

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA TA VIHIGA
HCFA NO E008 OF 2024

IN THE MATTER OF THE ESTATE OF MARIA KEGEHI LIJODI

ALEX DIMBA LIJODI.....
APPELLANT

VERSUS

NASIBU HOLDINGS LIMITED.....
.....RESPONDENT

WYCLIFFE MUSALIA MUDAVADI.....1ST
CONTEMNOR

NELSON CHAGENYA.....2ND
CONTEMNOR

RULING NO (2)

INTRODUCTION

1. In its Notice of Motion dated 10th February 2026 and filed on 13th February 2026, the Respondent herein sought orders injunctive orders restraining the Appellant and Contemnors from entering upon, ploughing, cultivating, fencing, constructing or in any way interfering the Respondent's quiet possession and use of LR No North Maragoli/Bugina/1005 (hereinafter referred to as "the subject property" or evicting, threatening, harassing or otherwise interfering with the Respondent's workers, servants or agents on the said subject land. It also prayed that Notice to Show Cause against the 1st and 2nd Contemnors herein to issue to show cause why they should not be committed to civil jail for disobedience of the orders issued by this court on 4th November 2024 and by Hon J. Agonda on 24th October 2024.

2. It also sought an order that this court be pleased to issue an order directed to the Officer Commanding Station (OCS) Mudete Police Station and the Sub-County Police Commander and the local Chief to provide immediate and adequate police protection to it, its workers, agents and property on the subject property, enforce and ensure strict compliance with all subsisting court orders and prevent any further acts of trespass, interference, intimidation or violence on the said land.
3. Oliver Kehodo Osengo, the Respondent's Farm Manager, swore an affidavit in support of the said application on 10th February 2026 and on behalf of the Respondent herein. The Respondent averred that the Trial Court in **Vihiga MC Succession No 399 of 2023 In the Estate of Maria Ageli Lijodi** issued orders on 24th October 2024, to the effect that the status being that it was in possession of the subject land be maintained pending the determination of the issue of ownership of the said subject land. It added that the court also issued an injunction restraining the Appellant herein whether by himself, his servants and/or agents, transferees of the impugned title and/or assigns or otherwise, however, from interfering with its possession of the subject land pending the hearing and determination of the issue of ownership of the subject land.
4. It pointed out that aggrieved by the decision, the Appellant herein filed this Appeal and sought for stay orders and that on 4th November 2024 this court ordered that the status quo of the subject land meaning that the persons who were on the said subject land to

continue doing so until 2nd December 2024 when this matter was to be listed for inter parties hearing and/or further orders and/or directions.

5. It asserted that on 22nd January 2026, Asati L.J also issued a Ruling in **ELCA/E002/2025** being an appeal from the decision in **Vihiga SPMC ELC Case No E055 of 2024** dismissing an application seeking injunctive orders against it. It added that shortly after the Ruling, it begun receiving information from neighbouring residents of rumours being spread to the effect that it was being alleged by persons known to be associates of the 1st Contemnor that the subject land had been returned to the 1st Contemnor and it would not be allowed to cultivate the land.
6. It asserted that the said allegations were inconsistent with the court's Ruling and the advice of its Advocates. It stated that on 6th February 2026, at around 12.00 noon, it received information from a neighbour that unknown persons had arrived at the subject land asking for it and that its workers that were present engaged the said person.
7. It pointed out that the workers later informed it that the said individuals delivered a letter allegedly from Emily Kadenyi & Advocates, addressed to it demanding that the company vacate the subject land. It added that it immediately forwarded the said letter to its advocates who advised that the same had not been served upon them as advocates on record and that there was no court order requiring it to vacate the land.

8. It was categorical that it informed the area Chief of the developments and remained in communication with its advocates. It further asserted that on 8th February 2026, being concerned with the safety of its workers, it requested the OCS Mudete Police Station to deploy security officers to the farm and that on 9th February 2026, one administration police officer was deployed to patrol on the farm.
9. It contended that on the same date, it was informed that the 2nd Contemnor accompanied by three (3) other persons visited the subject land, walked around it, pointed at sections of the land and appeared to be giving instructions to the other individuals. It added that on the same date at about 2.00a.m, its attendants heard a loud impact at the gate and observed a white pick-up motor vehicle and several individuals attempting to break and force entry into the subject land.
10. It stated that upon the workers flashing lights towards them, and raising an alarm, the said individuals fled the scene. It pointed out that the incident was reported at Mudete Police Station and recorded under OB No1321 of 9th February 2026 and one Mr Nebert Mugadi recorded a formal statement. It added that later on the same day at about 3.00pm, a tractor arrived at the farm accompanied by the Chief and two (2) Assistant Chiefs but that they had no court order authorising any activity on the land.
11. It further asserted that when it contacted the Chief, he informed it that he had been instructed by the 2nd Contemnor to supervise ploughing on the basis that the land had allegedly been

taken over. It added that it immediately contacted Advocate Sammy Wekesa and together they showed the OCS the subsisting court orders issued in respect of the subject land.

12. It was emphatic that on 24th October 2024, the court issued orders maintaining its possession of the subject land and further directed that police assistance be provided to ensure enforcement of the said orders and preservation of the status quo. It stated that the said police protection was subsequently withdrawn only after the Respondents represented to court that they would not deploy force or unlawful means to interfere with its possession.

13. It was emphatic that the recent actions by the Contemnors as explained were a violation of subsisting orders maintaining it in possession of the subject land and that unless police protection was reinstated and enforcement orders issued, there existed a real and imminent risk of unlawful dispossession, destruction of property and breach of peace.

14. The Appellant swore a Replying Affidavit on 2nd March 2026, the 1st Contemnor swore a Replying Affidavit on 26th February 2026 and the 2nd Contemnor swore a Replying Affidavit on 20th February 2026.

15. The Appellant averred that he was dissatisfied with the orders of 24th October 2024 and that was the substratum of this Appeal. The Appellant, the 1st and 2nd Contemnor stated that the said order was never served upon them by the Respondent and that the orders issued on 4th November 2024 by this court regarding the status quo

of the subject land was a temporary order that required to be extended after 2nd December 2024. They were emphatic that it, therefore, lapsed.

16. The 1st Contemnor asserted that he was the registered owner of the subject land and agreed with the 2nd Contemnor that they were both not parties to the suit herein and, therefore, there could be no orders of contempt against a person who was not a party to a suit.

17. The 1st Contemnor noted that he had filed an appeal in **Vihiga ELCA No E002/2025** which challenged the orders of Hon Agonda who had given the physical occupation and possession to the Respondent herein. The 1st and 2nd Contemnors denied the averments made by the Respondent and asserted that the allegations of forceful entry were not true and they were not in contempt of any court orders.

18. The Respondent's Written Submissions were dated 13th March 2026 and filed on 17th March 2026, the 1st and 2nd Contemnors' Written Submissions and those of the Appellant were dated 14th March 2026 and filed on 15th March 2026. This Ruling is based on the said Written Submissions which the parties relied upon in their entirety.

LEGAL ANALYSIS

19. The Respondent submitted that it was not invited to participate in the succession proceedings that revoked its Title of

the subject land. It argued that the rules of natural justice forbade a court from making orders adversely affecting the rights of a person without affording such a person an opportunity to be heard.

20. It argued that the Contemnors could not escape the operation of the order through technical pleas of non-joinder. It asserted that the question was not whether they were named in the title of the proceedings but whether they were persons claiming through, under or on behalf of those restrained by the order. It added that court orders bound not only the immediate parties but also those who derive authority or title through them and that the authority of the court would be rendered meaningless if restrained parties could defeat orders simply by acting through agents, proxies, transferees or assigns.

21. To buttress his point, it cited the case of **Trusted Society of Human Rights Alliance vs Mumo Matemo & 5 Others[2014]eKLR** where the Supreme Court underscored the centrality of obedience to court orders in maintaining the rule of law.

22. It contended that the law had long treated possession as notice to the world of the possessor's rights. In this regard, it relied on the case of **Mbothu & 8 Others vs Waitimu & 11 Others[1986] KLR 171** where it was held that possession of land constituted constructive notice of the possessor's interest. It was emphatic that in the present case, the Appellant acquired land that was already under its possession and that he could not, therefore,

avail himself of the doctrine of *bona fide* purchaser for value without notice.

23. It was categorical that the transfer of the subject land to the Appellant was subject to the doctrine of *lis pendens* and, therefore, the said transfer could not operate to defeat its right to preservatory relief. In this regard, it relied on the case of **Mawji vs USIU & Another [1976]KLR 185** where it was held that property in litigation could not be transferred so as to prejudice the rights of the other party in that litigation.

24. It contended that the circumstances of the transfer and the conduct of the Appellant and the Contemnors disclosed bad faith. It relied on the case of **Arthi Highway Developers Limited vs West End Butchery Limited & 6 Others[2015]eKLR** where it was held that courts would not protect titles arising from fraudulent, tainted or questionable transactions and the case of **King Woollen Mills Ltd & Another vs Kaplan & Stratton Advocates[1993]eKLR** where it was held that knowledge possessed by an advocate acting in a transaction may be imputed to the client.

25. It further asserted that this court had the jurisdiction to grant the orders sought. It explained that as a court seized of a succession appeal, it had the inherent authority to preserve the subject matter of the appeal so that the appeal was not rendered nugatory. It added that this court also had jurisdiction under Section 5 of the

Judicature Act and its inherent power to uphold its dignity and punish contempt of court.

26. It further placed reliance on several cases among them the case of **North Tetu Farmers Co Ltd vs Joseph Nderitu Wanjohi[2016]eKLR** where it was held that an application for contempt orders one must demonstrate that the terms of the order were clear and unambiguous and binding, the defendant had knowledge of the order, the defendant acted in breach of the order and that the conduct was deliberate. It was its contention that all the above-mentioned elements had been demonstrated herein.

27. It cited the case of **Shimmers Plaza Ltd vs National Bank of Kenya Ltd [2015]eKLR** where it was held that the law has changed and that as it stands today knowledge supersedes personal service in that where a party clearly acts and shows that he had knowledge of a court order, the strict requirement that personal service must be proved was rendered unnecessary. It also relied on the case of **Mutitika vs Baharini Farm Ltd[1985]eKLR** where it was held that the standard of proof in contempt proceedings was higher than on a balance of probabilities, although not exactly beyond reasonable doubt.

28. It further contended that the defence of non-service or lapse of orders was without merit as both the Trial Court and this court had recognised its possession of the subject land and maintained the status quo. It further cited the case of **Sam Nyamweya & 3 Others vs Kenya Premier League Limited & 2**

Others[2015]eKLR where it was held that the power to punish contempt existed to preserve and safeguard the rule of law.

29. It was emphatic that the Respondents, therefore, blatantly disobeyed the court's orders despite knowledge of its terms. It added that they were aware of the orders through their advocates, their own participation and through prior enforcement including police protection. It further cited the case of **Abdulrazak Muhsin Shariff vs Kadzo Masha Kazungu & 2 Others[2014]eKLR** where it was held that it was the obligation of every person against or in respect of whom an order was made by a court of competent jurisdiction to obey it unless and until that order was discharged. It urged the court to find the Respondents and Contemnors liable for their contemptuous actions.

30. Both the 1st and 2nd Contemnor submitted that the application against them was improper for the reason that they had never been parties to these proceedings nor had the Respondent ever made any application to enjoin them to this appeal. They were emphatic that the issues herein were between the Appellant and the Respondent and they were only strangers to the proceedings.

31. They asserted that the application bringing them in the Appeal without an order of enjoiner was incompetent and should be dismissed with costs. In this regard, they relied on the case of **Trusted Society of Human Rights Alliance vs Mumo Matemo & 5 Others[2014]eKLR** where it was held that a suit in court was a solemn process, owned solely by the parties and that was why there

were laws and rules under the Civil Procedure Code regarding parties to suits and who could be a party to a suit.

32. The 1st Contemnor further submitted that the orders by the Trial Court on 24th October 2024 maintaining the *status quo* of the subject land were altered by the order of this court on 4th November 2024 where the court directed that the same should subsist until 2nd December 2024 when this matter would be listed for inter-parties hearing and/or further orders. He added that on 7th July 2025, the court listed the matter for mention on 3rd November 2025 to take a Ruling date and stated that the interim orders were not extended. He, therefore, argued that there were no orders giving the Respondent the right to occupy his land.

33. He questioned whether this court sitting as a Probate and Administration Court could overrule the Judgment of Hon Asati L.J who sits as Judge of the Environment and Land Court and revert the land to the Respondent by way of an injunction restraining him from using his own land. In this regard, he relied on the case of **The Estate of Stone Kathuli Muinde (Deceased) Succession Cause No 1828 of 2007**(eKLR citation not given) where it was held that it was not in the function of the Probate Court to determine ownership of the assets alleged to estate property.

34. He further submitted that the Respondent had not demonstrated a *prima facie* case and/or it would suffer any irreparable loss that could not be compensated by way of damages, and that the balance of convenience laid in not granting the

Respondent an order of injunction against him as he had proved that he was the registered owner of the subject land.

35. To buttress his point, he placed reliance on several cases among them the case of **Giella vs Cassman Brown** (eKLR citation not given) and **Match Masters Limited vs Rhino Matches Limited[2006]eKLR** where the common thread was that to grant an interlocutory injunction the plaintiff must show a *prima facie* case with a probability of success, secondly; that such an injunction would not normally be granted unless the plaintiff might otherwise suffer irreparable injury and thirdly when court entertains doubt it would decide the application on a balance of convenience.

36. Both the Appellant and the 2nd Contemnor invoked Rule 81.4 of the English Civil Procedure Rules (Amendment No 3) Rules, 2020 and contended that it was a general rule that endorsement of a penal notice was a mandatory requirement to make out a case for contempt. To buttress their point, they cited several cases among them the cases of **Ochino & Another vs Okombo & 4 Others [1989]eKLR**, **Nyamodi Ochieng Nyamodo & Another vs Kenya Posts & Telecommunications Corporation[1994]eKLR** and **Shimmers Plaza vs National Bank of Kenya Limited[2015]eKLR** where the common thread was that no order of court requiring a person to do or abstain from doing any act may be enforced by committing him for contempt unless a copy of the order had been served personally on the person required to abstain from doing the act.

37. They argued that the Respondent had not proved that it served the Contemnors with any court order containing a penal notice and that they deliberately ignored the same. They were emphatic that as the Respondent had failed to discharge the burden then the orders of contempt could not be issued against the Contemnors. They urged the court to dismiss the Respondent's application with costs and that the orders issued on 16th February 2026 not to be extended.

38. A perusal of the record herein indicated that in **Vihiga MC Succession Cause No 399 of 2023 In the Estate of Maria Ageli Lijodi** the Trial Court on 24th October 2024 ordered as follows:-

“1. An order is issued that status being that the Respondent is in possession of L.R No North/Maragoli/Bugina/1005 be maintained pending the determination of the issue of ownership of the suit property.

2. An injunction is issued restraining the respondent whether by himself, his servants and or agents, transferees of the impugned title and or assigns or otherwise however from interfering with the Respondent's possession LR No North/Maragoli/Bugina/1005 pending the hearing and determination of the issue of ownership of the suit property.”

39. Further, this court on 4th November 2024, orders as follows:-

“I have looked at the Appellant’s Notice of Motion application dated 30th October 2024 and filed on 31st October 2024 and his Supporting Affidavit that was sworn on 30th October 2024 and the enclosures therein and hereby grant an order of status quo, the status being that the persons who are currently occupying the subject property to continue doing so until 2nd December 2024 when this matter will be listed for inter parties hearing and/or further orders and/or directions.”

40. It was with respect to the above-mentioned orders that the Respondent herein prayed that the 1st and the 2nd Contemnor herein be issued with a Notice to show cause why they should not be committed for civil jail for disobedience if the said orders.

41. It had been stated in a long line of authorities that the reason why courts would punish for contempt was to safeguard the rule of law and to protect the dignity of the court. It was the obligation of every person, against, or in respect of, whom an order was made by a court of competent jurisdiction to obey it unless and until that order was discharged. The uncompromising nature of this obligation was shown by the fact that it extended even to cases where the person affected by an order believed it to be irregular or void.

42. A party who sought orders for contempt of a court order, had to bring an application that met the threshold which was that an applicant had to demonstrate the terms of the order in question, that the respondent had knowledge of those terms and the

respondent wilfully disobeyed the terms of the order as was held in the case of **Samuel M. Mweru & Others vs National Land Commission & 2 Others [2020] eKLR.**

43. Upon proof of these requirements, the presence of wilfulness and bad faith on the part of the respondent would normally be inferred. However, the respondent could rebut this inference by contrary proof on a balance of probabilities.

44. Contempt of Court was in the nature of criminal proceedings and, therefore, proof of a case against a contemnor was higher than that of balance of probability as was held in the case of **Mutitika vs Baharini Farm Limited** (Supra).

45. The power to punish for contempt was a discretionary one and was to be used sparingly. This was because liberty of the subject was usually at stake and the Respondent had to prove wilful and deliberate disobedience of the court order by the contemnor. Due to the gravity of consequences that ordinarily flowed from contempt proceedings, it was proper that the order be served and the person cited for contempt have had personal knowledge of that order and wilfully disobeyed it.

46. There could not, therefore, be deliberate and wilful disobedience, unless a contemnor had personal knowledge of the existence of that order and that he had deliberately and wilfully disobeyed as was held in the case of **Econet Wireless Kenya Ltd vs Minister for Information & Communication of Kenya & Another [2005] eKLR.**

47. Notably, the 1st and 2nd Contemnors submitted that they were not parties to this appeal and were not served with the aforesaid orders, thus, could not be cited for contempt. A perusal of the Respondent's Supporting Affidavit indicated that there were no affidavits of service annexed therein to prove that the 1st and 2nd Contemnors were duly served with the said orders. As they were not parties to this appeal and/or the Trial Court's Succession Cause, it would be imprudent to assume that in one way or another they were aware of the court orders issued on 24th October 2024 and 4th November 2024.

48. Although the 1st Contemnor submitted on the issue of injunction, this court noted that Respondent had only prayed for a temporary injunction pending determination of this application and not the appeal. It, therefore, did not find it prudent to canvass the same as it was not necessary as the said prayer was already spent.

DISPOSITION

49. For the foregoing reasons, the upshot of this court's decision was that the Respondent's Notice of Motion Application dated 10th February 2026 and filed on 13th February 2026 was not merited and the same be and is hereby dismissed. Costs of the application herein will be in the cause.

50. It is so ordered.

DATED and **DELIVERED** at **VIHIGA** this **23rd** day of **March** 2026

J. KAMAU
JUDGE

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