

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT & LAND COURT AT MILIMANI**  
**ELC CASE NO. 253 OF 2011**

**STELLA NJERI KINUTHIA (Suing as administrator  
of the estate of MARY NG'ENDO NGUGI) .....**  
**APPLICANT**

**VERSUS**

**SAMWEL NGUGI MUIRURI ..... 1<sup>ST</sup>**  
**RESPONDENT**

**SAMUEL NGUGI KINUTHIA ..... 2<sup>ND</sup>**  
**RESPONDENT**

**AND**

**DAVID KAHIRA MUIRURI.....INTERESTED**  
**PARTY**

**RULING**

1. Before this court are the Decree Holder/Applicants' Notices of Motion dated 24<sup>th</sup>, 25<sup>th</sup> and 26<sup>th</sup> September, 2025.
2. The Notice of Motion dated 24<sup>th</sup> September, 2025 was filed pursuant to the provisions of **Article 48** of the **Constitution**, **Section 3A** of the **Civil Procedure Act**, **Section 14** of the **Environment and Land Court Act**, **Order 9 Rule 9**, and **Order 40 Rule 1** of the **Civil Procedure Rules**. It seeks the following reliefs:

- i. That an order be and is hereby issued cancelling all the sub-divisions of L.R. No. KARAI/GIKAMBURA/ 583 and the land registers and certificates of title for L.R. Nos. KARAI/GIKAMBURA/9973, 9974, 10210, 10211 & 10212 being sub-divisions of L.R. No. KARAI/GIKAMBURA/583.***
- ii. That the Kiambu Land Registrar and Surveyor be and are hereby directed to reinstate the land register for L.R. No. KARAI/GIKAMBURA/583 and to forthwith partition the parcel into two equal parts and transfer one part to the Applicant pursuant to the decree of the court dated 11<sup>th</sup> June 2020.***
- iii. That the court registrar be and is hereby directed to execute all documents and applications necessary to effect partition of L.R. No. KARAI/GIKAMBURA/583 into two equal parts and transfer one half to the Applicant.***
- iv. That the Officer Commanding Kikuyu Police Station do provide security during the survey/sub-division/partition exercise.***
- v. That the costs of this application be borne by the 1<sup>st</sup> Respondent.***

3. The Notice of Motion dated the 25<sup>th</sup> September, 2025 has been brought pursuant to the provisions of. **Article 48** of the **Constitution**, **Section 3A** of the **Civil Procedure Act**, **Section 14** of the **Environment and Land Court Act**, **Order 9 Rule 9**, and **Order 40 Rule 1** of the **Civil Procedure Rules**. It seeks the following reliefs:

- i. *That the 1<sup>st</sup> Respondent be and is hereby ordered to immediately surrender physical possession and occupation of half portion of L.R. No. KARAI/GIKAMBURA/577 to the Applicant.*
- ii. *That the Kiambu Land Registrar and Surveyor be and are hereby directed to forthwith partition L.R. No. KARAI/GIKAMBURA/577 into two equal parts and transfer one part to the Applicant pursuant to the decree of the court dated 11<sup>th</sup> June 2020.*
- iii. *That the court registrar be and is hereby directed to execute all documents and applications necessary to effect partition of L.R. No. KARAI/GIKAMBURA/583 into two equal parts and transfer one half to the Applicant.*
- iv. *That the Officer Commanding Kikuyu Police Station do provide security during the takeover*

*of possession, survey/sub-division/partition exercise.*

*v. That the costs of this application be borne by the 1st Respondent.*

4. The Notice of Motion dated 26<sup>th</sup> September, 2025 has been brought pursuant to the provisions of **Section 3A** of the **Civil Procedure Act**, **Section 14** of the **Environment and Land Court Act**, **Rule 39, 40 & 41** of **The High Court (Organization and Administration) Rules, 2016**, and **Order 9 Rule 9** of the **Civil Procedure Rules** seeking the following reliefs:

*i. That this court do issue summons to the 1<sup>st</sup> Respondent to personally appear before the Honorable Court and show cause why he should not be cited for contempt of court for disobeying court judgment dated 10<sup>th</sup> June 2019 & decree dated 11<sup>th</sup> June 2020.*

*ii. That this court do issue summons to the 1<sup>st</sup> Respondent to personally appear before the Honorable Court and show cause why he should not be cited for contempt of court for transferring parcel L.R. No. KARAI/GIKAMBURA/583 to his brother, the 1<sup>st</sup> Interested Party in violation of the express*

***judgment dated 10<sup>th</sup> June 2019 & decree dated 11<sup>th</sup> June, 2020.***

***iii. That the Honorable Court do mete out appropriate punishment by way of committal to civil jail for a period of six months or as this court may deem just in the circumstances.***

***iv. That this court do grant such further orders as it may deem appropriate in the interest of justice.***

***v. That the costs of this application be paid by the contemnor.***

5. The Motions are premised on the grounds set out on their face and supported by the affidavits of Stella Njeri Kinuthia, the Applicant herein. She deponed that she is the administrator of the estate of Mary Ng'endo Ngugi (deceased) formerly the 1<sup>st</sup> Plaintiff and decree holder in this matter.
6. She explained that on 10<sup>th</sup> June, 2019, this court delivered judgment in favour of the Plaintiffs, Mary Ng'endo Ngugi & Another. Subsequently, on 11<sup>th</sup> June, 2020, the court issued a decree ordering, *inter alia*, that one-half portion of each of L.R. No. Karai/Gikambura/583 and L.R. No. Karai/Gikambura/577 be excised and transferred to the Plaintiffs jointly.

7. She asserts that since the date of the judgment and without reasonable cause, the 1<sup>st</sup> Respondent has adamantly refused to comply with the decree of the court; that he has refused to surrender possession and/or excise and transfer a half portion of L.R. No. Karai/Gikambura/577 as ordered by the court and that the parcel remains in the 1<sup>st</sup> Respondent's sole name, possession and exclusive occupation.
8. It was deposed that the 1<sup>st</sup> Respondent has equally refused to surrender possession and/or to excise and transfer one-half portion of L.R. No. Karai/Gikambura/583 as ordered by the court. Instead, he transferred the property to his brother, the Interested Party, who subsequently subdivided L.R. No. Karai/Gikambura/583 into five separate parcels, namely L.R. Nos. Karai/Gikambura/9973, 9974, 10210, 10211 and 10212.
9. She deposed that she is apprehensive that the 1<sup>st</sup> Respondent, acting in concert with the Interested Party, may proceed to transfer the land to third parties with the intention of denying her the fruits of the judgment and ultimately defeating the decree and judgment of this court.
10. According to the Applicant, the wilful disregard and disobedience of this court's judgment is not only calculated to deny her mother's estate the right to land but further undermine court process, public confidence and bring administration of justice into disrepute. She urged the court to restore public confidence in the administration of justice

by imposing the appropriate sanction upon the 1<sup>st</sup> Respondent.

**11.** In response, the 1<sup>st</sup> Respondent filed a Notice of Preliminary Objection dated 13<sup>th</sup> February, 2026 premised on the following grounds, that:

- i. This Honourable Court lacks jurisdiction to hear and determine this Application since once a court has fully and finally adjudicated upon a matter, it cannot reopen or reconsider the case, except under defined circumstances such as through a successful application for review.***
- ii. This Honourable Court is now functus officio by dint of, firstly, having delivered its judgment on the said Appeal on 10<sup>th</sup> June, 2019 and secondly, the matter having been appealed to the Court of Appeal. The functus officio principle serves to ensure finality in judicial decisions and prohibits courts from revisiting matters already conclusively determined.***
- iii. In the present Application, the Applicant has invoked Order 40 Rule 1 of the Civil Procedure Rules which provides that cases in which temporary injunctions may be granted pending resolution of a suit. In light of this, this Honourable Court is functus officio, as the***

*instant Application seeks temporary injunctive relief notwithstanding that the suit has already been concluded.*

- iv. An Application for the Injunction cannot be used as a vehicle to re-litigate matters that were, or ought to have been, addressed during the original hearing or on appeal.*
- v. There is presently an active appeal pending before the Court of Appeal at Nairobi for determination (Nairobi Civil Appeal No. E487 of 202: Samuel Ngugi Muiruri vs Mary Ngendo Ngugi & Samuel Ngugi Kinuthia).*
- vi. In the circumstances, the issues arising from the Judgment of this Honourable Court are properly seized of by the Appellate Court, and any relief ancillary to or arising from the impugned decision ought to be sought before the Court of Appeal.*
- vii. Order 40 Rule 1 of the Civil Procedure Rules, specifically precludes this Honourable Court from entertaining applications for temporary injunctions because once a judgment has been delivered and a decree issued, the suit is no longer pending.*

- viii. Be that as it may, the Applicant has filed multiple Applications before this court seeking substantially similar orders, which amounts to an abuse of the court process.**
- ix. Jurisdiction is vested by either a Statute or the Constitution and a Court may not arrogate to itself jurisdiction through craft of interpretation or by way of endeavours to discern or interpret the intentions of Parliament, where the legislation is clear and devoid of ambiguity.**
- x. This Honourable Court, lacking jurisdiction, should not entertain this matter and must consequently dismiss the same with costs to the 1<sup>st</sup> Respondent.**

**12.** In response to all the three motions, the Interested Party filed grounds of opposition dated 13<sup>th</sup> February, 2026 premised on the grounds that its joinder herein is defective, incompetent and otherwise an abuse of the court process and will serve no purpose in assisting the court adjudicate this matter.

**13.** It was urged that the Applicant has failed to demonstrate that the Interested Party is a necessary party to the suit and that in any event, joinder of a party after judgment is only permissible where issues relating to damages remain outstanding.

- 14.** It was maintained that this court lacks jurisdiction to hear and determine this application since once a court has fully and finally adjudicated upon a matter, it cannot reopen or reconsider the case, except under defined circumstances such as through a successful application for review.
- 15.** In this case, it was deposed, the suit was terminated, and all issues arising between the primary parties determined by the judgment of this court delivered over five (5) years ago and that the judgment dated 10<sup>th</sup> June, 2019 in no way affects the Intended Interested Party since no orders were made against him.
- 16.** It was the 1<sup>st</sup> Interested Party's disposition that the Applicant has improperly invoked **Order 40 Rule 1** of the **Civil Procedure Rules**, which provides that temporary injunctions may only be granted pending the determination of a suit. In the present circumstances, the application seeks to employ injunctive relief as a means of reopening issues that were, or ought properly to have been, canvassed during the substantive hearing of the suit or on appeal.
- 17.** According to the Interested Party, the Applicant has filed multiple applications before this court seeking substantially similar orders, which amounts to an abuse of the court process and that there is an active appeal presently pending before the Court of Appeal at Nairobi for determination in **Nairobi Civil Appeal No. E487 of 2021: Samuel Ngugi**

**Muiruri vs Mary Ngendo Ngugi & Samuel Ngugi Kinuthia.**

- 18.** The Applicant filed submissions in support of the motions on 18<sup>th</sup> December 2025. Counsel submitted that pursuant to **Sections 13 and 14** of the **Environment and Land Court Act**, the court has jurisdiction to grant appropriate relief and to enforce its judgments in accordance with the **Civil Procedure Rules**.
- 19.** Counsel further invoked **Sections 34 and 38** of the **Civil Procedure Act**, arguing that all questions relating to the execution, discharge, or satisfaction of a decree fall for determination by the executing court, and that the court may order delivery of property specifically decreed.
- 20.** Counsel submitted that upon delivery of the judgment, the 1<sup>st</sup> Respondent ceased to have any lawful interest in the Applicant's half share of the two parcels and could not validly deal with the whole property. It was further argued that, under **Section 80** of the **Land Registration Act**, the court has power to rectify the register and cancel any registration obtained through fraud or mistake.
- 21.** Reliance was placed on ***Ojwang vs Ghelani & 5 others; Chaju Builders Limited (Interested Party) [2025] KEELC 5729 (KLR)*** for the proposition that a post-judgment transfer made in defiance of a court decree is fraudulent, contemptuous, and incapable of passing valid

title. Also cited was **Macfoy vs United Africa Co. Ltd (1961) 3 All ER 1169.**

22. It was further submitted that the law is settled that where a judgment debtor refuses to execute the necessary documents, the court may appoint its own officer to do so in order to give practical effect to the decree. In support of that proposition, Counsel relied on **Hantoosh vs Hantoosh & another [2025]eKLR, John Mwangi Ndegwa vs Kanyi Gichuhi [2019] KEELC 2857 (KLR), and Obiba vs Bwire & 6 others (2022) eKLR and MLL v RKL (2023) eKLR.**

23. Counsel submitted that although the 1<sup>st</sup> Respondent had not responded to the assertions of contempt, it was undisputed that he had knowledge of the court's judgment and decree, as demonstrated by the filing of a notice and memorandum of appeal in **Nairobi Civil Appeal No. E487 of 2021.**

24. It was submitted that established jurisprudence on contempt of court is that personal service of an order is not mandatory where knowledge of the order has been shown. In support of this position, reliance was placed on **Shimmers Plaza Limited vs National Bank of Kenya Limited [2015] eKLR** and **Basil Criticos vs Attorney General & 8 Others [2012] eKLR.**

25. Counsel submitted that the judgment was clear and unequivocal and its breach amounted to a deliberate and unlawful breach of the court's orders. Counsel cited **Kenya**

**Tea Growers Association vs Francis Atwoli & 5 others [2012] eKLR**, which adopted **Clarke vs Chadburn & others [1985] 1 All ER 211**, for the principle that court orders must be obeyed and that disobedience is punishable regardless of whether the contemnor believed the order to be erroneous or not.

26. Similar emphasis was placed on **Hadkinson vs Hadkinson (1952) All ER 567**, **In the Matter of Collins Odumba [2016] eKLR**, **Teachers Service Commission vs Kenya National Union of Teachers & 2 others [2013] eKLR**, **Johnson vs Grant 1923 SC 789**, **Ben Njoroge Mithamo & another vs Solicitor General & another [2015] eKLR**, and **Shimmers Plaza(supra)**, for the proposition that obedience to court orders is indispensable to the rule of law and that courts must firmly deal with proven contemnors.
27. None of the other parties filed submissions. [As at the 13<sup>th</sup> March, 2026]

### **Analysis and Determination**

28. Having considered the motion, responses and submissions, the issues that arise for determination are:
- i. *Whether the Motions dated 24<sup>th</sup>, 25<sup>th</sup> and 26<sup>th</sup> September, 2025 are competent? And if so?*
  - ii. *Whether the Applicant has established contempt of this court's orders of 10<sup>th</sup> June, 2019?*

iii. *Whether the court should order rectification of the register, cancellation of the subdivisions of L.R. No. KARAI/GIKAMBURA/583, and implementation of the decreed partition of L.R. Nos. KARAI/GIKAMBURA/583 and 577?*

29. Vide their respective responses, the 1<sup>st</sup> Respondent and the Interested Party challenge the competence of the present motions. In particular, the 1<sup>st</sup> Respondent has raised a preliminary objection premised on ten grounds which, in substance, may be condensed into two principal arguments.
30. First, that this court lacks jurisdiction to entertain the applications by reason of the doctrine of *functus officio*; and second, that the filing of multiple applications seeking similar reliefs amounts to an abuse of the court process.
31. The law on preliminary objections is well settled. In **Mukisa Biscuit Manufacturing Co. Ltd vs West End Distributors Ltd (1969) EA 696**, the court held that a preliminary objection raises a pure point of law which has been pleaded or arises by clear implication from the pleadings, and which, if argued as a preliminary point, is capable of disposing of the suit.
32. The court further observed that a preliminary objection is in the nature of a demurrer. It raises a pure point of law, argued on the assumption that the facts pleaded by the other party are correct. It cannot be raised where the court is

required to ascertain contested facts or where the matter calls for the exercise of judicial discretion. The Supreme Court reiterated these principles in **Hassan Ali Joho & Another vs Suleiman Said Shahbal & 2 Others [2014] eKLR.**

33. From the foregoing authorities, it is clear that for an objection to qualify as a preliminary objection, it must raise a pure question of law, proceed on the assumption that the facts pleaded are correct, and be capable of disposing of the matter at the threshold stage without the need for evidence.
34. The first ground in the 1<sup>st</sup> Respondents preliminary objection concerns the doctrine of *functus officio*. **The Black's Law Dictionary, 9<sup>th</sup> Edition** defines *functus officio* as:

*“[having performed his or her office] (of an officer or official body) without further authority or legal competence because the duties and functions of the original commission have been fully accomplished.”*

35. In **Odinga vs Independent Electoral & Boundaries Commission & 3 others (Petition 5, 4 & 3 of 2013) [2013] KESC 8 (KLR) (Civ) (24 October 2013) (Ruling)**, the Supreme Court while expounding on the doctrine cited an excerpt from an article by **Daniel Malan Pretorius, in “The Origins of the *functus officio* Doctrine, with**

**Specific Reference to its Application in Administrative Law,” [2005] 122 SALJ 832 that:**

***“The *functus officio* doctrine is one of the mechanisms by means of which the law gives expression to the principle of finality. According to this doctrine, a person who is vested with adjudicative or decision-making powers may, as a general rule, exercise those powers only once in relation to the same matter.... The [principle] is that once such a decision has been given, it is (subject to any right of appeal to a superior body or functionary) final and conclusive. Such a decision cannot be revoked or varied by the decision-maker.”***

36. Guided by the foregoing principles, the court finds that the objection raised by the 1<sup>st</sup> Respondent is properly taken. The objection raises a pure question of law. There is no need to ascertain contested facts beyond the court record, particularly since the background of the matter is not in dispute and if found in the affirmative, will dispose off the matter.
37. However, the contention that the application constitutes an abuse of the court process does not properly arise as a preliminary objection. This is because such a determination

entails a consideration of facts and the exercise of judicial discretion.

- 38.** Nonetheless, it is noted that this plea, alongside that of *functus* has also been raised vide the Interested Parties grounds of opposition and the court will consider the same
- 39.** As aforesaid, the doctrine of *functus officio* is a well-established principle intended to give effect to the finality of judicial decisions. Once a court has performed its adjudicative function and rendered a final decision, it generally lacks authority to reopen or reconsider the matter except as provided by law.[See **Odinga vs Independent Electoral & Boundaries Commission & 3 others (Petition 5, 4 & 3 of 2013) [2013] KESC 8 (KLR) (Civ) (24 October 2013) (Ruling)**]
- 40.** The doctrine, however, is not absolute. The court in **Silvanus Kizito vs Edith Nkirote Mwiti [2021] eKLR**, explained that a court does not become *functus officio* merely because it has delivered judgment. It may still deal with incidental matters such as stay, review, settlement of the decree, and execution proceedings. This residual jurisdiction enables the court to ensure that its judgment is effectively implemented.
- 41.** The background to the present dispute is straightforward. The deceased Plaintiff and one Samuel Ngugi Kinuthia instituted this suit seeking, among other reliefs, a declaration that the 1<sup>st</sup> Defendant/Respondent held L.R No's

Karai/Gikambura/577 and 583 in trust for himself and the Plaintiffs in equal shares, together with an order that half portions of the said parcels be excised and transferred to the Plaintiffs.

- 42.** The Plaintiffs contended that although the two properties were registered in the name of the 1<sup>st</sup> Defendant's father, 1<sup>st</sup> Respondent herein, they constituted family land. One parcel was ancestral land while the other had been acquired using proceeds from the sale of land and a plot belonging to Kiromo Warari, the family patriarch. It was therefore argued that the registration of the land in the name of Muiruri Ngugi was in trust for the wider family, including the Plaintiffs.
- 43.** Upon hearing the matter, the court found that Plaintiffs had established their case and the Defendant held the property in trust for the 1<sup>st</sup> Plaintiff. The court further ordered that half portions of the parcels be excised and transferred to the Plaintiffs jointly. A decree reflecting those orders was subsequently issued on 11<sup>th</sup> June 2020.
- 44.** In the present case, the Applicant has approached this court contending that the aforesaid orders have not been implemented and seeks their enforcement. In so doing, the Applicant brings the dispute within the ambit of matters relating to the execution or implementation of a court's decree.

45. In this regard, the relevant statutory framework is provided under **Section 34** of the **Civil Procedure Act**, which stipulates that all questions arising between the parties to a suit concerning the execution, discharge, or satisfaction of a decree shall be determined by the court that issued the decree, and not through a separate suit.
46. The import of this provision is that the court which issued the decree retains jurisdiction to determine any issues that arise in the course of its execution. This statutory mandate ensures that disputes relating to the enforcement of a judgment are addressed within the same proceedings in which the decree was issued.
47. This position is further reinforced by the **Civil Procedure Rules**. In particular, **Order 22 Rule 6** provides that a decree holder seeking execution must apply to the court which passed the decree unless the decree has been formally transferred to another court for purposes of execution.
48. The courts have consistently interpreted **Section 34** of the **Civil Procedure Act** to mean that all disputes arising from the execution, discharge, or satisfaction of a decree must be determined within the same suit in which the decree was issued. In *Kuronya Auctioneers vs Morris O. Odhoch & Another (2003) eKLR*, the Court of Appeal affirmed that the provision enables parties to a suit to have all questions

relating to execution determined by the court that passed the decree.

49. In *Waitiki vs Muchena t/a Arimi Kimathi & Co. Advocates & Another Civil Case E734 of 2021* [2025] KEHC 3720 (KLR), the court, citing *South Nyanza Sugar Co. Ltd vs Alfred Sagwa Mdeizi t/a Pare Auctioneers (2010) eKLR*, emphasized that **Section 34** bars the institution of separate proceedings to determine matters arising from the execution of a decree. It is clear from the foregoing that the court cannot be said to be *functus* as regards this issue.
50. As regards the pendency of the appeal and the contention that it divests this court of jurisdiction, and further affirms that this court is *functus*, the court finds the argument to be misconceived. The mere filing of an appeal does not deprive the trial court of jurisdiction to address matters relating to the execution or implementation of its decree, unless a stay of execution has been granted by the appellate court.
51. In the absence of such a stay, the decree remains valid, binding, and capable of enforcement, and the court that issued it retains jurisdiction to entertain applications necessary for its execution. Consequently, the objection premised on the doctrine of *functus officio* is without merit.
52. The 1<sup>st</sup> Respondent and the Interested Party further contend that the three Motions amount to an abuse of the court

process. It is argued that the Applicant has filed multiple applications seeking substantially similar orders and that the joinder of the Interested Party after judgment is defective and unnecessary.

53. The concept of abuse of court process does not have a closed definition. Broadly, it refers to the improper use of the judicial process in a manner that is oppressive, vexatious, or inconsistent with the administration of justice. The Supreme Court in **Kenya Section of the International Commission of Jurists vs Attorney General & 2 Others [2012] eKLR** observed that abuse of process concerns the motives behind a party's invocation of the court's jurisdiction and whether the process is being deployed in a manner incompatible with the ends of justice.
54. Similarly, in **Satya Bhama Gandhi vs Director of Public Prosecutions & 3 Others [2018] eKLR**, the court noted that abuse may arise where there is a multiplicity of actions on the same subject matter between the same parties, particularly where such processes are intended to harass an opponent or obtain duplicative relief.
55. The court has carefully considered the three Motions now before it. It is true that they were filed on consecutive dates and that there is a degree of overlap in the reliefs sought. Ideally, the Applicant could have consolidated the reliefs into a single, comprehensive application. To that extent, the

drafting of the applications may be said to be less than tidy. However, inelegance in drafting or multiplicity arising from procedural strategy does not, without more, amount to abuse of process.

- 56.** A closer examination of the applications demonstrates that they address different though interconnected aspects of post-judgment enforcement. The Motion dated 24<sup>th</sup> September, 2025 seeks preservation orders and cancellation of titles arising from the alleged subdivision of L.R. No. Karai/Gikambura/583 into parcels Karai/Gikambura/9973, 9974, 10210, 10211 and 10212, together with reinstatement of the register and enforcement of the decree.
- 57.** The Motion dated 25<sup>th</sup> September 2025 primarily addresses enforcement of the decree in relation to L.R. No. Karai/Gikambura/577, including surrender of possession and partition of the land as ordered in the judgment. The Motion dated 26<sup>th</sup> September 2025, on the other hand, seeks contempt proceedings against the 1<sup>st</sup> Respondent for alleged disobedience of the judgment and decree of this court.
- 58.** It is therefore evident that although the applications arise from the same decree, they seek reliefs addressing different facets of the alleged non-compliance with the court's orders. Those allegations, if established, raise serious questions regarding the implementation of the judgment and the possible defeat of the decree holder's entitlement. The

Interested Party also argues that his joinder is improper since the judgment did not issue any orders against him. However, the Applicant contends that one of the suit properties was transferred to him after judgment.

59. Where the execution of a decree may affect the rights of a person who was not originally a party to the proceedings, the court retains jurisdiction to join such a party to facilitate effective determination of issues arising during execution. Courts have recognized that joinder may occur even at the post-judgment stage where necessary, as affirmed by the Court of Appeal in **Mary Beach Limited vs Attorney General & 18 others [2018] eKLR.**

60. Ultimately, the court rejects the assertion that the Motions constitute an abuse of the process of the court and finds that they are competent.

**Whether the Applicant has demonstrated that there has been contempt of the court's orders of 10<sup>th</sup> June, 2019?**

61. The **Black's Law Dictionary (Ninth Edition)** defines contempt of court as:

***“Conduct that defies the authority or dignity of a Court. Because such conduct interferes with the administration of justice, it is punishable usually by fine or imprisonment.”***

62. Discussing contempt, the Supreme Court in **Republic vs Ahmad Abolfathi Mohammed & Another [2019] eKLR** posited thus:

*“There is no doubt that an act in contempt of the Court constitutes an affront to judicial authority; and the Court has the liberty and empowerment to mete out penalty for such conduct, in a proper case. The object is, firstly, to vindicate the Court’s authority; secondly, to uphold honourable conduct among Advocates, in their standing as officers of the Court; and thirdly, to safeguard its processes for assuring compliance, so as to sustain the rule of law and the administration of justice”*

63. Due to the repeal of the Contempt of Court Act, 2016, **[see The Kenya Human Rights Commission vs Attorney General & Another [2018] eKLR]** the substantive law governing contempt proceedings is the Judicature Act. **Section 5** of which provides:

*“(1) The High Court and the Court of Appeal shall have the same power to punish for contempt of court as is for the time being possessed by the High Court of Justice in England, and such power shall extend to upholding the authority and dignity of subordinate courts.*

***(2) An order of the High Court made by way of punishment for contempt of court shall be appealable as if it were a conviction and sentence made in the exercise of the ordinary original criminal jurisdiction of the High Court.”***

**64.** Additionally, **Section 29** of the **Environment and Land Court Act** under the title *offences* provides as follows:

***“Any person who refuses, fails or neglects to obey an order or direction of the Court given under this Act, commits an offence, and shall, on conviction, be liable to a fine not exceeding twenty million shillings or to imprisonment for a term not exceeding two years, or to both.”***

**65.** As a fundamental principle of the rule of law, courts do not issue orders in vain. Parties against whom court orders are directed are bound to obey them unless and until such orders are set aside or varied by a competent court. The Court of Appeal underscored this duty in ***Shimmers Plaza Limited vs National Bank of Kenya Limited [2015] eKLR***, where it held that obedience of court orders is not optional but mandatory, and that courts must safeguard their authority by ensuring compliance with their lawful directives.

**66.** Contempt proceedings are quasi-criminal in nature. Accordingly, the standard of proof required is higher than that applicable in ordinary civil cases, though not as

stringent as proof beyond reasonable doubt. This position was affirmed by the Supreme Court in **Republic vs Ahmad Abolfathi Mohammed & Another [2018] eKLR.**

**67.** To succeed in civil contempt proceedings, an applicant must demonstrate that the terms of the court order were clear, unambiguous, and binding on the respondent; the respondent had knowledge of those terms; the respondent failed to comply with the order; and the non-compliance was deliberate. These elements were articulated in **North Tetu Farmers Co. Ltd vs Joseph Nderitu Wanjohi [2016] eKLR** and **Republic vs Attorney General & another Ex parte Mike Maina Kamau [2020] eKLR.**

**68.** In the present case, the existence of clear and binding orders is not in dispute. This court delivered its judgment on 10<sup>th</sup> June 2019 declaring that the 1<sup>st</sup> Respondent held L.R. Nos. Karai/Gikambura/577 and 583 in trust for himself and the Plaintiffs and directed that half portions of the said parcels be excised and transferred to the Plaintiffs. A decree reflecting those orders was subsequently issued on 11<sup>th</sup> June 2020. The 1<sup>st</sup> Respondent has not denied knowledge of that judgment. Indeed, he states that he filed an appeal against the same.

**69.** The evidence placed before the court demonstrates that the decree has not been complied with. The Green Card produced in evidence shows that as at 23<sup>rd</sup> September 2025,

L.R. No. Karai/Gikambura/577 remained registered solely in the name of the 1<sup>st</sup> Respondent, notwithstanding the court's express order requiring the excision and transfer of one half of the parcel to the decree holders.

- 70.** The position regarding L.R. No. Karai/Gikambura/583 is even more concerning. The material placed before the court, including the Green Card and the mutation forms exhibited by the Applicant, indicates that the parcel was transferred to the 1<sup>st</sup> Interested Party in 2025 and there have been subdivisions. These transactions were undertaken despite the subsisting judgment directing that the parcel be partitioned and one half transferred to the Plaintiffs.
- 71.** Significantly, the 1<sup>st</sup> Respondent has not disputed the continued registration of L.R. No. Karai/Gikambura/577 in his sole name, nor has he offered any explanation for the transfer and subsequent subdivision of L.R. No. Karai/Gikambura/583 to the Interested Party
- 72.** From the foregoing, the court is satisfied that the judgment and decree of this court was not only disregarded by the 1<sup>st</sup> Respondent, but were actively undermined through subsequent dealings with the suit property. Such conduct is plainly inconsistent with the obligation to obey court orders and demonstrates a deliberate disregard for the authority of this court.

**Whether the court should order rectification of the register, cancellation of the subdivisions of L.R. No. KARAI/ GIKAMBURA/583, and implementation of the decreed partition of L.R. Nos. KARAI/GIKAMBURA/583 and 577?**

73. The Applicant also seeks orders for rectification of the land register, cancellation of the subdivisions arising from L.R. No. Karai/Gikambura/583, reinstatement of the original title and enforcement of the decree issued on 11<sup>th</sup> June 2020 through partition and transfer of half portions of L.R. Nos. Karai/Gikambura/577 and 583.
74. The basis for these prayers is that the 1<sup>st</sup> Respondent, in disregard of the court's judgment delivered on 10<sup>th</sup> June 2019, transferred L.R. No. Karai/Gikambura/583 to the Interested Party who subsequently subdivided it into Karai/Gikambura/9973, 9974, 10210, 10211 and 10212. As regards L.R. No. Karai/Gikambura/577, he has refused to transfer a portion thereof as directed.
75. From the analysis already undertaken on contempt, the court has found that the decree of this court has not been complied with and that subsequent dealings with the suit properties occurred notwithstanding the subsisting judgment.
76. The legal effect of transactions undertaken in defiance of a court order has been previously addressed. In **Ojwang vs Ghelani & 5 Others; Chaju Builders Limited (Interested**

**Party) [2025] KEELC 5729 (KLR)**, the court persuasively held that transactions carried out after a judgment extinguishing a party's interest in land are illegal and incapable of conferring any lawful title. Consequently, any subdivisions or transfers arising from such dealings are null and void and liable to cancellation.

77. The court agrees. Where a party proceeds to deal with land in disregard of a court decree determining proprietary rights, such transactions cannot attract the protection of the law. A party cannot purport to pass a better title than that which he himself possesses.
78. In the present case, once this court made its declarations over L.R. Nos. Karai/Gikambura/577 and 583, the 1<sup>st</sup> Respondent ceased to enjoy unfettered proprietary rights over the entire parcels. It follows that he could not lawfully transfer interests exceeding the rights remaining to him. Any subsequent transfer or subdivision undertaken in disregard of the decree could therefore not confer valid title upon the Interested Party or any subsequent transferee.
79. It therefore follows that the subdivision of L.R. No. Karai/Gikambura/583 into parcels Karai/Gikambura/9973, 9974, 10210, 10211 and 10212, undertaken after the judgment and in disregard of the decree, was unlawful and cannot stand in law. Those subdivisions were founded on a

transaction inconsistent with the court's judgment and must consequently fall with it.

- 80.** The court is also mindful that where a party declines to cooperate in the implementation of a decree, the law empowers the court to ensure that its orders are not rendered nugatory.
- 81.** Courts have routinely directed that the Deputy Registrar execute the necessary documents on behalf of a non-compliant party to facilitate subdivision, transfer, and registration. The court cannot remain as a spectator in the face of deliberate non-compliance of its orders. It bears a duty to ensure that its decrees are effectively implemented.
- 82.** In the circumstances, and in order to safeguard the integrity of the court's decree and ensure that the Applicant is not deprived of the fruits of the judgment, the court finds that the appropriate remedy is to restore the register to the position contemplated by the decree, and have the said parcels transferred to the Applicant as directed in the Judgment.
- 83.** In the end, the court finds that the Motions dated 24<sup>th</sup>, 25<sup>th</sup> and 26<sup>th</sup> September, 2025 are merited and grants the following reliefs:

- i. An order be and is hereby issued cancelling all the sub-divisions of parcel number**

**Karai/Gikambura/583, including  
Karai/Gikambura 9973, 9974, 10210, 10211 and  
10212.**

- ii. An order is hereby issued directing the Kiambu Land Registrar and Surveyor to reinstate the land register for L.R. No. Karai/Gikambura/583 and to forthwith survey and partition the parcel into two equal parts and transfer half of L.R. No. Karai/Gikambura/583 to the Plaintiffs, or their legal representatives, if deceased, pursuant to the Judgment and decree of the court dated 10<sup>th</sup> June, 2019 and 11<sup>th</sup> June 2020 respectively.**
- iii. An order does hereby issue directing the Kiambu Land Registrar and Surveyor to forthwith partition L.R. No. Karai/Gikambura/577 into two equal parts and transfer half of the same to the Plaintiffs, or their legal representatives, if deceased, pursuant to the Judgment and Decree of the court dated 10<sup>th</sup> June, 2019 and 11<sup>th</sup> June 2020 respectively.**
- iv. That the Deputy Registrar of this court be and is hereby directed to execute all documents and applications necessary to effect partition of L.R. No. KARAI/GIKAMBURA/583 and L.R. No. KARAI/GIKAMBURA/577 to reflect the decree of**

**this court of 11<sup>th</sup> June, 2020 without surrendering the original titles or obtaining any requisite consent.**

- v. The Officer Commanding Kikuyu Police Station is hereby directed to provide security during the survey/sub-division/partition exercise.**
- vi. The 1<sup>st</sup> Defendant is hereby found to be in contempt of the order of the court, and shall be sentenced upon mitigation.**
- vii. The 1<sup>st</sup> Defendant/Respondent shall bear the costs of the Motions.**

**Dated, signed and delivered virtually in Nairobi this 19<sup>th</sup> day of March, 2026.**

**O. A. Angote  
Judge**

**In the presence of:**

Mr. Kamau for Applicant

Mr. Olwewa for Bashir for Interested Party

Mr. Njuguna for 2<sup>nd</sup> Respondent

Court Assistant: Tracy