



**Gichuhi (Suing on Behalf of the Estate of Michael Gichuhi Muiru (Deceased))  
v Kenya National Highway Authority & another (Environment and Land  
Case E006 of 2023) [2026] KEELC 327 (KLR) (28 January 2026) (Ruling)**

Neutral citation: [2026] KEELC 327 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT THIKA  
ENVIRONMENT AND LAND CASE E006 OF 2023  
JM ONYANGO, J  
JANUARY 28, 2026**

**BETWEEN**

**GODFREY KIHUHA GICHUHI (SUING ON BEHALF OF THE ESTATE OF  
MICHAEL GICHUHI MUIRU (DECEASED)) ..... APPLICANT**

**AND**

**KENYA NATIONAL HIGHWAY AUTHORITY ..... 1<sup>ST</sup> RESPONDENT**

**CHINA ROAD & BRIDGE CORPORATION ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. Before this Court is the Notice of Motion application dated 20<sup>th</sup> October 2024 in which the Applicants seek the following Orders:
  1. Spent...
  2. Spent..
  3. That this Honourable court be pleased to order the immediate arrest and committal to civil jail for six months of the defendant’s Managing Director for gross disobedience of the court orders issued on 10<sup>th</sup> August, 2024.
  4. That pending the hearing and determination of this application this Honourable Court be pleased to direct the Inspector General of Police to ensure compliance of this court’s orders issued 10<sup>th</sup> August, 2024.
  5. That the defendants be completely denied audience in this court until they purge the contempt by immediately restraining the access road to land parcel number Kabete/Karura/2083.
  6. That costs of this application be provided for.



2. The application is premised on the grounds on the face of it and the supporting affidavit of Godfrey Kihuha Gichuhi sworn on even date.
3. The Applicants contend that the respondents are involved in the construction of Nairobi by-pass which is passing through Karura Town including the applicant's deceased father's hotel complex erected on Title Number Kabete/ Karura/2083 (hereinafter 'the suit property').
4. The Applicant contends that the construction by the Respondent ultimately impeded the access to the suit property which resulted in the instant suit and an application dated 11<sup>th</sup> January 2023 in which he sought an order against the Respondents to reinstate the access road to the suit land.
6. The applicant avers that after hearing the application dated 11<sup>th</sup> January 2023, the Court delivered a ruling ordering the Respondent's to reinstate the access road to the suit property within 60 days from 10<sup>th</sup> August 2024.
7. It is the Applicants contention that the order of the court was duly served upon the Respondent who are yet to comply with the Orders.
8. The Applicant contends that they continue to incur huge losses due to loss of customers as a result of inaccessibility of its business.
9. In the Applicants view, the Respondent have no respect for court orders and thus beseeches this court to issue orders to stop the gross contemptuous actions of the Respondent's and other persons acting under their instructions and or authority.
10. The 1<sup>st</sup> Respondent vehemently opposed the application and seek its dismissal vide the replying affidavit of Eng. Rinah Chikamai sworn on 24<sup>th</sup> January 2025.
11. The 1<sup>st</sup> Respondent concedes that the suit property initially had direct access to the former Ruaka Ndenderu-Gitaru single-carriage road as they were on the same elevation which was later impeded by the construction of the western by-pass.
12. The 1<sup>st</sup> Respondent avers that after the ruling issued by the Court on 10<sup>th</sup> August 2024 directing them to reinstate the access road to the suit property, they initiated the revision of its procurement plan and budget to cater for the construction of the access road.
13. The 1<sup>st</sup> Respondent contends that works to reinstate the access road to the suit property are currently ongoing and they are not in contempt of the court orders as they have demonstrably put in place measures to comply with the court orders.
14. The Applicant refuted and opposed the 1<sup>st</sup> Respondents assertions vide the supplementary affidavit of Godfrey Kihuha Gichuhi and contend that the 1<sup>st</sup> Respondent have since abandoned any work that they had commenced to resolve the issue of access to the suit property.
15. The application was canvassed by way of written submissions which were duly filed by both the Applicant and the 1<sup>st</sup> Respondent

### **Issues for Determination**

16. Having considered the application and the affidavit in support, the 1<sup>st</sup> Respondent's replying affidavit, the Applicant's supplementary affidavit, the rival submissions filed and the relevant authorities the following issue emerges for determination:



Whether the Respondent was in wilful contempt of the orders of this Court issued on 10<sup>th</sup> August 2024.

### **Analysis and Determination**

17. Contempt of court is not a trivial matter; it is a direct affront to the authority and dignity of the judicial system. It encompasses conduct or action that deliberately defies, obstructs, or shows disrespect for the authority and dignity of the Court.

18. Black's Law Dictionary 9<sup>th</sup> Edition defines contempt as follows:

“The act or state of despising; the conduct of being despised. Conduct that defies the authority or dignity of a court or legislature. Because such conduct interferes with the administration of justice.”

19. In Kenya, the *Contempt of Court Act* No. 46 of 2016 was declared unconstitutional, null, and void for lack of public participation and for encroaching on judicial independence; it no longer provides valid law governing contempt. See Kenya Human Rights Commission v Attorney General & another [2018] eKLR

20. The courts' power to punish for contempt derives from the inherent jurisdiction of superior courts under Section 5 of the *Judicature Act* which provides:

“Contempt of court

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 such power shall extend to upholding the authority and dignity of subordinate courts.

1. 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.”

21. This provision confirms that the jurisdiction to punish for contempt is both inherent and essential to the administration of justice.

22. It is a quasi-criminal power exercised by the Court which that directly affects the liberty and reputation of the contemnor. It is a power that the Court must assert when the orderly process of justice is obstructed or when its lawful orders are deliberately disregarded. The emphasis is not on retribution, but on preserving the authority of the judiciary, enforcing compliance with its pronouncements, and safeguarding public confidence in the rule of law.

23. Kenyan Courts have repeatedly interpreted and applied Section 5 of the *Judicature Act* as observed by the Court of Appeal in *Shimmers Plaza Limited v National Bank of Kenya Limited* [2015] eKLR:

“The law on Contempt of court is one of those vestiges of the laws we adopted from our colonisers, which quite unfortunately has yet to be amended with a view to bringing it in tandem with *the constitution* of Kenya 2010. This and any other such statutes need a total overhaul to align them to our endogenous current constitution.

For the time being however we must seek leverage in Section 5 of the *Judicature Act*...



... Consequently a careful consideration must be had to the provisions of the Contempt of Court Act of 1981 Act and PART 81 of Civil Procedure (Amendment No. 2) Rules, 2012 with regard to contempt proceedings in Kenya. The Contempt of Court Act of 1981 of England is described as:

"An Act to amend the law relating to contempt of court and related matters."

The scope of the said PART 81 as provided under Rule 81.1 is limited to contempt of court, penal, contempt and disciplinary provisions of the County Courts Act 1984, and allows a person to be;

- "(a) guilty of contempt of court; or
- (b) punishable by virtue of any enactment as if that person had been guilty of contempt of the High Court, to pay a fine or to give security for good behaviour, as it applies in relation to an order of committal."

This also applies to the High Court and Court of Appeal.

PART 81 (Applications and Proceedings in Relation to Contempt of Court) provides for four different natures or forms of violations under contempt of court, that is,

- a. Committal for "breach of a judgment, order or undertaking to do or abstain from doing an act" provided for under Rule 81.4.
  - a. Committal for "interference with the due administration of justice" (applicable only in criminal proceedings) provided for under Rule 81.11.
    - a. Committal for contempt "in the face of the court", provided for under Rule 81.16.
      - a. Committal for "making false statement of truth or disclosure statement." provided for under Rule 81.17."

- 24. In the absence of a valid domestic statute, Kenyan courts are obliged to look continuously to the law in force in England at the relevant time and apply it when exercising contempt jurisdiction.
- 25. It is against this backdrop of inherited legal principles and procedural guidance that the Court turns to the present application. The question for determination is whether the Respondent's conduct amounts to wilful contempt.
- 26. The Applicant contends that the Respondents were fully aware of the Court's orders issued on 10<sup>th</sup> August 2024, yet have taken no meaningful steps to comply.
- 27. The Applicant further submits that the culvert works carried out by the Respondents do not address the underlying issue of access to the suit property, and that these works were abandoned following the proceedings of 27<sup>th</sup> January 2025 demonstrating a wilful disregard for the Court's directives. Such conduct, the Applicant submits, reflects a conscious decision to ignore the authority of this Court, thus compelling the Applicant to seek the Court's intervention to vindicate its orders and ensure the effective administration of justice.
- 28. The 1<sup>st</sup> Respondent submits that contrary to the Applicant's assertion that the respondents have blatantly ignored the court's order, they have engaged in remedial action to comply with the orders. They submit that their works include: conducting clearance; earthworks; access culverts installation;



- drain excavation; gavel for subbase; cement improved graded crushed stones (gcs) for base and laying of asphalt concrete type 1 for the surfacing layer.
29. The 1<sup>st</sup> Respondents submit that the remaining works were inter alia hindered by budgetary constraints but maintains that work will nonetheless proceed as resources permit.
  30. Contempt of court is not established by disobedience alone. The law demands more than breach; it requires wilful and mala fide defiance as affirmed in *Samuel M. N. Mweru & Others v National Land Commission & 2 others* [2020] eKLR. The offence lies not in the mechanical fact of non-compliance, but in the deliberate affront to the authority and dignity of the Court which such conduct may disclose. Obedience to court orders is the lifeblood of the rule of law; without it, judicial authority is reduced to persuasion rather than command.
  31. To succeed in civil contempt proceedings, an applicant must prove, to a standard higher than that applicable in ordinary civil cases, the following essential elements:
    - i. The existence of a clear and unambiguous order, binding upon the respondent.
    - ii. Knowledge or proper notice of the terms of that order by the respondent.
    - iii. Breach of the order by the respondent.
    - iv. Deliberateness of the breach, such that the non-compliance was wilful and mala fide.
  32. Upon proof of these elements, wilfulness and bad faith may be inferred, unless the respondent, by credible evidence, demonstrates that the non-compliance was bona fide and therefore falls short of contempt.
  33. The Applicant's submit that the respondents were well aware of the court order issued on 10<sup>th</sup> August 2024 yet deliberately failed to comply. Such deliberate disobedience, the Applicant contends, constitutes contempt of court, for it represents a wilful affront to the authority, dignity, and repute of this Court and undermines the very administration of justice which the order was intended to safeguard.
  34. In applying the principles of contempt of court proceedings to the instant application, it is clear that the first element is satisfied: the order of this Court issued on 10<sup>th</sup> August 2024 was clear, unambiguous, and binding on the Respondents.
  35. Secondly, there is no dispute that the Respondents had full knowledge of the order and the obligations it imposed upon them.
  36. Thirdly, the Respondents failed to comply with the order, as evidenced by the abandonment of the culvert works and the absence of any effective action to remedy the obstruction to access to the suit property.
  37. The fourth element, deliberateness, is discerned from the conduct surrounding the breach. The Respondents' inaction was not the product of inadvertence, misunderstanding, or bona fide constraint. While budgetary considerations were cited by the 1<sup>st</sup> Respondent, no evidence has been adduced to substantiate this claim. The complete cessation of works and the absence of any substantive efforts to comply demonstrate a wilful and mala fide disregard for the Court's authority.
  38. The Respondents had both knowledge and opportunity to act, yet chose inaction, thereby offending the dignity, repute, and authority of this Court. Viewed cumulatively, these facts establish that the Respondents' conduct satisfies all the essential elements of civil contempt and warrants the intervention of this Court to vindicate its orders and preserve the rule of law.



39. In light of the foregoing, the Court is compelled to exercise its inherent jurisdiction to vindicate its authority and preserve the administration of justice. Contempt of this nature cannot be permitted to go unaddressed, for failure to enforce compliance with its orders would imperil the very foundation of the rule of law and invite disregard for judicial authority.
40. Accordingly, I find the Respondents to be in contempt of the court order dated 10<sup>th</sup> August 2024.
41. I direct that the Managing Directors of the Respondents appear before this court on 12th March 2026 for mitigation and sentencing.

It is so Ordered.

**DATED, SIGNED AND DELIVERED, AT THIKA THIS 28<sup>TH</sup> DAY OF JANUARY 2026**

.....

**J. M. ONYANGO**

**JUDGE**

In the presence of:

Mr Kithure for the Plaintiff

Mr Mwai for the 1st Defendant

Miss Maina for Prof. Mumma for the 2nd Defendant

Court Assistant: Hinga

