

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT MERU**  
**ELCL PETITION NO. E010 OF 2024**

**JOSEPH NGULU MUNGANIA .....1<sup>ST</sup> PETITIONER**

**ZAKAYO MUGAMBI .....2<sup>ND</sup> PETITIONER**

**JOHN MUTURIA MUNGANIA .....3<sup>RD</sup> PETITIONER**

**PAULINE KENDI JULIUS .....4<sup>TH</sup> PETITIONER**

***VERSUS***

**COUNTY GOVERNMENT OF MERU .....1<sup>ST</sup> RESPONDENT**

**LAND REGISTRAR MERU .....2<sup>ND</sup> RESPONDENT**

**NATIONAL LAND COMMISSION .....3<sup>RD</sup> RESPONDENT**

**ADMINISTRATION POLICE COLLEGE MERU ....4<sup>TH</sup> RESPONDENT**

**FULL GOSPEL CHURCH .....5<sup>TH</sup> RESPONDENT**

**AFRICAN INDEPENDENT PENTECOSTAL CHURCH OF AFRICA  
(AIPCA) .....6<sup>TH</sup> RESPONDENT**

**ATTORNEY GENERAL .....7<sup>TH</sup> RESPONDENT**

**RULING**

1. The subject application brings forth the issue/question of obedience to and compliance with court orders. Time and time

again, the questions of compliance or noncompliance with court orders come up; and the courts are called up to pronounce themselves on the significance/importance of compliance. Nevertheless, there is no gainsaying that it is essential for the maintenance of the rule of law and for good order that the authority and dignity of the court is upheld at all times. It is immaterial whether the addressee[s] of the court order, is a person in authority or otherwise. In any event, the bottom line is that the law is blind

2. The importance of compliance with court orders was highlighted in the case of **Shimmers Plaza Limited v National Bank of Kenya Limited [2015] KECA 945 (KLR)**. The Court of Appeal while reiterating the remarks of the Theodore Roosevelt [the 26<sup>th</sup> president of the United States of America] stated thus:

*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. For as Theodore Roosevelt, the 26<sup>th</sup> President of the United States of America once said:-*

***“No man is above the law and no man is below it; nor do we ask any man’s permission to obey it. Obedience to the law is demanded as a right; not as a favour”.***

*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.*

3. Back to the application before the court. Before me is the application dated the 25<sup>th</sup> of November, 2025 brought pursuant to the provisions of **Section 5 of the Judicature Act, Chapter 8 Laws of Kenya; Sections 1A, 1B, 3A and 63[e] of the Civil Procedure Act; and Order 51 Rule 3 of the Civil Procedure Rules** and wherein the Applicants have sought the following reliefs:

- i. *That this Application be certified urgent and the be heard on priority basis.*
- ii. *That the 4<sup>th</sup> Respondent and in particular, the in charge of REMU MUTABARI JULIUS be coted for contempt of court for deliberate disobedience of court orders issued on 23<sup>rd</sup> April, 2025.*
- iii. *That the 4<sup>th</sup> Respondent and in particular the in charge one REMU MUTABARI JULIUS be summoned to appear before court to show cause why he should not be punished for contempt of court orders issued on 23<sup>rd</sup> April, 2025.*
- iv. *That costs of this Application be provided for.*

4. The instant Application is premised on the grounds which have been highlighted in the body thereof. In particular, the Applicants have posited that this court rendered a Judgment on the 23.04.2025; thereafter a decree was extracted and sealed. In addition, it has been posited that the terms of the judgment and the consequential decree were and are still known to the 4<sup>th</sup> respondent. Nevertheless, it has been contended that the 4<sup>th</sup> respondent and in particular the Commander of the 4<sup>th</sup> Respondent [Remu Mutabari Julius] has continued to act contrary to and in contravention of the orders of the court.

5. Flowing from the foregoing, the Applicants have invited the intervention of the court and posited that the acts of the 4<sup>th</sup> respondent and in particular, the Commander of the 4<sup>th</sup> Respondent amounts to and constitute contempt of court. To this end, the court has been invited to cite the 4<sup>th</sup> respondent and thereafter summon the commander, namely, REMU MUTABARI JULIUS to show cause why same should not be punished for contempt.
  
6. The subject application is supported by the affidavit sworn by one Joseph Ngulu Mungania [the 1<sup>st</sup> applicant]. The supporting affidavit has reiterated the grounds at the foot of the application and emphasized the contention that the 4<sup>th</sup> respondent has remained in occupation of a portion of the suit property, despite the orders of permanent injunction which were issued by the court.
  
7. The application is opposed. The 4<sup>th</sup> respondent has sworn a replying affidavit sworn on [sic] the 19.02.2025 [sworn long before the application was filed] and wherein the deponent has highlighted various issues. The issues highlighted at the foot of the replying affidavit are: The 4<sup>th</sup> respondent is still on the suit property; the suit property is public land under the custody of Meru County Council; the 4<sup>th</sup> Respondent has not undertaken any new act of encroachment; the 4<sup>th</sup> respondent has not disobeyed the orders of the court; the 4<sup>th</sup> respondent is on the suit land lawfully; no evidence of trespass has been placed before the court; and the subject application constitutes and or amounts to witch hunt.

8. Arising from the foregoing, the deponent of the replying affidavit has contended that the Applicants have neither demonstrated nor established a basis for citation and punishment of the 4<sup>th</sup> respondent, or its commander. To this end, the court has been invited to find and hold that the subject application is vexatious; frivolous and an abuse of the due process of the court. In short, the court has been implored to dismiss the application with costs.
  
9. The application came up for hearing on the 23<sup>rd</sup> of February, 2026, whereupon the court issued directions pertaining to the hearing and disposal of same. In particular, the court directed that the application be canvassed by way of oral submissions.
  
10. Learned counsel for the Applicants adopted the grounds at the foot of the application; the contents of the supporting affidavit and thereafter highlighted three [3] key issues. The issues are: The court issued a judgment and the terms thereof were duly extracted *vide* decree signed on the 10<sup>th</sup> of July, 2025; and the 4<sup>th</sup> respondent has been aware of and privy to the terms of the decree; and the 4<sup>th</sup> respondent has acted contrary to and in contravention of the terms of the decree. In this regard, learned counsel for the Applicants has invited the court to find and hold that the 4<sup>th</sup> respondent and in particular, its commander is guilty of contempt and thus warrants citation and appropriate punishment.
  
11. Learned counsel for the 2<sup>nd</sup>, 4<sup>th</sup> and 7<sup>th</sup> Respondents adopted the contents of the replying affidavit sworn [sic] on the 19<sup>th</sup> of February, 2025 and thereafter highlighted three key issues. The issues highlighted by the named Respondents are: The decree of the court has never been duly and

personally served on the Commander of the 4<sup>th</sup> respondent; the Applicants have neither established nor demonstrated contempt of court; and the averments by the Applicants do not meet the threshold for citation for contempt of court. Moreover, it has been submitted that the standard of proof in matters of contempt is higher than a balance of probabilities but below beyond reasonable doubt.

12. From the foregoing contention, learned counsel for the named Respondents has invited the court to find and hold that the Applicants have not proven the plea of contempt and hence the application ought to be dismissed with costs.

13. Having reviewed the application; the supporting affidavit thereto; the replying affidavit in opposition thereto; the oral submissions canvassed by/on behalf of the parties and upon taking into account the relevant law, three [3] key issues crystalize for consideration and determination. The issues are: Whether the terms of the judgment and the consequential decree were/are unequivocal; whether the 4<sup>th</sup> respondent and in particular, its commander are knowledgeable of the terms of the decree; and whether the 4<sup>th</sup> respondent and by extension its commander has acted in contempt of the court orders.

14. Regarding the first issue, it is common ground that this court rendered a judgment as pertains to the petition that was filed herein. The judgment was delivered on the 23/04/2025. Moreover, the said judgment was delivered in the presence of the advocates for the various parties.

15. The details of the advocates, who were present during the delivery of the Judgment are captured at the foot thereof. Suffice it to state that the Learned Principal Litigation Counsel representing the 2<sup>nd</sup>; 4<sup>th</sup> ; and 7<sup>th</sup> Respondents was present.

16. More importantly, the terms of the judgement are broken down at the foot of paragraph 114 thereof. In particular, the court distilled the various reliefs/remedies, which were granted and the parties against whom the said reliefs were granted.

17. It is imperative to underscore that one of the reliefs/remedies which was granted by the court was an order of permanent injunction. The order was granted against the 1<sup>st</sup> to 7<sup>th</sup> respondents. The terms of the order of permanent injunction were:

**“An order of permanent injunction be and is hereby issued restraining the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> respondents; and their representatives, servants, agents and or anybody else acting at their behest, direction or instructions from entering onto, hicking any portion from evicting Kirimanchuma Primary School from dealing with and or whatsoever interfering with the quiet, peaceful and undisturbed actual possession, occupation, user and enjoiment of LR No. Tigania/Kiramachuma/6 measuring 10.374 acres by Kirimachuma Primary School.”**

18. The terms of the order under reference are explicit. Pertinently, the various respondents, who have been mentioned were ordered not to enter upon and or interfere with the occupation and peaceful usage of the suit property by the school. It is common ground that one of the Respondents

who was ordered to desist from or to stop trespassing onto the suit property was 4<sup>th</sup> respondent.

19. The 4<sup>th</sup> respondent may or may not have been happy with the terms of the order of the court. Nevertheless, there is no gainsaying that where a party, the 4<sup>th</sup> respondent not excepted, is aggrieved by a court order, same is enjoined to seek review or better still, prefer an appeal [whichever is applicable]. However, in respect of the instant matter, no appeal has been filed and or mounted. Moreover, if any appeal has been filed, there is no order of stay or otherwise.

20. Back to whether the terms of the judgment and the decree are explicit. I have reproduced the terms of the permanent injunction which was issued by the court. The terms are crystal clear. In any event, I did not hear the 4<sup>th</sup> respondent to contend that the terms of the court order were ambiguous, equivocal or ambivalent. Simply put, the terms of the judgment and the consequential decree, were understood by all and sundry.

21. In the premises, it is my finding and holding that the 4<sup>th</sup> Respondent was enjoined to cease entering onto and stop activities on the suit property. Moreover, the suit property was to be left under the occupation and possession of the school and not otherwise.

22. The next issue that merits consideration is whether the 4<sup>th</sup> respondent and by extension, its commander, was privy to or knowledgeable of the terms of the court order. I beg to state that the judgment of the court and which

was delivered on the 23.04.2025 was delivered in the presence of *inter alia*, Mr. Erick Obura [Principal litigation counsel] who was appearing for the 2<sup>nd</sup>, 4<sup>th</sup> and 7<sup>th</sup> respondents. In this regard, it is common ground that the judgment was delivered in the presence of learned counsel for the 4<sup>th</sup> respondent.

23.To the extent that the Judgment was delivered in the presence of learned counsel for *inter alia* the 4<sup>th</sup> respondent, it is deemed that the 4<sup>th</sup> respondent was and is therefore knowledgeable of and privy to the terms of the judgment. The 4<sup>th</sup> respondent cannot now purport that same was never served with the decree of the court.

24.Moreover, I wish to state that the issue of extraction and non- service of the decree upon the 4<sup>th</sup> respondent, was merely brought up by learned counsel during the submissions. The issue does not form part of the contents of the replying affidavit sworn on [sic] 19.02.2025. Quite clearly, the issue of non-service of the decree is an afterthought and *red-herring*.

25.Notwithstanding the foregoing, it is not lost on me that the law on contempt has since moved from extraction; and service of court orders, to knowledge of court orders. Currently, the law requires the claimant to establish and demonstrate that the contemnor was/is knowledgeable of the court order and the terms thereof. The moment it is proven that the addressee[s] was knowledgeable of the court order, then it behooves the said addressee/recipient of the court order to obey or comply.

26. In the case of **Executive Committee Kisii County, Governor, Kisii County & County Government of Kisii v Masosa Construction Company Limited & Transition Authority [2020] KECA 801 (KLR)**, the Court of Appeal highlighted the importance of the knowledge of the court order and in particular, the fact that the law on contempt had moved from proof of service of the court order.

The court stated thus:

*In [Justus Kariuki Mate v Martin Nyaga Wambora](#), [2014] eKLR this Court acknowledged the move from the position that an order endorsed with a penal notice must be personally served on a person before contempt can be proved. Lenaola, J (as he then was) in the case of [Basil Criticos v Attorney General](#) [2012] eKLR perceived an additional ground for dispensation with the requirement for personal service; “...where a party clearly acts and shows that he had knowledge of a court order, the strict requirement that personal service must be proved is rendered unnecessary”. Similarly, the requirement of notice of the prohibitory judgement or order would also be satisfied where a party is represented counsel who was present in court when the orders were made. Therefore, knowledge of the judgment or order by an alleged contemnor’s advocate suffices for contempt proceedings. There is a presumption that when an advocate appears in court on instructions of a party, it behoves him to report back to the client all that transpired in court that has a bearing on the client’s case. This presumption is in line with the dicta of the Canadian Supreme Court in the case of [Bhatnager v Canada, \(Minister of Employment and Immigration](#) 1990] 2 SCR 217 where it*

*was held that a finding of knowledge on the part of the client may be inferred from the fact that the solicitor was informed. Similarly, in the United States case of United States v Review 834 F.2d 1198, 1203 (5th Cir. 1987) it was held that a defendant had adequate notice of a show cause order because his attorney was on notice. (See also Kenya Supreme Court dicta in [Justus Kariuki Mate & another v Martin Nyaga Wambora & another](#) [2017] eKLR).*

27. From the foregoing, my answer to issue number two is *twofold*. Firstly, the contention by learned counsel for the named Respondents that there was no service of the decree is premised on misapprehension of the law of contempt. The said submission was made *per incurium*.

28. Secondly, the Judgment of the court which underpins the consequential decree was delivered in the presence of learned counsel for the 4<sup>th</sup> respondent. To this end, it is deemed that the 4<sup>th</sup> respondent; its agents; servants or representatives were/are knowledgeable of the court order.

29. The last issue for consideration relate[s] to proof of contempt and the applicable standard. To start with, Remu Mutabari Julius [ who is the commandant of the 4<sup>th</sup> respondent, has acknowledged and conceded that the 4<sup>th</sup> respondent is still in occupation of the suit property. Moreover, the said deponent has in his wisdom posited that the 4<sup>th</sup> respondent is lawfully in occupation of the suit land. [See paragraphs 3, 4, and 11 of the replying affidavit].

30. It suffices to state that the question of continued occupation of the suit property and by extension, trespass thereto has been conceded. Though the deponent of the replying affidavit contends that the 4<sup>th</sup> respondent is lawfully in occupation of the suit property. The question that does arise and begs the answer is [sic] what underpins the contention that the named Respondent's occupation of the Suit property is [sic] lawful. Nevertheless, I do remind myself that the court made an order. The order of the court was explicit. That court order has not been overturned. It is the said court order that is lawful.

31. On the contrary, any act; or omission that does not accord with the court order is unlawful. I am afraid that the contention by the deponent of the replying affidavit that the 4<sup>th</sup> respondent's occupation of the suit property is lawful, is built on quick sand. It cannot be lawful for as long as it runs contra the court order.

32. There is no gainsaying that every party who is knowledgeable of a court order is obliged to obey. The obligation to obey is an unqualified. The obligation is peremptory. It does not require the permission of a Third Party.

33. In the case of **Hadkinson –vs- Hadkinson, (1952) ALL ER 567**; Rommer, J, stated thus:

***“It is the plain and unqualified obligation of every person against, or in respect of, whom an order is made by a court of competent jurisdiction to obey it unless and until that order is discharged. The uncompromising nature of this obligation is shown by the fact that it extends even to cases where the person affected by an order believes it to be irregular or even void. Lord Cottenham, L.C., said in Chuck –vs- Cremer (1) (1 Coop. temp.Cott 342):***

***“A party, who knows of an order, whether null or valid, 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 or valid- 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 or 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 exists it must not be disobeyed.”***

34. It is my finding that the 4<sup>th</sup> respondent and by extension, its commandant are in contempt of court. The disregard and or disobedience is intentional, willful and deliberate. In any event, there is no sign of remorse in the body of the replying affidavit. On the contrary, the deponent of the replying affidavit is adamant. In this regard, it is my conclusion that the standard of proof, as pertains to contempt has been discharged.

35. Before concluding on this issue, it suffices to reference the holding of the Court of Appeal in the case of **Mutitika v Baharini Farm Ltd [1985] KECA 60 (KLR)**.

36. The Court of Appeal highlighted the applicable standard of proof. The court stated thus:

***“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. We envisage no difficulty in courts determining the suggested standard of proof. The standard of proof beyond reasonable doubt ought to be left where it belongs, to wit, in criminal cases.”***

## Conclusion

37. From the discussion alluded to in the body of the ruling, there is no gainsaying that the Applicants have established; proven; and demonstrated acts constituting willful disobedience of lawful court orders. On the contrary, the 4<sup>th</sup> respondent has not justified its continued occupation of trespass to the suit land.

38. It is common ground that the law applies to all and sundry. It matters not whether the addressee of the order is an individual or an institution. It matters not whether the addressee is mighty or otherwise. I repeat the law is blind. Moreover, the law binds all persons, bodies or institutions. The law is supreme. The Law is a respecter of no-one. On the contrary, Everyone must be a respecter of the Law.

## Final orders

39. From the foregoing, the final orders that commend themselves to the Court are:

- i. The Application dated 25.11.2025 be and is hereby allowed.*
  
- ii. The 4<sup>th</sup> Respondent, together with its commander [Remu Mutabari Julius] be and are hereby found guilty of contempt of lawful court orders.*
  
- iii. The 4<sup>th</sup> Respondent and its commander be and are hereby cited for contempt.*

- iv. The Commander of the 4<sup>th</sup> respondent [Remu Mutabri Julius] be and is hereby ordered to attend court for purposes of mitigation and show cause why same should be punished for contempt.*
- v. The show cause/mitigation shall be undertaken on the 11.03.2026.*
- vi. Costs of the Application be and are hereby awarded to the Applicants.*
- vii. The Costs in terms of clause [vi] shall be agreed upon and in default be taxed in the conventional manner.*

40.It is so ordered.

**DATED, SIGNED AND DELIVERED AT MERU THIS 24<sup>TH</sup> DAY OF  
FEBRUARY, 2026**

**OGUTTU MBOYA, FCIArb;CPM [MTI-EA].**

**JUDGE**

**In the presence of:**

Naserian: Court Assistant

Mr. Omari for the Petitioners/Applicants

Mr. Juma [litigation counsel] for the 2<sup>nd</sup>, 4<sup>th</sup> and 7<sup>th</sup> Respondents.

N/A for the 1<sup>st</sup> Respondent

N/A for the 3<sup>rd</sup>, 5<sup>th</sup> and 6<sup>th</sup> Respondents