

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT ELDORET**  
**SUCCESSION CAUSE NO E071 OF 2021**  
**IN THE MATTER OF THE ESTATE OF KIPLAGAT CHERUIYOT KABOROR**  
**alias KIPLAGAT KABOROR (DECEASED)**  
**AND**  
**IN THE MATTER OF CONTEMPT OF COURT BY HARRISON KIPLAGAT**  
**KIPKOECH KABORO and KIPCHUMBA KIPLAGAT**

JOSEPH KIPTUM MUTWOL.....PETITIONER/APPLICANT

**=VERSUS=**

HARRISON KIPLAGAT.....1<sup>ST</sup> RESPONDENT/CONTEMNOR

KIPKOECH KABORO.....2<sup>ND</sup> RESPONDENT/CONTEMNOR

KIPCHUMBA AKIPLAGAT.....3<sup>RD</sup> RESPONDENT/CONTEMNOR

Coram: **Before Justice R. Nyakundi**

**J.K Kiplagat & Company Advocates**

**RULING**

- 1.** Before this Court is a Notice of Motion brought to this court under Section 5(1) of the Judicature Act Chapter 8 Laws of Kenya, Orders 40 Rule 3 (1) and 51 Rule 1 of the Civil Procedure rules 2020, Section 3A and 63 © of the Civil Procedure Act Chapter 21 Laws of Kenya and All Other enabling Provisions of the Law seeking the orders:-
  - a)** That this honourable court do order that the Respondents are in contempt of court orders issued on 4/8/2022 and 21/11/2022
  - b)** That this Honourable court does commit the Respondents/Contemnors to civil jail for term of six (6) months or other wise as the court may deem fit.
  - c)** Costs be in the cause

## **WHICH APPLICATION IS MADE ON GROUNDS THAT:**

- a.** This Honorable court issued certificate of confirmation of grant on 4/8/2022 distributing the estate of the deceased as it appears thereon.
- b.** Consequently, the court again issued an order 21/11/2022 for subdivision of the land UASIN GISHU/ELGEYO BORDER/313.
- c.** According to the orders of the court, the county surveyor visited the suit parcel and placed respective beacon after sub-division of the land.
- d.** The contemnors in total disregard of the orders of this court, have destroyed the fixed boundaries and destroyed the beacons set by the surveyor
- e.** As a result of the contemnors disobedience, the dispute over the subject land continues despite a determination having been made in finality by this court thus attracting sanction of the law.
- f.** This application has been made in utmost good faith and in he best interest of justice.

## **DECISION**

1. This application is based on the implication of the certificate of confirmation of grant dated 4.8.2022 issued by this court presided over by Limo J. Following the certificate of confirmation of grant, the session Judge then issued the following orders to facilitate the implementation for certificate of confirmation of grant: “ It is hereby ordered
  - (a) that an order issued to the County Surveyor, County Land Registrar and the County Land Adjudication and Settlement Officer Uasin Gishu County to carry out sub division of property known as LR NO UASIN GISHU/ELDGEYO BORDER/313 as per the certificate of confirmation of grant issued on 4<sup>th</sup> day of August 2022.*
  - (b) That the OCS Tembelio Police Station to provide security during the ground visit by the County Surveyor and the County Land Registrar Uasin Gishu County.*

2. From the application, outlined grounds together with the annexed documentary evidence from the county Surveyor, there is a prima facie evidence of a breach of a Court Order if indeed beacons were destroyed which were as a result of orders issued on 31.8.2020. This court and other superior courts have consistently held that willful disobedience of court orders particularly when done with impunity or devious of the persons who are expected to comply and in the event they did not want to do so inform the court of the compelling reasons for a variation or a review. The claims being made in this application constitutes a grave, and actionable contempt of court which undermines the rule of law. This court is clothed with immense inherent powers to punish such acts and this authority cannot be curtailed by any other person or legislation. The defiance of Court Orders with impunity justifies strict action even in instances where the contemnor is elderly or has health issues. When one leads the fact of this case, such actions warrant punishment without misplace sympathy or unwarranted magnanimity
3. The key principles regarding impunity of court orders include the following:
  - *Deliberate Disregard: Impunity arises when orders are ignored deliberately and contumaciously, requiring the court to use its potent weapon of contempt.*
  - *Apology as a Trick: The Supreme Court has warned that apologies should not be used as a legal trick to wriggle out of responsibility. If the conduct is serious an apology need not be accepted.*
  - *Personal Liability: The court has highlighted that the corporate veil, can be lifted to hold official personally liable for contempt, punishing them for treating court orders as cosmetic.*
  - *Negligence as Contempt: While willful disobedience is necessary, the court has indicated that extreme negligence and carelessness may also amount to contempt.*

4. It must be further observed that time has come for the question to be paused to the Respondent why they should not be punished for the disobedient of the orders passed by this court. In the case of the A.G VS Time Newspaper Ltd 1974 AC 273 stated: “ There is an element of public policy in punishing civil contempt since the administration of justice would be undermined if the order of any court of law could be disregarded with impunity.

If an order passed by a competent court is clear and an ambiguous and not capable of more than one interpretation, disobedience or breach of such an order would amount to contempt of court. There can be no laxity in such a situation because otherwise the court orders would become the subject of mockery. That any execute or misunderstanding of a courts order will not be a permissible defense by the contemnor.

5. From the above analysis this orders be served upon the contemnors to show cause why they should not be committed to Civil Jail so as to uphold and maintain the dignity of courts and majesty of the law. The contemnors do submit themselves to this court on the 17.2.2026 for Sentence as per the law established. In default of attendance out of their own free will to appear before this court, warrants of arrest do issue by the Deputy Registrar for the Officer Commanding Tembelio Police Station within their domicile to execute and have them placed before this court for further orders. That for purposes of expedience the Process Server of this court be and is hereby appointed as the liaison officer to extract the summons which shall be served through the Area Chief under which the subjects in question fall under his dominion. It is so ordered.

**GIVEN UNDER MY HAND AND THE SEAL OF THIS COURT THIS 12<sup>TH</sup>  
DAY OF FEBRUARY 2026**

.....

**R. NYAKUNDI**

**JUDGE**