

**IN THE COURT OF
APPEAL AT
NAKURU**

(CORAM: MATIVO, GACHOKA & OKELLO JJ.A.)

CIVIL APPEAL (APPLICATION) NO. E142 OF

2022

BETWEEN

**JOSEPH LANGAT
PETROLINER
CHERONO
BERNARD LANGAT** (*Suing as
the officials of 343 members of
Koita Welfare Self Help Group*).....**APPLICANTS**

AND

**THE KERICHO
COUNTY SECRETARY.....1ST
CONTEMNOR/RESPONDENT THE ASSISTANT KERICHO
COUNTY COMMISSIONER.....2ND
CONTEMNOR/RESPONDENT
THE COUNTY SURVEYOR
KERICHO COUNTY.....3RD CONTEMNOR/RESPONDENT
THE COUNTY EXECUTIVE
COMMITTEE MEMBER FOR LANDS,
HOUSING
AND PHYSICAL PLANNING.....4TH
CONTEMNOR/RESPONDENT THE KERICHO COUNTY
ATTORNEY.....5TH
CONTEMNOR/RESPONDENT THE KERICHO COUNTY
LAND REGISTRAR.....6TH
CONTEMNOR/RESPONDENT THE CHAIRMAN FOR THE
COMMITTEE ON LANDS, HOUSING
AND PHYSICAL PLANNING.....7TH
CONTEMNOR/RESPONDENT THE VICE CHAIRMAN FOR**

**THE COMMITTEE ON LANDS, HOUSING
AND PHYSICAL PLANNING.....8TH
CONTEMNOR/RESPONDENT KERICHO COUNTY GOVERNMENT
.....1ST
RESPONDENT
NATIONAL LAND COMMISSION.....2ND
RESPONDENT
CHIEF LAND REGISTRAR.....3RD
RESPONDENT
ATTORNEY GENERAL.....4TH
RESPONDENT**

JAMES FINLAY KENYA LIMITED.....5TH RESPONDENT

(Being an appeal from the Judgement of the Environment and Land Court at Kericho (Oundoj) dated 27th October, 2022).

REASONS FOR DECISION

1. On 24th February 2026, this Court dismissed the applicants' application dated 7th May 2025 under Rule 34 (7) of the Court of Appeal Rules, 2022 and reserved the reasons for the decision. Pursuant to the said Rule, these are the reasons for our decision, but first, we will highlight the key aspects of the applicants' application.

2. Briefly, the application is brought under Sections 3, 3A, and 3B of the Appellate Jurisdiction Act, Rules 43 and 44 of the Court of Appeal Rules, 2022 and all other enabling provisions of the law.

The applicants are seeking orders that:

a) That this Court finds that Kipyegon Kirui, (the Kericho County Secretary), Benson Mokami, (the Assistant County Commissioner), Isaak Kibet (the County Surveyor), Brian Lang'at (the County Executive Committee Member for Lands, Housing and Physical Planning), Gideon Mutai, (the County Attorney), Catherine Wacuka, (the County Land Registrar), Hezron Ngetich, (the Chairman for the Committee on Lands, Housing and Physical Planning), and Dominic Mutai, (the Vice Chairman for the Committee on Lands, Housing and Physical Planning) who are officials of the Kericho County Government are in contempt of the

Court.

- b) That upon the contemnors failing to show cause why they should not be held in contempt of the court's orders, the**

Honourable Court be pleased to commit them to civil jail for six (6) months and/or any other order as the court may deem fit.

c) That the Honourable Court be pleased to order the contemnors to purge their contempt by ceasing any sub- divisions and/or adverse dealings on the suit property contrary to the court's order.

d) That the costs of the application be provided for.

3. The salient grounds in support of the application are: (a) the applicants have been the *bona fide* owners of the land known as LR. No: 5468/R; (b) they have resided in the said land since time immemorial; (c) the 1st respondent forcefully entered into the land prompted them to file Kericho ELC. Petition No. 1 of 2017 which was dismissed prompting them to file the present appeal; (d) by an application dated 3rd February 2023, they applied for stay orders pending the hearing and determination of their appeal; (e) on the 31st May 2023, a consent order maintaining the *status quo* pertaining to the said land was recorded in the presence of their counsel on one hand and counsel for the 1st and 5th respondents. The import of the said order was that the members of Koita Welfare Self Help Group would continue to reside in the suit property without any intrusion by the respondents pending hearing and determination of their

appeal before this Court. (e) their attempt to resolve the issue with

the 1st respondent failed; (f) the respondents hand-picked some of the applicants' members and others not originally in the suit property with a view to settling them on the land; (g) in utter defiance of this Court's order, the respondents begun subdividing the suit property in violation of the Court order.

4. During the virtual hearing of the application on 24th February 2026, learned counsel Mr. Mulamba holding brief for Mr. Mokuu appeared for the applicant. There was no appearance for the contemnors and the respondents. The applicants' counsel had filed an affidavit of service dated 21st May 2025 showing that they had served the respondents as follows: The National Land Commission, The Hon. Attorney General, M/s Korir and Company Advocates and M/s Bett & Company Advocates via their respective e-mail addresses. There is nothing to show that the contemnors were personally served with the Court order they are alleged to have violated, the present application or the hearing notice requiring them to attend hearing before this Court on 24th February 2026.
5. The main point urged by the applicants' counsel in his submissions

is that on 31st May 2023, this Court ordered *status quo* to be maintained pending the hearing and determination of Civil Appeal

No. E142 of 2022. According to counsel, the import of the said order is that the applicants would continue being in occupation of the suit property. Counsel contended that the contemnors have defied the said order and even proceeded to sub-divide the land and settle select persons thereon.

6. To fortify his argument in support of the application, the applicants' counsel cited **Gathiga & 5 Others vs. Kiru Tea Factory Company Ltd [2023] KSEC 41 (KLR)** in support of the proposition that a Court has inherent power to enforce compliance with its orders. Counsel also cited **Justus Kariuki Mate & JIM G. Kauma vs. Martin Nyaga Wambora [2014] KECA 590 (KLR)** in support of the holding that disobedience of Court orders is at the core of the administration of justice. Lastly, counsel relied on **Michael Situ Mwaura Kamau vs. Director of Public Prosecutions & 4 Others [2018] KECA 359 (KLR)** which underscored the need for an applicant in a contempt application to demonstrate willful and deliberate disobedience of the Court order and urged this Court to allow the application.
7. As mentioned above, there was no appearance for the respondents

and the 1st to 8th contemnors. There is nothing to show that the contemnors were served with the order they are being accused of

violating, the present application and the hearing notice. There is nothing to show that the lawyers said to have been served are acting for them. The cited persons were not parties to the proceedings before the trial court nor are they parties in this appeal. They have been cited for contempt on account of the positions they occupy.

8. The requirement to serve a copy of the order with a penal notice is essential to ensure the alleged contemnor knows exactly what is forbidden or required of them. To be enforceable by means of committal (imprisonment), the order must have a "*penal notice*" endorsed on it, warning the person that disobedience may result in imprisonment or a fine. As was stated in **Re W (B) (An Infant) [1969] 2 Ch 176**, it is a strict requirement that a Court order must be personally served on the person ordered to do or abstain from an act, unless the Court orders otherwise. However, courts may sometimes accept proof of "*knowledge*" of the order (dispensing with strict personal service) if the contemnor is actively evading service, or if it can be shown that the contemnor was aware of the terms of the order. A person cannot be punished for violating an order they did not know it existed. The burden of

proof lies on the applicant to show that the respondent was aware of the order. As was held by the Supreme

Court of India in **Kanwar Singh Saini vs. High Court of Delhi [2012] 4 SCC 307**, in a contempt proceeding, the Court must record a finding that the disobedience was *wilful* and *intentional*.

9. Also important is the fact that in order to succeed in civil contempt proceedings, an applicant must prove (i) the terms of the order, (ii) knowledge of the terms by the contemnors, (iii) failure by the contemnor to comply with the terms of the order. Upon proof of these requirements, the presence of willfulness and bad faith on the part of the contemnor would normally be inferred, but the contemnor could rebut this inference by contrary proof on a balance of probabilities. Looking at the three elements of civil contempt stated above, one wonders how the contemnors could intentionally disobey an order they had not been served with and whose terms they were not aware of.

10. As was held by the Supreme Court of Appeal of South Africa in **Fakie N.O. vs. CCI Systems (Pty) Ltd [2006] ZASCA 52** and **Pheko vs. Ekurhuleni City (No 2) [2015] ZACC 10**, committal

is refused if: (a) The respondent shows that the non-compliance was not deliberate or in bad faith. A party may genuinely, but mistakenly, believe they are entitled to act in a certain manner. (b) If the cited persons can prove

they are unable to comply with the Court order due to circumstances beyond their control, the Court will not order committal. (c) Because the remedy of committal carries a risk of deprivation of freedom, the applicant must prove the requisites of contempt beyond a reasonable doubt. If the respondent creates a reasonable doubt regarding their willful disobedience, the application for committal will fail. (d) If the Court order is not clear, unambiguous and in the case of a mandatory order, capable of being obeyed, the Court will refuse to punish for contempt. (e) If the contemnor was not aware of the Court order or it was not properly served on them, they cannot be held in contempt, as knowledge of the order is a prerequisite. The burden is on the applicant to prove all elements beyond reasonable doubt, but the respondent bears an evidential burden to show that non-compliance was not willful or *mala fide*. **(Fakie N.O. vs. CCII Systems (Pty) Ltd** (supra). In this case, there is nothing before us to show that the contemnors were served with the order with a penal notice or that they were fully aware of the terms. This ground is sufficient to dismiss this application.

11. We can only add that the power to order detention in a civil prison

is

not punitive but intended to enforce compliance. It requires strict

adherence to procedural safeguards, including ensuring the contemnor has had an opportunity to be heard. (See the Supreme Court of India in ***Jai Dayal vs. Krishan Lal Garg (1996) 11 SCC 588***).

12. Contempt proceedings being quasi-criminal in nature, the standard of proof required is higher than in civil cases. The alleged contemnor is entitled to the protection of all safeguards/rights which are provided in the criminal jurisprudence, including the benefit of doubt. There must be a clear-cut case of willful and intentional obstruction of administration of justice. The case should not rest only on surmises and conjectures. A question whether there is contempt of court or not is a serious one. It behooves the Court to act with as great circumspection as possible making all allowances for errors of judgment and difficulties arising from inveterate practices in courts and tribunals. The power to punish for contempt is a powerful weapon that should be exercised with utmost care and caution.

13. What emerges from the above discussion is that it is impermissible to find an alleged contemnor guilty of contempt in

the absence of conclusive proof of the essential elements of civil contempt.

Accordingly, the applicant's application dated 7th May 2025 fails. It

is hereby dismissed. Since the respondents and the contemnors did not attend Court or file any papers, we make no order as to costs.

Dated and delivered at Nakuru this 19th day of March, 2026.

J. MATIVO

.....
**... JUDGE OF
APPEAL**

M. GACHOKA C. Arb, FCIArb.

.....
**.... JUDGE OF
APPEAL**

(DR.) J. O. OKELLO

.....
**.... JUDGE OF
APPEAL**

*I certify that this is
a true copy of the
original.*

Signed.

DEPUTY REGISTRAR.