the part two (2) of the order.
4. She further averred that on 30<sup>th</sup> April 2024, this court issued another order restraining the Respondent from tilling, ploughing, planting, working or in any other way interfering with the subject land limited to the portion on 0.65 acres as per the Surveyor's Report dated 8<sup>th</sup> November 2022 pending hearing and determination of this Succession Cause. She contended that despite the Objector being aware of the said order, she ploughed the entire parcel from where the beacon was situated to the clinic in contravention of the said order and as such, lowered the dignity and integrity of this court bringing it into ridicule.
5. She further stated that the Objector had the full knowledge of the said order and that was why she filed the application dated 27<sup>th</sup> May 2024 in which she sought that this court reviews its orders but the court declined. She asserted that unless the Objector was punished, she would continue and even solidify her believe that court orders were for nothing. She added that the Objector's wilful and flagrant contravention of the said order was detrimental to her interests and the entire public.
6. She contended that when she filed her application dated 29<sup>th</sup> September 2023 for among other prayers, citation of the Objector for contempt, the court in its Ruling dated 30<sup>th</sup> April 2024 spared her

on account that there was no evidence that had been placed before it to show that she or her advocate were present when the order dated 4<sup>th</sup> November 2022 was delivered.

7. She contended that it was in the interest of justice that the Objector be cited for contempt to bring about law and order. She asserted that if the said disobedience was allowed to persist, it would impede the cause of justice as the court would never know the truth and would be unable to enforce its own orders as was the case herein.
8. She asserted that the Objector had despised and defied the authority of this court despite the terms of the said order being clear, unambiguous and were binding on her. She was emphatic that the Objector's conduct was, therefore, deliberate as she had continued to treat the orders of this court with extreme impunity.
9. The Objector swore a Replying Affidavit on 1<sup>st</sup> April 2025 in opposition to the said Petitioner's application. The same was filed on 2<sup>nd</sup> April 2025. She averred that this court visited the subject land on 3<sup>rd</sup> December 2024 to determine the dispute and that on 16<sup>th</sup> December 2024, it issued new orders after the site visit ordering her to clear the maize until where the Objector had been running the clinic to give clear access to her.
10. She was categorical that she immediately heeded to the orders of the court and cleared the maize giving access to the clinic and the toilets. She added that on 25<sup>th</sup> February 2025, the court once again ruled that the orders issued on 16<sup>th</sup> December 2025

were to subsist pending hearing and determination of her Summons for Revocation.

11. She was categorical that she had faithfully obeyed the orders as evidenced by her annexed photographs. She asserted that there were no beacons placed as had been alleged by the Petitioner and denied ever having removed the same.
12. The Applicant's Written Submissions were dated and filed on 22<sup>nd</sup> April 2025 while those of the Respondent were dated 6<sup>th</sup> May 2025 and filed on 29<sup>th</sup> May 2025. This Ruling is based on the said Written Submissions that both parties relied upon.

### **LEGAL ANALYSIS**

13. The Petitioner submitted that the Objector was privy to the Ruling of this court delivered on 30<sup>th</sup> April 2024 which she claimed was served upon the Objector's Advocate on 6<sup>th</sup> June 2024 despite them having been aware of it. She added that as further proof that the Objector was aware of the said order, she filed and served her application dated 27<sup>th</sup> May 2024 seeking to review the said order but failed in her attempt as the order was still in existence.
14. She invoked Section 5 of the Judicature Act and urged the court to punish the Objector as a contemnor for disobeying court orders which were valid. She asserted that as she filed her submissions herein, the Objector had already ploughed and planted the entire land including the 0.65 acres earmarked for her. She

added that the only solution was to punish the Objector and order her to remove forthwith all the crops she had planted in the Petitioner's portion of land measuring 0.65 acres.

15. She pointed that even as this court was reserving a date for this Ruling, the Objector and her daughter were celebrating that by the time the Ruling would be delivered they would have harvested and perhaps ploughed again in defiance.
16. She placed reliance on the case of **Hadkinson vs Hadkinson (1952) All ER 567** where it was held that it was the plain and unqualified obligation of every person against or in respect of whom an order was made by a court of competent jurisdiction to obey it unless and until it was discharged and disobedience of such an order would as a general rule result in the person disobeying it being in contempt and punishable by committal or attachment and in an application to court by him not being entertained until he had purged his contempt.
17. She further cited Section 29 of the Environment and Land Court Act and urged the court to punish the Objector. She relied on the cases of **Kenya Tea Growers Association vs Francis Atwoli Petition No 64 of 201** (sic) **at Nairobi, Environment and Land Case No 46 of 2020** at Kisumu and **Miguna Miguna vs DPP & 2 Others** (eKLR citations not given) without highlighting the holdings she relied on therein.
18. On her part, the Objector submitted that the law of contempt was to protect the dignity of the courts and uphold the rule of law.

She placed reliance on the case of Samuel M.N Mweni Case (eKLR citation not given) where it was held that there were essentially four (4) elements that must be provided to make the case for civil contempt, they included, the terms of the order must be clear and unambiguous and binding on the defendant, the defendant must have the knowledge of or proper notice of the terms of the order, and that the defendant's conduct was deliberate.

19. She was categorical that she cleared the maize as per the order. She further asserted that her actions were not deliberate as there were two (2) contradicting orders, one limiting her to a portion of 0.86acres, the same not having clear boundaries and another requiring her to clear the maize around the clinic until where the toilets the Petitioner was running a clinic had reached.

20. She argued that she had fully obeyed the order as from 16<sup>th</sup> December 2024 when the same was ordered and that the Petitioner could not allege that she had not complied as the second limb of the order required that the OCS to the nearest police station provide security to the Petitioner to clear the maize and the explanation that there were changes at Embali & Emusire Police Station administratively could not stop the OCS from either station from effecting the orders and if that was true then they could have moved the court appropriately.

21. She asserted that the last orders of the court superseded the previous orders as the orders of 16<sup>th</sup> December (**sic**) were directed after the site visit that enabled the court to have a true picture of

what was on the ground. She added that without boundaries on the subject land, it was impossible for her as a layman to determine the measurements to know where the boundary would be and at the same time comply with the order that was to subsist upon hearing and determination of her application for revocation of Grant. She urged the court to dismiss the Petitioner's application.

22. There was no doubt that contempt of court proceedings were a serious undertaking because a court exercising this jurisdiction was minded to ensure the orderly functioning of society and the rule of law. On conviction, the alleged contemnor stood to lose his or her liberty. It could not, therefore, be taken lightly.

23. The contempt of court proceedings were in the nature of criminal proceedings. It was for that reason that proof of a case against a contemnor was higher than that of balance of probability as was held in the case of **Mutitika vs Baharini Farm Limited [1985] KLR 229, 234.**

24. The power to punish for contempt was discretionary and was to be exercised sparingly. The applicant was required to demonstrate that the contemnor had personal knowledge of an order that was served on him or her and that he or she had wilfully disobeyed the order. The applicant was also required to prove wilful and deliberate disobedience of the court order by the contemnor as was held in the case of **Econet Wireless Kenya Ltd vs Minister for Information & Communication of Kenya & Another [2005] eKLR.**

25. Notably, the issue of whether the Objector and/or her Advocate were aware of the order of this court on 30<sup>th</sup> April 2024 was not in dispute herein. What was in contention was whether the Objector disobeyed the said order.
26. In its Ruling dated 30<sup>th</sup> April 2024, this court allowed the Petitioner's Notice of Motion application dated 29<sup>th</sup> September 2023 and filed on 2<sup>nd</sup> October 2023 in terms of prayer No (3) but limited her occupation to the portion of 0.65 acres as per the Surveyor's Report dated 8<sup>th</sup> November 2022. The said Prayer No (3) was to the effect that the Objector either by herself or through her servants/agents or any other person whatsoever be restrained from tilling, ploughing, planting, working or in any other way interfering with the subject land.
27. A perusal of the photographs annexed as evidence by the Petitioner showed that indeed on 3<sup>rd</sup> January 2025, the Objector had planted maize on the subject land all the way to the toilets and the clinic that was manned by the Petitioner. Further, the photographs dated 11<sup>th</sup> March 2025 showed that she had ploughed the subject land.
28. On the other hand, the Objector annexed photographs dated 28<sup>th</sup> March 2025 alleging that she had complied with the order of this court. This court was convinced by the evidence of the Petitioner that as at 3<sup>rd</sup> January 2025, the Objector had still planted maize on the subject land and on 28<sup>th</sup> March 2025 as she alleged

she had already harvested the same. She, therefore, annexed photographs that showed that she had harvested.

29. This court noted that in her submissions, the Objector kept contradicting herself in that while claiming that she complied with the court's order, she also complained of the orders of the court being contradictory or ambiguous to justify her actions.

30. Going further, it was also clear that the Objector filed an application dated 27<sup>th</sup> May 2024 seeking that this court reviews its orders of 30<sup>th</sup> April 2024 but the court dismissed that specific prayer. This was proof that she was aware of the orders and still proceeded to disobey the same.

31. Court orders must be obeyed as explained earlier in this Ruling. It was evident that the Objector disobeyed the orders of this court even after the court had paid a site visit and gave its own orders to salvage the issues at hand pending hearing and determination of her Summons for Revocation of Grant dated 28<sup>th</sup> October 2022. It was only prudent that she be cited for contempt before the court could proceed with cause.

### **DISPOSITION**

32. For the foregoing reasons, the upshot of this court's decision was that the Petitioner's Notice of Motion application dated and filed on 24<sup>th</sup> March 2025 was merited and the Objector be and is hereby

cited for contempt for court orders. She will bear the costs of the application.

33. It is hereby directed that the Objector attends court on 2<sup>nd</sup> February 2026 for mitigation and sentencing.

34. It is so ordered.

**DATED** and **DELIVERED** at **VIHIGA** this **28<sup>th</sup>** day of **January** 2026

**J. KAMAU**  
**JUDGE**

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