

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT THIKA

ELC CASE NO. E082 OF 2021

BONIFACE MAINA MUNENE

ROSEMARY KANYU

PATRICK KARANI MUKURU

**(Suing as the chairman, secretary and treasurer of Olive's Village Resident Association and welfare group) APPLICANTS/
PLAINTIFF**

VERSUS

**KAIRU NGURE 2ND DEFENDANT/
CONTEMNOR**

AND

**ESTATE OF NGURE KAIRU 1ST DEFENDANT/
RESPONDENT**

**ROSELINE MWAURA 3RD DEFENDANT/
RESPONDENT**

**ANTHONY MUGWERU WACHIRA 4TH DEFENDANT/
RESPONDENT**

**LAND REGISTRAR THIKA 5TH DEFENDANT/
RESPONDENT**

COUNTY GOVERNMENT OF KIAMBU .. 6TH DEFENDANT/ RESPONDENT

NATIONAL LAND COMMISSION.....7TH DEFENDANT/ RESPONDENT

ATTORNEY GENERAL.....8TH DEFENDANT/ RESPONDENT

RULING

Introduction

1. This court has been tasked with determining the Notice of Motion application dated 14th March 2023 in which the applicant seeks the following Orders:

1. *Spent....*

2. *THAT the Honourable Court be pleased to order the issuance of summons to the Respondent/ Contemptor (sic) to appear personally before this court and show cause why they should not be cited for contempt and committed to civil jail for such a term or condemned to such other penalties as the court may deem fit.*

3. *THAT the Honourable Court be pleased to cite the Respondent/ Contemptor (sic) for contempt of court and commit them to civil jail for a term of six months AND or be fined a sum amount of Kshs. 200,00/= (Two Hundred Thousand) only.*

4. *THAT the Respondent/ Contemptor (sic) be ordered to cease any further constructions and demolish any structures put on the parcels of land barred by this Honourable court.*

5. *The 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 Rosemary Kanyua Mugambi sworn on even date.

3. The Applicant contends that by a ruling delivered on 24th February 2022 the Honourable Judge issued an order restraining any dealings in respect of the following parcels of land pending the hearing and determination of this suit, including the properties registered under

the following title Numbers:*Juja/ Kiaura Block 28 (Olive Village) 1; Juja/ Kiaura Block 28 (Olive Village)3; Juja/ Kiaura Block 28 (Olive Village)8; Juja/ Kiaura Block 28 (Olive Village)17 Juja/ Kiaura Block 28 (Olive Village)46; Juja/ Kiaura Block 28 (Olive Village)52; Juja/ Kiaura Block 28 (Olive Village)53* (the suit properties)

4. The Applicant avers that the 2nd Respondent, fully aware of the specific and unequivocal court order, willfully disobeyed, violated, and acted in blatant contempt of the same.
5. The Applicant asserts that the 2nd Respondent has erected water towers and installed water tanks for the sole purpose of establishing a water vending business.
6. Further, 2nd the Respondent has placed advertisements on the estate's perimeter wall purporting that parcels of land are available for lease.
7. The Applicant also avers that the 2nd Respondent has excavated trenches and dug holes with the intention of fencing off the suit properties.
8. Moreover, the Applicant contends that the 2nd Respondent has persistently harassed, threatened, and intimidated the residents, their employees, and interfered with their property.
9. The Applicant beseeches the court to intervene and stop the 2nd Respondent's/ contemnor's actions.

10. The application was opposed by the 2nd Respondent's Replying Affidavit sworn on 23rd March 2023 denying any acts of contempt and seeking the dismissal of the application.
11. The Applicant responded to the 2nd Respondent vide the Further Affidavit of Rosemary Kanyua Mugambi and reiterated that the 2nd Respondent was well aware of the subsisting court order but nonetheless elected to persist in conduct amounting to contempt of court.
12. The application was canvassed by way of written submission.

Issues for Determination

13. Having examined the application together with the affidavit in support, the replying affidavit in opposition, the applicant's further affidavit, the submissions by counsel and the relevant authorities, the following issues emerge for determination:

"Whether the order was clear, unambiguous and unequivocal; and finally whether there was compliance with the same."

Analysis and Determination

15. The authority of the Court, and by extension the rule of law, rests upon the unwavering obligation of all persons and institutions to comply with lawful court orders.

16. In Kenya, the jurisdiction to punish for contempt is anchored in the inherent power of the Court and section 5 of the Judicature Act, following the invalidation of the Contempt of Court Act, 2016.
17. Section 5 of the Judicature Act 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.***
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.”***

18. The effect of section 5 of the Judicature Act is to preserve the Court’s power to punish for contempt as an incident of its inherent jurisdiction, aimed at safeguarding the authority, dignity, and effectiveness of the judicial process. Section 5(1) of the Judicature Act obliges the High Court and the Court of Appeal, and by extension counsel appearing before them, to ascertain and apply the law of contempt as administered by the High Court of Justice in England at the time an application for contempt is instituted.
19. In ***Christine Wangari Gachege v Elizabeth Wanjiru Evans & 11 others [2014] eKLR***, the Court of Appeal clarified that section 5 does not merely confer jurisdiction but also imports the substantive and

procedural law governing contempt from England as it exists at the time of the application. The Court further underscored that this requirement is mandatory and not discretionary.

20. Similarly, in ***Shimmers Plaza Limited v National Bank of Kenya Limited* [2015] eKLR**, the Court of Appeal reiterated that, while the Kenyan courts retain inherent jurisdiction to punish for contempt, the exercise of that power must be grounded in the applicable English law on contempt, particularly on issues relating to proof of service, knowledge of the order, and willful disobedience.
21. Together, these decisions affirm that contempt proceedings in Kenya are tightly circumscribed, both substantively and procedurally, and that strict compliance with the applicable legal framework is a prerequisite to the invocation of the Court's coercive authority.
22. The Court further observes that the law imported under section 5(1) of the Judicature Act is not static; it evolves in accordance with developments in the English legal system.
23. As highlighted in ***Christine Wangari Gachege v Elizabeth Wanjiru Evans & 11 others* [2014] eKLR**, following the implementation of Lord Woolf's "Access to Justice Report, 1996", the old Rules of the Supreme Court of England were gradually supplanted by the Civil Procedure Rules, 1999. Notably, the Civil Procedure (Amendment No. 2) Rules, 2012, which came into force on 1st October, 2012, replaced Order 52 RSC entirely, and Part 81 now governs applications and proceedings in relation to contempt of court. Part 81 delineates four

distinct forms of contempt, including breach of a judgment, order, or undertaking (Rule 81.4), interference with the due administration of justice (Rule 81.11), contempt in the face of the court (Rule 81.16), and making a false statement in a disclosure statement (Rule 81.17).

24. In the instant application, Rule 81.4, which governs the breach of a judgment, order, or undertaking, is determinative.
25. Additionally section 29 of the Environment and Land Act grants this court the power to punish anyone who disobeys, fails or neglects to obey a court order or direction by a fine of upto Kshs 20 million, imprisonment for a term not exceeding two years or both. It is undisputed that the 2nd Respondent was aware of the subsisting court order restraining any dealings on the suit properties. Notwithstanding this knowledge, the 2nd Respondent admitted to undertaking a series of actions directly contrary to the order, including the construction of a stone fence, the excavation of trenches, and the installation of water tanks on the suit property. Each of these acts, carried out with full awareness of the Court's directive, constitutes a deliberate defiance of the judicial mandate.
26. In determining whether the 2nd Respondent's conduct constitutes contempt, the Court is guided by well-settled principles, as reaffirmed in ***Samuel M. N. Mweru & Others v National Land Commission & 2 others* [2020] KEHC 9233**. It is an established principle of law that, to succeed in civil contempt proceedings, the applicant must prove three foundational elements: (i) the terms of the order, (ii) knowledge of these terms by the Respondent, and (iii) the

Respondent's failure to comply with the order. Once these elements are established, the presence of willfulness and bad faith on the part of the Respondent is ordinarily inferred, though the Respondent may rebut this inference with evidence on a balance of probabilities.

27. Perhaps the most comprehensive formulation of the elements of civil contempt is found in *Contempt in Modern New Zealand*, which identifies four essential requirements: the applicant must prove, to the higher standard applicable in civil contempt proceedings, that (a) the terms of the order were clear, unambiguous, and binding on the defendant; (b) the defendant had knowledge of or proper notice of the order; (c) the defendant acted in breach of its terms; and (d) the defendant's conduct was deliberate.
28. In the instant application, the 2nd Respondent was fully aware of the restraining order prohibiting any dealings on the suit properties, yet he admitted to constructing a stone fence, digging trenches, and installing water tanks, each act carried out in deliberate defiance of the Court's clear and unambiguous mandate.
29. While the 2nd Respondent contends that his actions did not contravene, and are therefore not in contempt of, the Court's order, this argument is untenable. His admitted conduct plainly falls within the scope of the restraining order and satisfies all the essential elements of civil contempt: a binding and unambiguous order, knowledge of its terms, deliberate non-compliance, and willfulness.

30. While the 2nd Respondent's actions clearly establish contempt, the Court must consider the high standard of proof required when imposing sanctions that affect personal liberty.
31. Contempt of court is quasi-criminal in nature, and constitutional principles dictate that no person should be deprived of freedom unless the breach is established beyond reasonable doubt or, in civil contempt, to a high standard of proof. This ensures that the Court's coercive powers are exercised judiciously and in a manner consistent with the protection of fundamental rights.
32. Applying these principles to the instant case, the Court is satisfied that the 2nd Respondent's admitted conduct meets the high standard required for civil contempt. There is no evidence to suggest that the 2nd Respondent's actions were inadvertent or excusable, and no reasonable doubt exists as to the willfulness of his non-compliance.
33. In these circumstances, the requisite standard of proof has clearly been met, and the factual record supports a finding of deliberate contempt.
34. The Court respectfully agrees with the reasoning in *Shimmers Plaza Limited v National Bank of Kenya Limited* [2015] eKLR where the court stated:

"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 flagrantly 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.”

35. In essence, to permit deliberate defiance of its orders would not merely erode its authority, but strike at the very foundations of law, order, and the public’s trust in the administration of justice.
36. Accordingly, I find the 2nd Respondent in contempt of the court order 13th October 2022.
37. The application dated 14th March 2023 is allowed with costs. The 2nd Respondent to appear in court on 18.3.26 for mitigation and sentencing failure of which a warrant of his arrest be issued.

Dated, Signed and Delivered, at Thika this 5th day of February 2026

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J. M. ONYANGO
JUDGE

In the presence of:

1. Mr Kairu Ngure 2nd Defendant present in person
2. Ms Muibu for the Plaintiff/Applicant
3. Ms Njeri Kiarie for Mr Mwaura for the 3rd and 4th Respondents

Court Assistant: Hinga

ORIGINAL