

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIVASHA

ELC NO. 45 OF 2024

(FORMERLY NAKURU ELC NO. 139 OF 2019)

HARRISON WAWERU NGANGA.....1ST

PLAINTIFF/RESPONDENT

MATIGARI NDUNYU NJERU

COMPANY LIMITED.....2ND

PLAINTIFF/RESPONDENT

VERSUS

ANTONY KAMAU NDOGE

.....DEFENDANT/APPLICANT

AND

JOSEPH KIRAGU NJOROGE.....1ST INTERESTED PARTY

**THE LANDS REGISTRAR, NAIVASHA.....2ND INTERESTED
PARTY**

**THE DISTRICT SURVEYOR, NAIVASHA.....3RD INTERESTED
PARTY**

**THE HONOURABLE ATTORNEY GENERAL.....4TH INTERESTED
PARTY**

RULING

1. What is before me for determination is Chamber Summons dated 24th March, 2025 brought under the provisions of Section 10 of the Judicature Act, Cap 8 of the Laws of Kenya, Part 1 Rule 2(2) of the High Court Practice and Procedure Rules and Order 25, (6), 40, 51 Rule 16, 60, 63 of the Civil Procedure Rules, Section 1A, 1B and 3A of the Civil Procedure Act, (Under Article 159(2)(d) of the Constitution and Section 63 (e) & 80 of

the Civil Procedure Act, Order 45 of Civil Procedure Rules 2010, the Inherent Powers of the Court and all the enabling provisions wherein the Defendant/Applicant has sought for the following orders:

- i. **Spent.**
 - ii. **Spent.**
 - iii. That the stay orders existing be set aside, the conditions of stay of sentencing having been repeatedly violated and worsened by the conduct of the Respondent/Contemnor and warrants of arrest be issued and extended.
 - iv. The honourable court be pleased to order the contemnor and his agents, more so his son John Njehia and John Njoroge to purge all acts of contempt over the subject suit land owned herein (incision of 50 acres) Hilly and Rocky Area Adjacent to Ndunyu Njeru to be granted audience.
 - v. That one John Njehia, the son of the contemnor, do surrender the subject title deed in its original state to the honourable court.
 - vi. The Respondents be sentenced accordingly upon the finding of the contempt.
 - vii. The Officer Commanding Station (OCS) Gilgil Police Station do effect the warrants of arrests upon issuance by the court herein.
 - viii. The cost of this application be provided.
2. The said Application was supported by the grounds therein as well as the Supplementary Affidavit (**sic**) of equal date sworn by Anthony Kamau Ndoge, the Defendant/Applicant herein, who deponed that the 1st Plaintiff/Respondent was in repeat acts of contempt even after the court found him guilty of contempt on 4th July, 2024.

3. He deponed that the Respondent's confession that his son John Njehia holds the title and he could be the one subdividing the land was confirmatory of the violations that he had cited. That the Respondents were still subdividing, selling off and duping third parties into the sale and disposal of the subject matter despite unequivocal court orders and a successful contempt of court process against them. That subsequently, the Applicant risked losing a fortune of hard-earned property at the behest of a fraudster, despite the validity of the existing contracts, which had been acknowledged and through illegal subdivisions, mapping and mutations of the founding title and portions on the ground.
4. That the conduct of the Plaintiffs/Respondents points to a disobedient party, willing to scale all heights in violation of orders, in a process that he had initiated and take advantage of a bad situation to alter the contest radically. That the Applicant's prime property had been illegally invaded, subdivided, partitioned, disposed of, trespassed onto and titles over it procured by fraud on the part of the Plaintiffs/Respondents through new registration numbers being subdivisions 6547B to 67441- 67449 MUT/NVS/19286/5/24 by Mayabi on 6th June, 2024. That further, subdivisions and mutations 51263 to 67694-67905 MUT/NVS/195299/7/24 had been executed by Agnes on 11th August, 2024, as captioned in map sheet Gilgil/Gilgil Block 1(Kikopey) No.87 purchased on 13th August, 2024.
5. That the offending and illegal mutations had been executed, during the pendency of the instant case and after the ruling and contempt orders of 4th July, 2024.
6. That the Plaintiff had equally been busy pursuing a stay order with an intent to appeal, wherein the instant motion was being treated as a response to the Respondents' application for stay. Furthermore, the Respondents were falsifying information at the lands registry to effect such changes and to radically alter the suit herein, with a view to defeating the hearing, judgment, and execution should the same go in favour of the Defendant/counterclaimant.

7. That indeed, the Plaintiffs/Respondents herein had filed an application for stay of execution of the orders of the court of 4th July, 2024 on the ostensible danger of being jailed having been found in contempt of court, but instead of pursuing his appeal for its worth, he had now taken to extending further harm and injury towards the Applicant devoid of lawful justification and /or cause. That a repeat contemnor, an ex facie contemnor, did not merit audience before court and must purge his foul conduct before he could be heard on anything, more so when he was obtaining money from unsuspecting members of the public for sale of land, which funds he was using to wreck more havoc and wriggle his way through the court, land and the police.
8. He deponed that the Respondent/ contemnor was entirely uninterested in the just resolution of the instant case but had instead resorted to excoriating the suit and the Applicant herein. That accordingly, the orders sought to be granted by the Honourable court would safeguard the subject matter which was being dissipated by the Respondent and his agents to destroy the substratum of the suit herein.
9. That the interested parties had jointly and severally colluded to defeat the order of the court, knowingly and deliberately as they had sold, bought and caused to be transferred the subject land during the pendency of the case, a fact entirely against court orders and to which they had been aware having been served and written to letters of protest, more so the lands registrar. Furthermore, the Respondent had been involved in numerous criminal cases, relating to the title under contests and its diverse offshoots in illegal subdivisions. That in any event, the court having previously indicated that the Plaintiff/ Respondent and his agents, among them the interested parties, had all defied clear and unequivocal orders of the court, the instant Application was a repeat violation requiring sterner action, mostly a jail term or a very hefty fine.
10. That the Plaintiff herein had continued to interfere with his peaceful enjoyment of the parcel of land and had even gone ahead and planted

illegal beacons thereon despite the pendency of this suit, and the court's orders of status quo.

11. In response and in opposition to the Defendant/Respondents Application, the Plaintiffs through their Replying Affidavit dated 30th May, 2025 sworn by Harrison Waweru Nganga, the 1st Plaintiff herein who is one of the directors of the 2nd Plaintiff deponed that being dissatisfied with the court's ruling of 24th July, 2024 (**sic**), he lodged a Notice of Appeal dated 10th July, 2024 simultaneously with an application for stay pending appeal for which the court granted him a stay of execution on 9th October, 2024. Since the delivery of the ruling on 4th July, 2024, he had not in any way whatsoever interfered with the suit property as alleged by the Applicant. He explained that he had gifted his son John Njihia Waweru, land parcel number Gilgil/Gilgil Block 1/60823 measuring approximately 0.348 Ha in the year 2019 which position he had explained to the Honourable court on 21st November, 2024.
12. That he was not a party to the Sale Agreement dated 16th February, 2023, between the said John Njihia and Joseph Kiragu Njoroge, nor was he privy to the alleged sales, subdivisions and or mutations as had been alleged in the Applicant's supporting Affidavit. That, in any event, the maps and photographs annexed were undated and not reflective of the true status of the suit property.
13. He deponed that in the interest of justice, he was inviting the Honourable court to conduct a site visit in the presence of the Lands Registrar, Naivasha, and the Director of Survey to verify and confirm the status of the suit property and thereafter fix the matter for defence hearing as he had already testified and closed his case. He maintained that he had not violated any orders of the Honourable Court and that the Applicant had not tendered any cogent evidence to buttress his allegations. That subsequently, the Defendant/ Applicant's Notice of Motion application dated 24th March, 2025, was unmerited and should be dismissed with costs.

14. In a rejoinder, the Defendant/Applicant vide his Supplementary Affidavit dated deponed that the Respondent had failed to answer to his repeated acts of contempt and/or failed to purge his earlier sales, disposal and subdivision of the parcel in dispute, and orders of the court convicting him on 4th July, 2024. That indeed, the Respondent had admitted gifting his son a parcel of land which was in court and subject of litigation.
15. Regarding the Respondent's assertion on the gift, he deponed that he said Respondent had forgotten and deliberately so, that he had disclosed to the court in January 2025 that he did not know who was selling the land, yet it was his son, John Njehia, whom he gave the title. That the Respondent had equally forgotten that out of the court's own motion, he had been asked about the status of the land, in which he confirmed that the title deed was with a third party, the son, who the court had also summoned.
16. That interestingly, the Respondent herein now claims that he had not sold the land yet the map shows subdivisions even after the issuance of the court orders convicting him. That indeed, the Respondent and his counsel had claimed that the instant motion was pegged on an undated map, yet knowing that maps were issued by state departments who were part of his conduits and complicit actors in the scheme of fraud. That in any event, the Respondent had not provided any map, to the contrary, assuming that the one that the Applicant had relied upon was wrong.
17. That however, even assuming that the map was wrong and illegitimate, it did not discount admitted sales by the interested party who had also been examined by the court in the instant matter and a second one by the Applicant's own son, against lawful court orders. He thus deponed that the Plaintiffs/Applicants' response was another set of inaccuracies that had been intended to muddle the trial of the instant matter and to dissipate the subject matter herein.
18. That the acts of contempt having been with precision pleaded and proven, the instant Application should be allowed as prayed.

19. Through a Supplementary Affidavit dated 2nd October, 2025, the Applicant deponed that pursuant to the site visit that had been requested for by the Respondents and undertaken on two occasions with the presiding Judge attending on 24th September, 2025, a number of facts had come to the fore, that needed further evidence in proof of the application dated 24th March, 2025 against the repeated acts of contempt by the Respondent, even after the had court found him guilty of contempt and citing him accordingly on 4th July, 2024. That indeed, despite the Respondent lying under oath about the subdivision of the subject land, its mutation and sale, he had since disclosed to the court that his son, one John Njehia was in the custody of the mother title deed, at his instance, that he had given him as a gift and for safe custody.
20. That, however, it was apparent that the son only holds a portion of an acre of the subject land, which he concedes to have sold a portion thereof to John Njoroge, among others. That Njehia was not a registered land owner and or known beneficiary of the subject 50-acre portion, nor of the larger 135-hectare subject of the suit. It had been discovered during the hearing at the site that even as late as 25th June, 2025, the land had been sold to a group called Hekima, alongside the Kayole women group, Mr Yobesh and 40 others, during the pendency of the instant suit and after the court orders. That the aforementioned were all illegal acts by the Plaintiff, the Lands Registrar, and the surveyors involved.
21. That the green card having been mutilated, the maps and certificates of mutation could not grant the exact status even with the surveyor and the lands Registrar evidencing collusion and desecration of the court order. It was also apparent that the Respondent has had running battles in court over the same land and its subdivision, the entire 135 hectares as prayed for in the plaint, for instance, Nyahururu ELC Civil case between him, 2nd Defendant and Paul Ngugi Mburu, Nancy Mwihaki Ngure, Esther Wairimu Mburu, Tabitha Wanjira Waweru and Lucy Wambui Waweru, hence the overreach to the disputed 50 acres subject herein.

22. That the instant case had been lodged in court by those very Plaintiffs/ Respondents against the listed parties above on 20th January, 2021, way past the orders. That the parcels involved were offshoots of the land herein, being Gilgil/Gilgil/Block 1/51390-51413, where the Plaintiff himself was claiming forgeries and illegal transfers, fraud, and illegality, among other claims, in an agreement dated 3rd June, 2020. That, in any event, the conduct of the Plaintiffs' advocates had not been helpful either, since they seem to enable him in those fraudulent and criminal acts across courts and registries. That while a litigant was entitled by law and the constitution to an advocate of his own choice, the same litigant had no liberty, more so a corporate one like the 2nd Defendant (**sic**), to proceed as they were presently doing without requisite and relevant resolutions affecting such actions, entirely breaching both the civil procedure and the Companies Act. That the Plaintiffs' conduct, in itself, necessitated amendments to the suit, yet he was the same one complaining about the multiplicity of applications, which were a result of his own acts of contempt.
23. He thus deponed that the inescapable conclusion was that the Plaintiff was determined to defy the law, while violating the process of the court and the destruction of the subject matter by opening up future litigation with third parties should the court decide contrary to their preferences as they had already with the discovery of the third parties to whom he had sold land and those that were unknown at the present.
24. On 29th September 2025, the court was accompanied to the site visit by the land surveyor and the land registrar, wherein it was shown the suit land and noted that there were about 4 or 5 houses built therein, there was also a plot that had building materials (stones) on site. There were about 50 people present, some of whom had bought portions of the suit land. The court had informed the people present that it had not come to conduct a hearing but to find out if, after the orders of 15th January 2020,

which were reaffirmed on the 2nd March 2020, directing parties to maintain the status quo, there had been disobedience of the said orders.

25. Thereafter, M/s Josephine, the Land Registrar, had informed the court that she had the green card to the suit land, which had been registered to Matigari on 23rd January 2019, that subsequently, the parcel of land had been subdivided on 10th July 2019, giving rise to parcel Nos.51186 - 51413. That, after 15th January 2020, there had been subdivisions resulting in land parcels Nos. 51400 - 51413, all of which had been registered to one Nancy Mwihaki. However, when the court sought to inquire who this Nancy was and from whom she had bought/transferred the land, nobody seemed to know her.

26. The court questioned Mr John Njihia, to whom there had been allegations that the Plaintiff (his father) had given him the title to parcel of land No.1/47955, wherein he stated that in 2019, the Plaintiff had gifted him a 1-acre piece of land being block 1/60823, which had been a subdivision of parcel of land No.51197. That, subsequently, he had sold the land to the 1st Interested Party and transferred the same to him in the year 2023, and the land was registered in the name of the said Interested Party on 2nd March 2023.

27. Other interested parties who spoke on site were;

- i. Mr Yobesh Maroko stated that there were 40 members who had bought land from Harrison Nganga (the 1st Plaintiff/Respondent) since 2019, and finished paying for it in the year 2020, and received their titles. He provided the court with a list of members.
- ii. Ms. Consepta Muchongo confirmed that they bought parcels of land, where there were buildings, from Mr. Anthony Ndoge (Defendant) in the year 2013. M/s. Bernice Wambui Thuku, on the other hand, stated that her title No. Gilgil/Gilgil Block 1/57020, was issued on 28th June 2021 after having bought land from the 1st

Defendant in the year 2018. The Court noted that the said land was not part of parcel No.47955.

- iii. Mr. John Ougo Wasonga stated that he bought land from the 1st Defendant in the year 2015 but had not received his title.
- iv. Mr Harrison Njuguna Kimari also stated that he belonged to Hekima Self Help Group and that they bought 8 parcels of land from the 1st Plaintiff/Respondent on 18th June 2025. That after they had been shown the land, they had paid a sum of Kshs. 1,000,000/=.

28. The Interested Party stated that since he had bought land for his mother, he should be allowed to develop it for her as he was not part of contemnors.

29. Mr Biko, counsel for the 1st Defendant/Counterclaimant, confirmed that, despite there being court orders in place, including those of June 2025, the same had been disobeyed and sought the court to give directions.

30. Mr. Mwangangi, the counsel for the 1st Plaintiff/Respondent, sought to see where the beacons had been placed on the property.

31. Mr. Victor Kirui, the Surveyor, stated that they needed to pick the boundaries of the 40 members and thereafter do a report. He mentioned that they would get in touch with the licensed surveyor, who would submit the report to him, because at that moment, they could not confirm whether there were any beacons on the ground/suit property. The Court granted him 14 days to compile and file his report.

32. The Application dated 24th March 2025 was disposed of by way of written submissions wherein the Applicant, through his submissions dated 2nd October 2025 summarized the factual background of the matter in detail and then framed his issues for determination as follows:

- i. Whether there exist court orders

- ii. Whether the Respondent was served or is aware of the same orders.
 - iii. Whether the Plaintiffs acts, have gone against the said orders.
 - iv. Whether there is sufficient material before court to demonstrate violation of the court orders.
 - v. Whether the threshold for conviction has been met.
 - vi. Sentence.
 - vii. Costs.
33. The Applicant contends that the breach of court orders is no longer a matter of "if," but a matter of "how much," based on the following:
- i. The Respondent's own affidavits and change of legal representation confirm that he was fully aware of the orders issued in 2020 by Justice Ohungo and later reaffirmed by Justice Njoroge.
 - ii. The Applicant provided maps, mutation forms, sale agreements, and evidence of new fencing/beacons.
 - iii. During the court's site visit on 24th September 2025, third-party purchasers and the Respondent's son (John Njehia) openly admitted to transactions and subdivisions that occurred *after* the court had issued stay orders.
34. The Applicant emphasised that the 1st Respondent did not stop interfering with the suit land even after being found guilty of contempt on 4th July 2024, but instead, up-scaled his illegal activities, including a sale as recently as June 2025.
35. The Applicant submitted that the Affidavit in support dated 24th March, 2025, coupled with a site visit by the court and the confession by his agents and purchasers, in droves, had evidenced breach. That subsequently, the only consequential outcome was that the law had been violated, and the same law offers remedies for such brazen acts of

disobedience of court orders. That the Honorable court's verdict of 4th July, 2024, had been restated in support of the instance application since the offending acts then have not been purged either.

36. The Applicant concluded by submitting that because the Respondent had shown brazen disregard for the judiciary, wherein he had repeatedly sold land that is the subject of active litigation, the court must move beyond fines. He thus sought a custodial sentence to act as a fair deterrent, the setting aside of the stay orders to remove the legal protections the 1st Plaintiff was currently using to avoid sentencing, and immediate orders to stop the further dissipation of the 50-acre suit land.

37. The 1st Plaintiff/Respondent, on the other hand, vide his Submissions dated 5th February 2025 (sic), summarised the factual background of the matter and argued that the allegations of contempt are legally and factually groundless. He maintained that he had consistently obeyed the court orders and that the Applicant was using sham tactics to delay the final hearing of the suit.

38. He framed his issues for determination as follows:

- i. Whether the Applicant is in contempt of court orders issued on 31st March, 2021 and after the ruling of the court.
- ii. Whether the Applicant has met the threshold for the grant of the orders sought.
- iii. Who bears the costs of the application?

39. In response to the framed issues for determination, the 1st Plaintiff/Respondent argued that the orders dated 2nd March 2020 and formally signed on 31st March 2021 were fatally flawed. Citing the case of **Ochino and Another vs Okombo & 4 others (1989) KLR**, he argued that for contempt to lie, an order must be clear and unambiguous. He contended that maintaining the status quo was unclear because the court never established what the status was on that day—specifically, who was in possession or what subdivisions already existed.

40. Relying on the case of **R vs National Environmental Tribunal & Another (2013) eKLR**, he argued that the court was never briefed on the ground reality of a 334-acre property that had been on the market since 2003.
41. He asserted that any infractions had been committed by people who were not bound by the order. He argued that the sales or subdivisions cited by the Applicant were conducted by the 1st Interested Party or his son (John Njehia), who were not parties to the suit when the orders were issued.
42. Citing the case of **Alex Ngarachu Njenga & 2 others v Kenya Electricity Transmission Co Ltd Nyahururu ELC Appeal No 14 of 2020** (unreported), he submitted that since these third parties were never served with the orders, they could not be held in contempt, nor could he be blamed for their independent actions.
43. He denied having committed any violations following the conviction of 4th July 2024, maintaining that all his land sales occurred before the court orders were issued.
44. He noted that the mutation forms and maps provided by the Applicant lacked signatures or dates as proof that they had been executed after the court's prohibition order.
45. He further claimed that during the court visit, there had been no sale agreements that he had been produced involving him, after July 2024. In fact, he noted that the Applicant had admitted that they had suspected his son (John Njehia) as being responsible, yet they were seeking to punish him (the father).
46. He emphasised that the Standard of Proof in contempt cases was higher than a balance of probabilities and closer to the criminal standard of beyond a reasonable doubt. He cited the cases of **Mutitika v Baharini Farm Limited [1985] eKLR** and **Geoffrey Kiania Kamwara v Mwikamba Kagembe [2022] eKLR** to argue that the court must exercise extreme scrutiny.

47. That since the evidence of the sale agreements between third parties did not directly implicate him, the high threshold for a custodial sentence had not been met.
48. In conclusion, he submitted that the application was a dubious attempt to frustrate his constitutional right to a fair and timely trial. He cited the case of **St Mary Academy Limited & another v Grace Njeri Mukora & another; Yvone Jeruto & another (contemnor) [2021]** amongst others, to support the dismissal of the application, arguing that the court should down its tools on the contempt issue and proceed to the main defense hearing. The Applicant should be sanctioned for delaying the case with a multiplicity of applications.

Determination.

49. I have considered the application herein, its response, the authorities cited and the applicable law. Indeed, in its Ruling of 4th July 2024, the Court found as follows;

“I further find that the said orders of the 15th January 2020 and 2nd March 2020 directing the parties to maintain the status quo on the suit property were valid, there was no ambiguity in the same and lastly that the Plaintiff/Respondents brazenly disobeyed the said orders by causing the suit land to be mapped, subdivided and registered in the names of third parties. I find that the Contemnors’ conduct was deliberate, in the sense that they willfully acted in a manner that flouted the Court Orders which had directed that parties maintain the status quo prevailing. I thus find that the Plaintiffs/Respondents herein are in blatant contempt of Court orders and will proceed to punish them for contempt.”

50. The matter was then scheduled for 17th September 2024 for mitigation and sentencing. However, vide an application dated 30th July 2024, the contemnor sought and was granted stay of the execution of the said Ruling, pending the hearing and determination of his intended Appeal to the Court of Appeal. Thereafter, parties had sought time to settle the matter out of court.
51. However, on the 30th April 2025, following the filing of the current application, the court noted that despite the parties having sought and being granted time to try to negotiate, instead of pursuing the appeal or negotiating a settlement, the court was informed that the Respondent had up-scaled their contumacious conduct by continuing to subdivide and sell the land. Accordingly, it had been directed that this application, dated the 24th March 2025, be heard and determined. The court also obliged the parties who sought a site visit, and the suit land was visited on the 24th September 2025, where the court observed that there were about 4-5 finished houses on the site and construction materials in some of the plots. The court was accompanied by the land registrar and surveyor, who filed his report dated the 22nd October 2025, showing subdivisions carried out on the original property Gilgil/Gilgil Block 1/47955 (Kekopey Ranch) from 2008 to date. The mutations were also attached to the report.
52. The Application herein seeks orders to set aside the existing order of stay of mitigation and sentencing because the conditions thereto have been repeatedly violated and worsened by the conduct of the Respondent/ Contemnor. The applicant also seeks that the contemnor and his agents, more so his son John Njehia and John Njoroge, purge all acts of contempt in relation to the subject suit land before being granted audience.
53. For the purpose of this application, I am interested in the interference on the suit land post the orders of *“15th January 2020 and 2nd March 2020’ directing the parties to maintain the status quo”* and from the surveyor’s report, *land parcel No 47955* was sub divided on 2nd October 2019 giving

rise to parcels of land No. 51186-51413 which parcels of land were subsisting by the time the court issued the impugned orders. On 2nd June 2020, however, parcel No. 51194 was subdivided, giving rise to parcel Nos. 53316-53319, and so the subdivisions continued as late as 17th September 2025, when parcel of land number 51234 was subdivided, giving rise to parcels of land numbers 70750-70763.

54. I have looked at the mutation forms, and of interest is whether the Plaintiff herein had repeatedly violated the conditions of the court's stay and or status quo order.

- i. Parcel No 51199 registered to Matigari Ndunyu Njeru Co Ltd, the (2nd Plaintiff was subdivided into parcels No. 63700, 63701 and 63702 on 1st February 2023.
- ii. Parcel No 51197 registered to Matigari Ndunyu Njeru Co Ltd, the (2nd Plaintiff was subdivided into parcels No. 60821, 60822, 60823 60824 and 60825 on the 5th September 2022.
- iii. Parcel No 51191 registered to Matigari Ndunyu Njeru Co Ltd, the (2nd Plaintiff was subdivided into parcels No. 57166-57205 on the 27th May 2021.
- iv. Parcel No 51195 registered to Matigari Ndunyu Njeru Co Ltd, the (2nd Plaintiff was subdivided into parcels No. 56906-56908 on the 6th May 2021.
- v. Parcel No 51242 registered to Matigari Ndunyu Njeru Co Ltd, the (2nd Plaintiff was combined with 51231,51240 to give parcel No. 63500 on the 10th January 2023
- vi. *Parcel No 51189 registered to Matigari Ndunyu Njeru Co Ltd, the (2nd Plaintiff was subdivided into parcels No. 69469-69508 on 3rd November 2025.*

- vii. Parcel No 51264 registered to Matigari Ndunyu Njeru Co Ltd, the (2nd Plaintiff was subdivided into parcels No. 65478-65480 on the 31st August 2023.
- viii. Parcel No 51364 registered to Matigari Ndunyu Njeru Co Ltd, the (2nd Plaintiff was subdivided into parcels No. 64597-64599 on the 17th May 2023.
- ix. Parcel No 51270 registered to Matigari Ndunyu Njeru Co Ltd, the (2nd Plaintiff was subdivided into parcels No. 61989-61991 on the 27th July 2022.
- x. Parcel No 51194 registered to Matigari Ndunyu Njeru Co Ltd, the (2nd Plaintiff was subdivided into parcels Nos. 53316-53319, on the 2nd June 2020.

55. From the above tabulation, it is clear that the Plaintiff/Respondent indeed repeatedly violated not only the conditions of the court's status quo order, but there had also been a violation of the stay order on 3rd November 2025, which was a post-Contempt Ruling.

56. Having already found the Respondent in contempt, I find the issues arising for determination as being :

i. Whether the Respondents have breached the conditions of the Stay of Execution.

ii. Whether there is evidence of repeat contempt post-dating the conviction of 4th July 2024.

iii. The appropriate sanction for the found continued contempt if any.

57. It is clear from the tabulation above that these actions occurred while the suit was pending, hence the reason why the court had found the Plaintiff/Respondent in contempt of the status quo orders. More

egregiously, some actions occurred *after* the court had already convicted the Respondents of contempt. The 1st Plaintiff's claim that he gifted land to his son, who then acted independently, is a transparent veil. A party cannot gift to a proxy what the subject of a restrictive court order is to so as to circumvent the law.

58. It is trite that the purpose of a stay of execution is to preserve the substratum of the case, as was held in the case of **Consolidated Marine. vs. Nampijja & Another, Civil App.No.93 of 1989 (Nairobi)**, where the Court held that: -

“The purpose of the Application for stay of execution pending Appeal is to preserve the subject matter in dispute so that the right of the Appellant who is exercising his undoubted right of Appeal is safeguarded and the Appeal if successful, is not rendered nugatory”.

59. However, in the instant case, I find that the Respondent/ Contemnor has not used the stay of execution to seek justice in the Court of Appeal, but as a shield to complete the dissipation of the suit matter. Such brazen and habitual disobedience strikes at the very heart of the Rule of Law.

60. The courts have consistently held that a court order is not a mere suggestion but must be obeyed even if a party believes the order is wrong or has filed an appeal. These orders must be obeyed as they stand unless and until they are discharged, and therefore, a party who knows of an order cannot be permitted to disobey it.

61. The Court of Appeal in **Teacher's Service Commission v Kenya National Union of Teachers [2015] eKLR** emphasised that the supremacy of the law is the foundation of any civilized society. That Court orders are not made in vain and are not decorations. They must be obeyed.

62. I reject the Plaintiff/Respondent's claim that his son, John Njehia, was the one subdividing the land because there was a clear nexus between the parties. A party must comply with a court order, and attempting to circumvent it via third parties constitutes a "willful defiance" of the law. I therefore find that, in this instance, where the Respondent chose to use a proxy or family member to circumvent a court order, the court would look at the substance of the violation, rather than the form of the person who signed the document.
63. A stay of execution is a discretionary, equitable remedy and therefore, where a party obtains a stay and then uses that period to worsen the situation, the court has the inherent power to revoke it. In this case, the Respondents have turned the principle that "discretion is exercised to protect the subject matter of the suit" on its head. While the court exercised its discretion to grant a stay to prevent 'substantial loss' to the Respondents, the Respondents have used that stay to cause 'substantial loss' to the Applicant by subdividing the land. Indeed, their conduct defeats the very purpose of the stay; they lose the protection of the court, and therefore, the judicial discretion originally exercised in their favour must now be withdrawn.
64. In **Econet Wireless Kenya Ltd v Minister for Information & Communication of Kenya & another [2005] eKLR**: the court held that:

"The reasons for this approach are obvious - a contemnor would have no right of audience in any court of law unless he is punished or he purges the contempt. So, the court is obliged to hear the application for committal first before any other matter. This is a general rule which must be applied strictly."

65. In view of the foregoing, the Court finds that the Plaintiffs/Respondents have treated this Court's orders with utter disdain. Consequently, I make the following orders:

- i. The Stay of Execution granted on 9th October 2024 is hereby set aside and vacated for breach of conditions.
- ii. The Defendant/Applicant shall have the costs of this application.

Dated and delivered via Microsoft Teams at Naivasha this 12th day of March 2026.



M.C. OUNDO
ENVIRONMENT & LAND COURT- JUDGE