



**Wayuga v Church Commissioners for the Anglican Church of Kenya & another; Sapit Primate and Archbishop of All Kenya & 2 others (Interested Parties) (Environment and Land Case 56 of 2017) [2026] KEELC 400 (KLR) (27 January 2026) (Ruling)**

Neutral citation: [2026] KEELC 400 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MIGORI  
ENVIRONMENT AND LAND CASE 56 OF 2017  
FO NYAGAKA, J  
JANUARY 27, 2026**

**BETWEEN**

**SAMWEL ORWA WAYUGA ..... PLAINTIFF**

**AND**

**THE CHURCH COMMISSIONERS FOR THE ANGLICAN CHURCH OF KENYA ..... DEFENDANT**

**AND**

**LYDIA ALOO WAYUGA ..... APPLICANT**

**AND**

**THE MOST REVD JACKSON OLE SAPIT PRIMATE AND ARCHBISHOP OF ALL KENYA ..... INTERESTED PARTY**

**THE RT REVD PROF JOSEPH GALGALO THE PROVINCIAL SECRETARY, THE ANGLICAN CHURCH OF KENYA ..... INTERESTED PARTY**

**DESMOND MTULA THE CEO, THE CHURCH COMMISSIONERS FOR KENYA ..... INTERESTED PARTY**

*(On whether the defendant Respondents as well as well as the interested parties are in contempt of court)*



## RULING

### The application

1. The Applicant filed a Notice of Motion application dated 27<sup>th</sup> June 2025. It is expressed to be brought under Sections 1A and 1B of the Civil Procedure Act, Order 51 of the Civil Procedure Rules, 2010, Sections 3, 4(1) and 29 of the Contempt of Court Act, 2016 and all other enabling provisions of the law.
2. The Applicant seeks ORDERS THAT:
  1. ...Spent
  2. ...Spent
  3. ...Spent
  4. The honourable court determines that the defendant/Respondent and the interested parties are in contempt of court;
  5. The honourable court be pleased to order that the defendant/Respondent and the interested parties be committed to civil jail for disobedience of the orders of the court issued on 23<sup>rd</sup> June 2016 by Honourable S. Okong'o, reiterated by the same court in its ruling of the 29<sup>th</sup> June 2017 and by the Court of Appeal sitting in Kisumu by its judgment delivered on 16<sup>th</sup> August 2024 in the suit herein.
  6. The honourable court directs the defendant/Respondent and the interested parties to vacate the property of the plaintiff referred to as LR No.3699 Kasungu/Kamreri-Adjudication Section.
  7. That the defendant /Respondent and the interested parties provide the costs of the application.
3. The application is premised on grounds outlined on the face of it as well as the affidavit in support of it. It is sworn by one, Lydia Aloo Wayuga, the Applicant herein. In a nutshell, the Applicant maintained that her deceased father, Samwel Orwa Wayuga instituted a suit against the defendant /Respondent, being Kisii HCC no. 4 of 2004. It was transferred to Migori once the ELC was established in Migori. It was given the number it now bears, being Migori ELC NO. 56 of 2027. She stated that her father died on 10<sup>th</sup> December 2024. She has since obtained limited grant of letters ad litem for purposes of suing /defending her late father's estate.
4. Regarding the history of the instant application, the Applicant stated that her late father instituted a suit against the Defendant/Respondent in 2004, seeking orders to prohibit the defendant/Respondent from using, trespassing, residing, building, dealing or in any way interfering with the plaintiff's proprietary rights on land parcel LR No 3699 Kasungu/Kamreri-Adjudication Section besides other orders.
5. The Applicant stated that the court heard and determined the suit in her father's favor in a judgment delivered on 23<sup>rd</sup> June 2016. The defendant/Respondent, being aggrieved by the said decision, sought a stay of execution against both the judgment and decree of the court. They appealed against the decision at the Court of Appeal, being Kisumu CA no. 111/2018. The Applicant added that the defendant/Respondent was granted a 12-months stay of execution of the judgment of the court. When the Court



of Appeal rendered its judgment on 16<sup>th</sup> August 2024 the appeal was dismissed with costs to the Respondent.

6. The Applicant maintains that, despite the orders on the above cited decisions, the Defendant/Respondent as well as the Interested Parties have disobeyed the said orders as they continue to trespass, enter, erect buildings and alienate the plaintiff's property. She added that the defendant/Respondent and the Interested Parties continue to occupy the suit property in utter disregard of the orders of the court.
7. The Supporting Affidavit reiterates the contents of the grounds of the application, which the court need not replicate. She annexed of the following documents: her father's death certificate; a copy of limited letters of administration ad litem; a copy of judgment dated 23<sup>rd</sup> June 2016; a copy of the ruling dated 27<sup>th</sup> June 2017; a copy of Court the Appeal judgment dated 16<sup>th</sup> August 2024; and copies of photographs of buildings erected on the suit property.

### **Response**

8. One, Desmond Mtula, swore a replying affidavit on behalf of the defendant/Respondent on 11<sup>th</sup> July 2025. He stated that he swore the affidavit in his capacity as the Chief Executive Officer of the defendant/Respondent.
9. The said Mr. Mtula deponed that the suit property, being Land Parcel no. 3699 Kasungu/Kamreri Adjudication Section does not exist. He further deponed that the adjudication of Kasungu/Kamreri has since been finalized and title deeds issued. He annexed a copy of a letter dated 7<sup>th</sup> November 2024 and a Certificate of Finality of Adjudication for Kasungu/Kamreri Adjudication section as annexures marked DM-1A and DM-1B.
10. Further, Mr. Mtula deponed that, although the defendant/ Respondent had been served with an eviction notice over the suit property, the same was not capable of execution and the decree holder could only get costs. He reasoned that the two parties herein had blindly litigated over public land, that is, LR Mbita/12386/I within Mbita township without involving the National Land Commission as well as the Government Chief Valuer as parties. He annexed a copy of a letter dated 19<sup>th</sup> June 2025 and Marked as annexure DM-2.
11. Further, the 3<sup>rd</sup> Respondent deponed that contempt proceedings do not arise where a decree has not been issued; rather, the decree ought to be executed in accordance with the law if at all the decree is capable of being executed.

### **Submissions**

12. The application was canvassed through written submissions. The Applicant filed her submissions dated 15<sup>th</sup> August 2025. She submitted that, the trial court and the Court of Appeal determined the matter in favor of her deceased father. She also submitted that, even after the court granted the defendant/Respondent a specific time within which to move out of the suit, property, they have ignored the orders by refusing to move out of the suit property.
13. Moreover, the Applicant submitted that she wrote the defendant/Respondent on 12<sup>th</sup> June 2025 asking them to vacate the suit property. The defendant's/Respondent's response to her letter shocked her as they resorted to an absurd allegation that the suit property does not exist yet the parties have been litigating over this property since the year 2004 to 2024. This strange allegation, she maintained, is replicated in the Replying Affidavit sworn by Desmond Mtula on 11<sup>th</sup> July, 2025.



14. The Applicant also submitted that the above stated position adopted by the Respondents cannot be possible as the Respondents have litigated over the suit property for a period of twenty (20) years and the litigation could not have happened if they had thought that the suit property did not exist. She added that the judgment of the court dated 27<sup>th</sup> June 2016 was very specific that the defendant's/ Respondents' church has been put up on plot no. 3699.
15. In addition to the foregoing, the Applicant maintained that the defendant/Respondent, despite the orders of the court, has refused move out of the suit property. She relied on *Samwel N. Mweru & others v National Land Commission & 5 others* [2020] eKLR to highlight to rationale behind contempt proceedings as well as the test to be met when proving contempt of court.
16. Finally, the Applicant submitted that the Interested Parties in the application have been joined herein in their capacity as officials of the 1<sup>st</sup> Respondent and the parties responsible the construction and demolition of structures on the suit property. She maintained that the said had been served with the orders of the court, and they together with the defendant/ Respondent, had defied the orders. Accordingly, she urged this court to find the defendant/Respondent as well as the Interested Parties in contempt of court.
17. The defendant/Respondent as well as the interested third parties filed their joint submissions dated 15<sup>th</sup> August 2025. They outlined three issues for determination, namely: whether the terms of the order were unambiguous; whether the defendant had knowledge or proper notice of the terms of the order; and whether the defendant has acted in breach of the terms of the order.
18. On whether the terms of the order were ambiguous, it was submitted that the same were unambiguous at the time they were issued except that the said orders had been overtaken by events.
19. On whether the defendant and its agents are aware of the orders, it was submitted that the defendant/ Respondent as well as its agents have been aware of the orders of the court since the same have not been varied and or set aside. The defendant/Respondent and its agents argued and that they are willing to implement the implementable part of the order, that is, the order of the court on costs of the suit.
20. Lastly, on the issue as to whether the defendant/Respondent and its agents acted in breach of the terms of the order, it was argued that the defendant/Respondent and the Interested Parties herein did not act in breach of the order. They argued that the suit property was still under adjudication when the suit was instituted in the year 2004. However, on 23<sup>rd</sup> May 2008, the adjudication process for the Kasungu/Kamreri Adjudication Register came to an end when the parties were still litigating. To this end, the defendant/Respondent and the interested parties herein submitted that upon conducting a search in the land registry, they discovered that the search certificate for the suit property could not be found as the green card was not available.
21. The defendant/Respondent and the Interested Parties attributed the above development to the suit parcel and others being superimposed on Mbita Township plots which were not under adjudication. Therefore, they argued that, the registration documents relating to the suit parcel and others in the Kasungu/Kamreri Adjudication Section had been recalled to Nairobi by the Government.
22. Lastly, the defendant/Respondent concluded that the it was not breach of the orders of the court; that the said orders had been overtaken by events and that the application had been brought prematurely. They added that, although the Applicant had extracted a decree, she had not obtained a certificate of costs to warrant execution and committal to civil jail through contempt of court proceedings.



## Issues, Analysis and Determination

23. After the considering the application and the response as well as the submissions of the parties, this court has opined that the issues for determination in this application are: whether the defendant / Respondent and its officials are in contempt of court; and, who to bear the costs of the application.
24. At the outset, it is important to clarify that the, although the Applicant has brought into the proceedings parties who were not parties to the suit as it was being litigated at the time, that is to say, both in this court and the Court of Appeal. Therefore, the said parties cannot be said to be properly joined. This is because there was no order for joinder of the alleged Interested Parties. Even if they are officials responsible for the activities of the Defendant and are found to be in contempt of court, they cannot be so found and punished but rather as holders of the offices responsible for the functions of the church because officers may be changed or replaced from time to time, but offices remain and are executed by specific officers as long as the organization remains. In any event, there in no suit to which the alleged Interested Parties could be joined, the suit having been heard to its logical conclusion and the instant application having been filed post judgment. The court also notes that, Desmond Mtula, whom the Applicant deems an Interested Party swore the Replying Affidavit on behalf of the defendant/ Respondent. He swore it in his capacity as the Chief Executive Officer of the defendant/Respondent. As such, the said Affidavit will be considered by the court.

### Whether the defendant/Respondent is in contempt of court

25. Contempt of court refers to behavior or conduct that defies the authority of the court. Such conduct interferes with the administration of justice and often subjects courts of law to ridicule hence the need for punishment for contemnors.
26. The law of contempt in Kenya is spelled out in various statues including the Judicature Act as well as the various statutes establishing the various courts in our court system. Section 29 of the Environment and Land Court Act grants this court the power to punish for contempt of court and provides 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.
27. Although the Applicant herein expressed the application to be brought under among others laws, Sections 3, 4(1) and 29 of the Contempt of Court Act, 2016, the court notes that the said provisions of the law are inapplicable as the Contempt of Court Act was rendered unconstitutional in Kenya Human Rights Commission v Attorney General & Another [2018] eKLR 9656 where the High court determined that:

“A declaration is hereby issued that the entire contempt of court Act No 46 of 2016 is invalid for lack of public participation as required by Articles 10 and 118(b) of the constitution and encroaches on the independence of the Judiciary.”
28. It is important for parties to always update themselves on the development of the law. Otherwise they would mislead others or be misled to their detriment regarding the law.
29. Be that as it may, this court has considered the application in its entirety, the response thereto as well as the submissions filed by the parties. The Applicant’s case or issue is that both the trial court and the court of appeal ordered the defendant/Respondent to vacate its parcel of land, being Kasgunga/



- Kamreri/3699-Adjudication Section. She argued this order was granted after the courts concurred that her deceased father was the proprietor of the suit land.
30. That despite these clear, orders, the defendant /Respondent has continued to occupy her fathers land, which conduct amounts to contempt of court. In her attempt realize the fruits of the judgment, the Applicant stated that she wrote the defendant/Respondent a letter dated 12<sup>th</sup> June 2025, asking them to vacate the suit premises. However, she was shocked the Respondents, in their reply to her letter acknowledged that in deed her father was successful in the suit, but the orders of the court could not be implemented as the suit property was unavailable.
  31. The defendant/Respondent on its part acknowledged that it was ordered to leave the suit premises, but argued that that order was incapable of implementation. Their reasoning was that, the suit was commenced in the year 2004 when the suit property was undergoing adjudication. The said adjudication, they argued, was finalized in the year 2008 and maintained that land parcel Kasgunga/ Kamreri 3699 and well as 2102 were no longer available following the adjudication process. They argued that, despite being served with the order of the court, they could not abide by it given the above stated circumstances and argued that the they were willing to obey the part of the order relating to costs. Equally, they argued that, since the Applicant had not extracted a certificate of costs, contempt pf court proceedings as well as committal to civil jail could not apply to them.
  32. This court has perused the court file and notes that the trial court entered judgment in favour of the Applicant's father on 23<sup>rd</sup> June 2016. By the said judgment, the court declared that the defendant's/ Applicant's church building had been put up on land parcel no. Kasgunga/Kamreri/3699 and not Kasgunga/Kamreri/2102 as argued by the defendant/Respondent. The court proceeded to grant all the reliefs sought by the plaintiff, including an order for eviction and an injunction.
  33. The defendant/Respondent sought a stay of execution, which was granted, and appealed against the judgment of the trial court at the Court of Appeal. On 16<sup>th</sup> August 2024, the Court of Appeal dismissed the defendant/Respondent's appeal with costs.
  34. That being said, the defendant/Respondent does not deny that there is an order of the court mandating them to vacate the suit property. they have argued that the order in question has been overtaken by events, the suit property in question, having become unavailable in the course of litigation.
  35. Obeying court orders is of utmost importance to the administration of justice and the maintenance of law and order in any jurisdiction. This position was reiterated by the court of appeal in *Shimmers Plaza Limited v National Bank of Kenya Limited*, Civil Appeal 33 of 2012) [2015] KECA 945 (KLR) (Civ), where the court emphasized that "[T]he duty to obey the law by all individuals and institutions is paramount in the maintenance of the rule of law, good order and the due administration of justice."
  36. The court in *Shimmers plaza limited* (supra) proceed to state as follows:

“We reiterate here that court orders must be obeyed. Parties against whom such orders are made cannot be allowed to trash them with impunity. Obedience of Court orders is not optional, rather, it is mandatory and a person does not choose whether to obey a court order or not...The courts should not fold their hands in helplessness and watch as their orders are disobeyed with impunity left, right and centre. This would amount to abdication of our sacrosanct duty bestowed on us by *the Constitution*. The dignity, and authority of the Court must be protected, and that is why those who fragrantly disobey them must be punished, lest they lead us all to a state of anarchy. We think we have said enough to send this important message across.”



37. The test to be applied by the courts when determining whether or not a party is in contempt of court was established in *Samuel M.N Mweru & others v The National Land Commission & 2 others, Nairobi (HC) Miscellaneous Civil Application No. 443 of 2017*, the High Court determined as follows:

“40. It is an established principle of law that in order 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. Upon proof of these requirements the presence of willfulness and bad faith on the part of the Respondent would normally be inferred, but the Respondent could rebut this inference by contrary proof on a balance of probabilities.[46] Perhaps the most comprehensive of the elements of civil contempt was stated by the learned authors of the book *Contempt in Modern New Zealand*[47] who succinctly stated: “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) that: (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”

38. The standard of proof applicable in civil contempt cases was held in the *Samuel Mweru* decision (*supra*) to be above the proof on a balance of probability standard adopted in civil cases and below the proof beyond reasonable doubt standard adopted in criminal cases.

39. There is no doubt that the defendant/Respondent was ordered to vacate the suit property as is confirmed by the trial court’s judgment, which was later upheld by the court of appeal the defendant/Respondent acknowledges being aware of this order as well as its terms.

40. On whether the terms of the said order were clear and unambiguous, and binding upon the defendant/Respondent, it was submitted by the defendant/Respondent that the same was clear and unambiguous. The defendant Respondents only alleged that there was a change of circumstances that made the order incapable of being implemented. this change of circumstances the defendant/Respondent argued, was occasioned the unavailability of the green card records of the suit parcel in the registry following the finalization of the adjudication process.

41. Finally, on whether the defendant /Respondent is in breach of the terms of the order, this court answers this question in the affirmative. the defendant /Respondent submitted that it is not capable of obeying the order mandating it to vacate the suit land because the suit land does not exist. It also argued that the Applicant has not extracted a certificate of costs, and as such, contempt proceedings as well as committal to civil jail cannot apply to them.

42. This court respectfully finds that the instant application does not relate to execution; rather, it relates the obedience of the orders of the court mandating the defendant/Respondent to vacate the suit property. As such, the issue of certificate of costs does not arise.

43. In the same breadth, the court finds that the defendant /Respondent was bound to obey the order of the court, irrespective of whether or not the land in question exists in the land records or not. For the avoidance of doubt, the order in question relates to the parcel of land upon which the defendant/Respondent has erected its church, which land and church building still exist to date.



44. To be clear, the respondents opposed the application by arguing that the suit land, litigated over in the instant suit and the Court of Appeal between them and the Plaintiff, does not exist. Further, that the parties mistakenly litigated over a nonexistent parcel of land, which was public land. They added that they confirmed from the Lands Office that the records regarding the suit parcel of land do not exist. Further, that the said records were recalled to Nairobi. It was their contention that they cannot be held in contempt of court over the judgment of the court over a nonexistent parcel of land. The Applicant does not think likewise.
45. It is important to note at this point that the parties herein, except the so called Interested Parties, litigated over a specific parcel land situate on the site where they were in occupation at the time and still are: a specific piece of earth (*propria portio terrae*, in Latin) or a specific ground on the earth (*terra*, in Latin) on which their church was built and on the buildings stand up to this day, and the worshippers' activities take part in or conduct their weekly worship programs and other activities. It is this specific parcel of land which they respondents now claim does not exist in the lands offices. But they know, and it is clear, that it was the one litigated over. Again, it is the same piece of land that the said Respondents now allege that belongs to the public. The question that immediately arises is, if the land does not exist have the Respondents moved from or vacated this specific non existent portion of land which the court found they had built on and which it further found comprised in Kasgunga/Kamreri No. 3699. The answer is negative.
46. The other question that follows is, if the said portion or piece of earth (*propria portio terrae*) on which the Respondents had built their church, and from which they were ordered to move, was indeed public land, are the Defendants a public entity? Obviously, the answer is "no". Have the Respondents ever applied to the National Land Commission to be allocated this same parcel of land so that it be duty given to them through allocation, in order to enable them to remain on it as they currently are? The answer is "no". If indeed the suit land is public land, do the respondents want this court to believe that they built, occupy and operate on air. Put differently, are the buildings or facilities the Respondents own or claim, and their members use for worship and conduct other church activities thereon situate on a non existent parcel of land? Of course not.
47. The argument that they have obtained documents from the land to show that the land does not exist is neither here nor there because the Defendants litigated clearly over a parcel of land on which the church still stands on.
48. In my view, the respondents are blowing hot air and blowing hot and cold. They cannot abate and reprobate. They litigated over a parcel of land which was identified and they pleaded over. They lost their case over the same parcel of land. They appealed from the case over the same parcel of land. They lost the appeal also. Therefore, they were obligated to vacate the land immediately because the period they had been given by this Court expired. They haven't. They cannot, by any stretch of imagination, course this court to believe that they are not on a parcel of land they were ordered to vacate.
49. Additionally, the judgements of both this Court and the Court of Appeal regarding the parcel of land, being, parcel No. 3699 have never been set aside or reviewed. It therefore means, the judgments are binding on both parties. The Respondents are indirectly relitigating over a subject matter which this court is now *functus officio*. As children of God, as they purport to be, they ought to live by the truth, and the truth is that that were ordered to vacate the said parcel of land or portion of earth that constituted the subject matter of this suit, and they should do so forthwith. Their continued presence on it bespeaks defiance and contemptuous acts which ought to be punished.
50. The court also holds that a party does not have the luxury of determining or electing which orders of the court it may obey and otherwise. Any party facing difficulty in obeying court orders must present it



to the court for further directions. But this is not the case herein. In this matter the applicant just wants to continue to refuse to obey the orders of this court by devising another tool for obstruction of justice: purporting to change the subject matter from existence on paper or in records to non existence, which this court cannot agree with. The position about a party reporting to court on difficulty was adopted by the Court of Appeal in Peter Ng'ang'a Muiruri v Gikanga T/A Expeditious General Merchants & another, Civil Appeal No. 27 of 2012, where the court determined that:

“...The power (to punish for contempt of court) is exercised to protect the dignity of the court. It is to ensure the streams of justice are kept pure. A party aggrieved by an order of the court should move to review, set aside or appeal the decision; not to disregard or disobey it. In *Hadkinson Vs. Hadkinson* [1952] 2 All ER 567 at 569 it was stated as follows-

“ A party who knows of an order, whether null and void, regular or irregular, cannot be permitted to disobey it...it would be most dangerous to hold that the suitors or their solicitors could themselves judge whether an order was null and void, whether it was regular or irregular. That they should come to the court and not take upon themselves to determine such a question, that the course of a party knowing of an order which was null and irregular and who might be affected by it was plain. He should apply to the court that it might be discharged. As long as it existed, it must not be disobeyed”.

51. The Respondent was given 12 months to vacate the suit land from 2016 when the judgment was delivered. Granted that they waited for the judgment of the court of appeal before they would vacate, it is not more than a year since the said judgment was delivered. The argument that there is no certificate of costs hence the defendants cannot be found to be in contempt does not hold water. They cannot wait for the certificate in order to vacate because twelve months from the date of judgment was not dependent on the extraction of a certificate of costs. This is another gimmick to delay the execution of the decree herein. Additionally, In the circumstances, this court finds that the Defendant/ Respondent willfully disobeyed its orders, and still continues to so. This court cannot countenance this kind of conduct because it amounts to not only injustice to the Applicant, who has waited for 20 years to access justice but also demeans and undignifies the court through defiance.
52. The upshot of the foregoing is that, the Applicant's application dated 27<sup>th</sup> June 2025 succeeds in terms of prayer 4 of the same, to the effect that the defendant/Respondent only as a party is in contempt of court. I convict the officials of the said church accordingly.
53. Further, I now direct that the officers of the church who are responsible for its relocation from the suit land, and the running of the services and functions, that is to say, the Primate and Archbishop of all Kenya, the Provincial Secretary, the Anglican Church of Kenya, and the CEO, The Church Commissioners for Kenya are all ordered to attend court in person on 10<sup>th</sup> February 2026 to show cause why they should not be punished accordingly.
54. The Defendant/Respondent is hereby ordered to vacate the suit premises forthwith but not more than seven (7) days, and if they do so as a sign of good faith the consider will consider meting out a lenient sentence.
55. On the issue of costs, this court will exercise its discretion to award costs of the application to the Applicant.
56. Orders accordingly.



**RULING DATED, SIGNED AND DELIVERED VIRTUALLY VIA THE TEAMS PLATFORM  
THIS 27<sup>TH</sup> DAY OF JANUARY 2026.**

**HON. DR. IUR NYAGAKA**

**JUDGE**

From 12:46, in the presence of,

Court Assistant: Lola

Mbithi for the Plaintiff/Applicant

Ms. P. Odhiambo for the Defendant and I. Ps/ Respondent

