



**LWM v PMG (Matrimonial Cause 24 of 2016)
[2026] KEHC 1769 (KLR) (17 February 2026) (Ruling)**

Neutral citation: [2026] KEHC 1769 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
MATRIMONIAL CAUSE 24 OF 2016
HI ONG'UDI, J
FEBRUARY 17, 2026**

BETWEEN

LWM APPLICANT

AND

PMG DEFENDANT

RULING

1. In the Notice of Motion dated 23rd September 2025 brought under sections 1A, 1B & 63 of the [Civil Procedure Act](#), Order 51 of the [Civil Procedure Rules](#) and all the enabling laws, the plaintiff/applicant prays for the following orders; -
 - i. -
 - ii Spent.
 - iii. the Honourable Court be pleased to compel the defendant/contemnor to cease any adverse dealings with the parcel of land known as Kiambogo Block 2/5XXX and/or its sub-divisions being Kiambogo /Kiambogo Block 2/26XXX and Kiambogo Kambogo Block 26XXX without informed consent of the applicant.
 - iv. That this honourable court be pleased to find the defendant/contemnor in contempt of the court's order dated 27th November, 2019.
 - v. That upon the honourable court finding the defendant in contempt, the court be pleased to commit the contemnor to civil jail for a period not exceeding six (6) months and/or any other order as the court may deem fit.
2. The said application is premised on the grounds on its face and the affidavit by the plaintiff/applicant sworn on even date. She deponed that on 27th November 2019 this court adopted an order of the court the mediation settlement agreement dated 4th November 2019. That the said order was meant



to protect each party's right in the matrimonial property Kiambogo/Kiambogo more so following their separation and subsequent divorce. She further stated that the defendant's sub-division of the said parcel of land and his subsequent plans to sell the resulting sub-divisions amounted to contempt of court. Thus, there was urgent need for this court to stop further attempts by the defendant to deal with the subject property to her detriment and contrary to the orders issued by the court.

3. In response the respondent filed a replying affidavit sworn on 14th October 2025. He denied being in contempt of any court orders. He averred that the plaintiff/applicant was fully aware of the subdivision of the property known as Kiambogo /Kiambogo Block 2/5XXX into Kiambogo /Kiambogo Block 2/26XXX and Kiambogo/Kiambogo Block 2/26XXX. That the said subdivision was conducted openly and transparently, with her knowledge and participation.
4. He further averred the property Kiambogo/Kiambogo Block 2/5XXX had been subdivided, lawfully sold and part of the proceeds used to offset existing financial obligations as envisaged under the mediation settlement agreement and subsequent court orders. Further, that as per the last orders of this court dated 8th July 2021, he gave the plaintiff /applicant the sum of Kenya Shillings Two Million Four Hundred and Sixty-Four Thousand Seven Hundred (KShs. 2,464,700) being her half share of the proceeds from the sale of one of the properties.
5. He stated that the plaintiff/applicant's conduct demonstrated bad faith, greed and her actions are solely motivated by a desire to gain financially without justification or contribution. Additionally, that the plaintiff/applicant's application is misconceived as all pertinent issues were conclusively determined by this court in its ruling delivered on 8th July 2021. Thus, any further enforcement should properly be pursued through execution or mediation and not contempt proceedings.
6. The plaintiff/applicant filed a further affidavit dated 23rd October 2025 in which she denied the contents of the defendant /respondent's affidavit save for paragraph 7 in which she reiterated the contents of the affidavit in support of the application.
7. The application was canvassed by way of written submissions

Plaintiff/applicant's submissions

8. These were filed by Elizabeth Wangari & Company Advocates on 11th November, 2025. Counsel gave brief facts of the case and identified two issues for determination.
9. The first issue is whether the defendant's action amounts to contempt of court. Counsel submitted in the affirmative and cited the decision in *Samuel M. N. Mweru & Others v National Land Commission & 2 Others* [2020] eKLR where the court held 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 wilfulness 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. Perhaps the most comprehensive of the elements of civil contempt was stated by



the learned authors of the book *Contempt in Modern New Zealand* 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 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.”

10. Counsel further submitted that the court order was clear, unambiguous and binding upon both parties, the defendant/respondent was a direct party to the mediation agreement that culminated in the court order. That by subdividing the suit property without the plaintiff/applicant's consent resulted to disobedience of the court orders of 27th November 2019. That the defendant/respondent's actions amounted to wilful and deliberate violation of subsisting court orders.
11. In respect to the above, the court's attention was drawn to the decisions in *Josephat Mwisa & 24 Others v Pharmacy and Poisons Board & Another* [2016] KEHC 7361 (KLR), *Simmers Plaza Limited v National Bank of Kenya Limited* [2015] eKLR, *Teachers Service Commission v Kenya National Union of Teachers & 2 Others* [2013] eKLR, and *Basil Criticos v Attorney General & 8 Others* [2012] eKLR.
12. In conclusion, counsel submitted that the defendant /respondent's wilful disobedience of court orders undermined the authority of this court and he should not go unpunished. Further, that this court has a duty to uphold its dignity and the rule of law. She urged the court to find and hold that the defendant/respondent is guilty of contempt and proceed to commit him to civil jail for a period not exceeding six (6) months and/or issue any other order as it may deem fit.

Defendant/respondent's submissions

13. The defendant/respondent's submissions were filed by G. C Nyongesa & Company Advocates and are dated 14th November, 2025. Counsel gave brief facts of the case and identified two issues for determination.
14. The first issue is whether the applicant has proved beyond reasonable doubt that the respondent is in contempt of court. Counsel submitted that the plaintiff/applicant failed to prove the essential elements of contempt. That the standard of proof in contempt proceedings is beyond reasonable doubt, akin to criminal proceedings as contemplated in the case of *Getecha v Hydro Developers Limited*



(Environmental & Land Case E011 OF 2023) [2025] KEELC 721 (KLR) where the court held as follows;

“It is trite that the standard of proof in contempt matters is higher than that of ordinary civil matters. In the case of *Mutitika v Babarini Farm Limited* [1985] KLR 229, 234 the Court of Appeal held that: -

“In our view, the standard of proof in contempt proceedings must be higher than proof on the balance of probabilities, almost but not exactly, beyond reasonable doubt...The standard of proof beyond reasonable doubt ought to be left where it belongs, ‘to wit, in criminal cases. It is not safe to extend it to an offence which can be said to be quasi-criminal in nature. The rationale for this standard is that if cited for contempt, and the prayer sought is for committal to jail, the liberty of the contemnor will be affected. As such, the standard of proof is higher than the standard in civil cases. This power, to commit a person to jail must be exercised with utmost care and exercised only as a last resort. It is utmost importance, therefore, for the respondents to establish that the alleged contemnor’s conduct was deliberate in the sense that he or she wilfully acted in a manner that flouted the court order.”

15. He further submitted that it had not been sufficiently demonstrated that the defendant/respondent deliberately disobeyed court orders. That the said disobedience if at all must be wilful, deliberate and with clear intention to defy the court’s authority. He stated that the defendant/respondent had demonstrated a consistent intention to utilize the subject property for the family’s benefit and that is building a home for his children. He placed reliance on the decision in *Samuel M.N. Mweru & Others v National Land Commission & 2 Others* (*supra*).
16. Counsel asserted that there has been emphasis that courts must be slow to find contempt in matrimonial matters where parties are often acting under emotional strain and in a rapidly changing personal landscape. Reference on this was made to the decision in *FNM v JAM* (Matrimonial Cause E001 of 2022) [2024] KEHC 15341 (KLR) (4 October 2024) (Ruling) where the learned judge opined as follows:

“...it is clear to me that both parties opted to modify the terms of the judgment. In any case, it is apparent that the Claimant acted with undue haste and that, rather than cooperating with the Respondent, she opted to institute these contempt proceedings.
17. I note that the parties made arrangements to comply with the court orders, and to that extent agreed on the sale of the motor vehicle and valuation of the properties. In my view under these circumstances application of the extraordinary remedies available in contempt of court proceedings isn’t called for.
18. My understanding of the authorities I have cited is that the contempt orders ought to be issued sparingly and only in the clearest of cases. In my view this is not one such case.”
19. See also; *Elijah Momanyi p/a Anassi Momanyi Company Advocates v Bartera Maiyo* HC Eldoret Misc 149 of 2005 (Unreported) and *Muthaiga Heights Management PLC v View Point Homes Limited & 2 others; Kenya Urban Roads Authority (Interested Party)* [2025] KEELC 7891 (KLR) where the learned Judges reiterated the findings in the case of *Gatharia K. Mutikika v Babarini Farm Ltd.*
20. In conclusion, counsel urged the court to dismiss the plaintiff/applicant’s application in its entirety and award costs in favour of the defendant/respondent.



Analysis and determination

19. I have carefully considered the application, the affidavits and submissions by both parties. In my opinion, one issue arises for determination by this court that is; whether the defendant /respondent is guilty of contempt of court.
20. 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.”
21. 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.
22. The high court in the case of *Samuel M. N. Mweru & Others v National Land Commission & 2 others* (*supra*) also relied on by the parties herein, discussed the applicable law on contempt of court as follows:
-
“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.”
23. Having carefully perused the court record, I note that on 26th November, 2019 and not on 27th November 2019 as indicated by the plaintiff/applicant in her application, indeed this court adopted as an order of the court the mediation settlement agreement between the parties herein. Thereafter, on 27th November 2019 the said orders were extracted by the deputy registrar. There is no doubt that the said order was in the knowledge of the parties herein and especially the defendant/respondent since the same culminated from a mediation settlement agreement between them.
24. According to the orders of 26th November 2019 and particularly paragraph 6, it was stated that the two remaining plots should not be sold without the consent of the other party but the same could be developed or used for family by either of them. In his pleadings, the defendant/respondent does not deny having sub-divided and sold the property Kiambogo/Kiambogo Block 2/5XXX. He argued that the plaintiff/applicant was well aware of the sub-division and that he used the proceeds from the sale to offset existing financial obligations envisaged in the mediation settlement agreement.
25. In view of the above, I opine that if the parties mutually agreed that the aforementioned property should not be sold without consent of either party, then going ahead to sell it without involving the plaintiff/applicant amounted to defiance of the court orders issued on 26th November 2019. No evidence was adduced by the defendant/respondent showing that the plaintiff/applicant was aware of



or agreed to the sale of the property Kiambogo/ Kiambogo Block 2/5XXX. Further, the mediation settlement clearly indicated the specific property which was to be sold for purposes of settling financial obligations. Additionally, I note that this not the first time the defendant/respondent is found not to have complied with the said orders. In the ruling delivered on 8th July 2021 Ngugi J (as he then was) under paragraph 24 found the defendant/respondent not to have substantively complied with the court orders. The same scenario is being repeated.

26. 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.”

27. 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.
28. Consequently, this court finds the defendant/respondent being guilty of contempt of court and he shall be punished accordingly.
29. Orders accordingly.

DATED AND SIGNED THIS 20TH JANUARY, 2026 BY:

H. I. ONG'UDI

JUDGE

DELIVERED THIS 17TH FEBRUARY 2026 IN OPEN COURT AT NAKURU BY:

MOHOCHI S. M.

JUDGE

