



**Hussein v Managing Director/CEO, Islamic Foundation Kenya & 5 others (Land Case E157 of 2024) [2026] KEELC 1855 (KLR) (19 March 2026) (Ruling)**

Neutral citation: [2026] KEELC 1855 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
LAND CASE E157 OF 2024  
TW MURIGI, J  
MARCH 19, 2026**

**BETWEEN**

**ABDISALAN ADAN HUSSEIN ..... APPLICANT**

**AND**

**THE MANAGING DIRECTOR/CEO, ISLAMIC FOUNDATION  
KENYA ..... 1<sup>ST</sup> RESPONDENT**

**THE MANAGING DIRECTOR/CEO, SALEPUSH INVESTMENT  
LIMITED ..... 2<sup>ND</sup> RESPONDENT**

**THE MANAGING DIRECTOR/CEO, SHYAM GENERAL MERCHANTS  
LIMITED ..... 3<sup>RD</sup> RESPONDENT**

**AND**

**SADAFF SHOKATALI HABIB ..... 1<sup>ST</sup> INTERESTED PARTY**

**SABAHATT SHAKATALI HABIB ..... 2<sup>ND</sup> INTERESTED PARTY**

**THE ESTATE OF SHOKATALI GULAMHUSSEIN HABIB .... 3<sup>RD</sup> INTERESTED  
PARTY**

**RULING**

1. Before me are two applications for determination. The first application is a Notice of Motion dated 18<sup>th</sup> April 2024 brought under Section 3A of the Civil Procedure Act, Order 40 Rules 1, 2, and 4 of the Civil Procedure Rules, Section 101 of the Land Registration Act, and Articles 40 and 60(1)(b) of the Constitution of Kenya, in which the Applicant seeks the following orders:
  - a. Spent.
  - b. Spent.



- c. Pending the hearing of the suit, the Court be pleased to grant temporary injunctive orders against the Respondents whether by themselves, their servants, agents, employees or any other person stopping and restraining them from encroachment, entry or trespass into the suit property and from undertaking any excavation, construction or development on L.R. No. 1870/III/233 until they take appropriate remedial, compensatory and mitigating action against encroachment, damage, destruction or other interference of whatever nature on the Applicant's adjoining suit property.
  - d. The Honourable Court be pleased to grant a permanent injunction against the Respondents whether by themselves, their servants, agents, employees or any other person stopping and restraining them from encroachment, entry or trespass into the suit property and from undertaking any excavation, construction or development on L.R. No. 1870/III/233 until they take appropriate remedial, compensatory and mitigating action against encroachment, damage, destruction or other interference of whatever nature on the Applicant's adjoining suit property.
  - e. The Honourable Court be pleased to order that the Defendants jointly and severally do pay to the Applicant general, special, and exemplary damages.
  - f. Pending the hearing of the suit, the OCS Spring Valley Police Station be directed to safeguard and protect the rights and interests of the Plaintiff/Applicant over the suit property.
  - g. Costs of the application be provided for.
2. The application is premised on the grounds appearing on its face together with the supporting affidavit of Abdisalan Adan Hussein, sworn on even date.

### **The Applicant's Case**

3. The Applicant averred that he is the registered owner of L.R. No. 1870/111/417, the suit property herein, while the 1<sup>st</sup> Respondent owns the adjacent property L.R. No. 1870/11/233, which shares a boundary with it.
4. He further averred that the 1<sup>st</sup> and 2<sup>nd</sup> Defendants have entered into a joint venture to develop an apartment block on L.R. No. 1870/111/233 and have employed the 3<sup>rd</sup> Defendant as the main contractor for the project.
5. He averred that the 3<sup>rd</sup> Defendant, in implementing the project, has encroached onto the suit property and has undertaken deep excavation works that have blocked access to his house, damaged his perimeter wall, and disrupted the power supply. He further averred that construction has continued despite stop orders issued by the National Construction Authority. He also averred that he has been forced to relocate his family due to the safety threat caused by the construction.
6. In conclusion, the Applicant urged the Court to allow the application in the interest of justice so as to preserve and protect his property.

### **The 1<sup>st</sup> Respondent's Case**

7. The 1<sup>st</sup> Respondent filed an undated affidavit, sworn by its trustee, Ayyub Mohamed Khalid, in opposition to the application.
8. The deponent averred that the 1<sup>st</sup> Respondent is the registered owner of parcel No L.R. No. 1870/111/233, which is adjacent to the suit property owned by the Plaintiff. He confirmed that the



1<sup>st</sup> and 2<sup>nd</sup> Respondents have entered into a joint venture agreement to develop apartments on the property belonging to the 1<sup>st</sup> Respondent.

9. The deponent averred that the Applicant does not have standing in the matter because he is not the owner of L.R. No. 1870/111/417. He further averred that the Applicant has encroached on the adjacent property and has been asked to vacate. In conclusion, he averred that the development has complied with all relevant regulations and has maintained the standards of good neighborliness.

### **The 2<sup>nd</sup> Respondent's Case**

10. The 2<sup>nd</sup> Respondent filed a replying affidavit sworn on 6<sup>th</sup> May 2024 by its director, Ahmed Hassan Mohamed, in opposition to the application.
11. The deponent averred that the 1<sup>st</sup> Respondent owns the property adjacent to the suit property and is in a joint venture with the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents to develop it. He further averred that the Applicant is not the owner of the suit property. He stated that the Respondents obtained permission from Jaffa Management Limited (the managers of the suit property) to use part of the suit property for hoarding purposes. He further stated that a survey conducted established that the suit property encroached on the adjacent property. It was also noted that all relevant approvals and mitigating factors are in place.
12. In conclusion, he stated that the Applicant was ordered to vacate the suit property in ELC No. E300 of 2022.

### **The 3<sup>rd</sup> Respondent's Case**

13. The 3<sup>rd</sup> Respondent filed an affidavit dated 7<sup>th</sup> May 2024, sworn by Josephat Baruku Mesesi, which reiterated the contents of the 2<sup>nd</sup> Respondent's affidavit.  
The application was canvassed by way of written submissions.

### **The Applicant's Submissions**

14. The Applicant filed his submissions dated 2<sup>nd</sup> April 2025. On behalf of the Applicant, Counsel submitted that the Applicant had met the legal threshold for the grant of an injunction. On the first condition. Counsel submitted that the Applicant has established a prima facie case as he owns the suit property, which has been damaged by the development carried out by the Respondents.
15. On the second condition, Counsel submitted that the Applicant has suffered irreparable harm due to emotional distress and structural damage caused by the Respondents. It was also submitted that the balance of convenience favours the Applicant, as if the injunction is not granted, the Applicant's house may suffer further structural failures, thereby endangering lives. To support this point, Counsel relied on *Giella (Supra)*, *Mrao Ltd (Supra)*, *Nguruman Limited v Jan Bonde Nielson [2014] KEHC 1718 (KLR)*, and *Paul Gitonga Wanjau v Gathuthi Tea Factory Company Ltd & 2 others [2016] KEHC 7263 (KLR)*.

### **The 1<sup>st</sup> And 2<sup>nd</sup> Interested Parties' Submissions**

16. The 1<sup>st</sup> and 2<sup>nd</sup> Interested Parties filed their submissions dated 29<sup>th</sup> October 2025.
17. On behalf of interested Parties Counsel outlined the following issues for the Court's determination:
  - a) Whether the application meets the threshold for granting temporary injunctive order against the Defendants;



- b) Whether the application meets the threshold for granting of permanent injunction against the Defendants;
  - c) Whether the Court should order the Defendants jointly and severally to pay the Applicant general, special and exemplary damages.
18. Regarding the first issue, Counsel submitted that the Applicant has not established a prima facie case justifying the issuance of a temporary injunction, as it has been shown that the 1<sup>st</sup> and 2<sup>nd</sup> Interested Parties are the registered owners of the house on the suit property. It was further submitted that the Applicant had not demonstrated that he would suffer irreparable harm and that the balance of convenience favours the Interested Parties, since they are the registered owners of the house on the suit property. To support this point, Counsel relied on Section 25 of the *Land Registration Act* and the cases of *Giella v Cassman Brown & Co Ltd* (1973) EA 358, *Mrao Ltd v First America Bank of Kenya Ltd & 2 Others* (2003) eKLR, *Francis Muthui Mathangani v Alice Gathigia Menja* [2020] KEELC 115 (KLR), and *Pius Kipchirchir Kogo v Frank Kimeli Tenai* [2018] KEELC 2424 (KLR).
19. Regarding the second issue, Counsel submitted that the Applicant has not met the criteria for the grant of a permanent injunction. It was further submitted that granting a permanent injunction would adversely affect the ownership and construction rights of the Interested Parties and the Respondents. To support this, reliance was placed on *Bandari Investments & Co. Ltd v Martin Chiponda & 139 others* [2022] KEELC 1469 (KLR) and *Malier Unissa Karim v Edward Oluoch Odumbe* [2015] eKLR.
20. Regarding the third issue, Counsel submitted that the Applicant had failed to quantify the special damages claimed. To support this point, Counsel relied on *China Wu Yi Limited & another v Irene Leah Musau* [2022] KEHC 2549 (KLR).
21. The second application is a Notice of Motion dated 31<sup>st</sup> July 2024 brought under Sections 3, 3A, 34(3), 63(e) of the *Civil Procedure Act*, Section 5 of the *Judicature Act*, Order 40 Rule 3 of the Civil Procedure Rules, and the Rules of the Supreme Court of England, in which the Applicant seeks the following orders:
- a. That the Managing Directors or CEOs of Islamic Foundation Kenya, Salepush Investments Limited, and Shyam General Merchants Limited be committed to jail and/or detained in prison for a term of six months or such other term as this Court may deem appropriate for being in contempt of a valid Court order issued by the Court on 9<sup>th</sup> May 2024.
  - b. That in the alternative, the Managing Directors or CEOs be fined Kshs. 200,000/= each or such sum as this Court may deem appropriate for being in contempt of the Court's orders made on 9<sup>th</sup> May 2024.
  - c. That the Managing Directors or Chief Executive Officers, Islamic Foundation Kenya, Salepush Investment Limited and Shyam General Merchants Limited do jointly and severally pay the costs of the contempt proceedings.
  - d. Such further or other reliefs that the Court may deem just to grant.
22. The application is based on the grounds appearing on its face together with the supporting affidavit of Abdisalan Adan Hussein sworn on even date.



### **The Applicant's Case**

23. The Applicant averred that he is the owner of L.R. No. 1870/III/417 (hereinafter referred to as the 'suit property'). He further averred that on 9<sup>th</sup> May 2024, the Court issued an order prohibiting the Respondents from continuing construction on the land adjoining to the suit property. Despite the Court's orders, the Respondents have continued with their construction activities. He urged the Court to find the Respondents in contempt of the Court's orders and to hold them liable.

### **The 1<sup>st</sup> Respondent's Case**

24. The 1<sup>st</sup> Respondent filed a replying affidavit sworn by its CEO, Mohamed Hasham Husein, on 17<sup>th</sup> September 2024, in opposition to the application. The deponent averred that the Court orders pertain to the suit property and not to L.R. No. 1870/III/233, which the 1<sup>st</sup> Respondent owns. He explained that the dispute relates to the suit property, not the adjacent land. He further clarified that construction was ongoing on the adjacent land, not on the suit property, as the orders issued apply only to the suit property.
25. In conclusion, he stated that the 1<sup>st</sup> Respondent has not violated any Court orders and that the contempt application is therefore without merit.

### **THE 2<sup>ND</sup> AND 3<sup>RD</sup> RESPONDENTS CASE**

26. The 2<sup>nd</sup> and 3<sup>rd</sup> Respondent filed a replying affidavit sworn by its Director, Ahmed Hasan Mohamed, on 9<sup>th</sup> October 2024 in opposition to the application.
27. The deponent argued that the Applicant should have first lifted the corporate veil before initiating proceedings against the directors of the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents. He also maintained that, without such action, he was not a proper party to the case. He pointed out that service of process was not effected upon him and therefore he could not be deemed in contempt of the Court's orders. He contended that the photographs presented by the Applicant as evidence were taken before the application was filed and did not meet the requirements of the *Evidence Act*. In conclusion, he urged the court to dismiss the application with costs.

### **The 1<sup>st</sup> And 2<sup>Nd</sup> Interested Parties Case**

28. The 1<sup>st</sup> and 2<sup>nd</sup> Interested Parties opposed the application through the replying affidavit sworn by Kepha Ogutu, a Property Management Agent, on 29<sup>th</sup> October 2024.
29. The deponent stated that the Applicant does not own the suit property because it is one of seven sectional properties, each with its own title. He also mentioned that the suit property is managed by Jaffer Apartment Management Limited and was registered in the name of Shokatali Habib, the late father of the 1<sup>st</sup> and 2<sup>nd</sup> Interested Parties, who gifted it to them in 2013.
30. He stated that the deceased lost the title and attempted to reconstruct the file, after which the Applicant claimed ownership of the suit property. In ELC NO. E300 of 2022, the Court found this ownership to be irregular and ordered him to vacate the suit property. He further claimed that the Applicant is using the contempt application to fraudulently access the suit property.
31. He asserted that the owner of the land on which the seven sectional properties sit consented to the Respondents' development project on the adjacent land. He asserted that the Court's orders relate to the suit property, not the adjacent land.



32. In conclusion, he argued that the Applicant lacks the locus to file the contempt application since he is not the owner of the suit property.
33. The application was canvassed by way of written submissions.

### **The Applicant's Submissions**

34. The applicant filed his submissions dated 2<sup>nd</sup> April 2025.
35. On behalf of the Applicant, Counsel relied on the definition of contempt outlined in *Econet Wireless Kenya Ltd v Minister for Information & Communication of Kenya & another* [2005] KEHC 1767 (KLR). Counsel also cited *Samuel M. N. Mweru & Others v National Land Commission & 2 others* [2020] KEHC 9233 (KLR) to discuss the elements required to establish civil contempt.
36. Counsel submitted that the Respondents blatantly disobeyed the Court orders issued on 9<sup>th</sup> May 2024 by continuing with the construction. It was submitted that the order issued on 9<sup>th</sup> May 2024 was clear and unambiguous as it expressly barred the Respondents from carrying out construction on L.R. No. 1870/111/233 pending further directions of the Court.
37. Counsel further submitted that the Respondents Managing Directors were aware of the order as they were duly served. Counsel argued that even in the absence of personal service, knowledge of the order can be inferred from their legal representatives' presence in court when the orders were issued. To support this argument, Counsel relied on *Shimmers Plaza Limited v National Bank Limited* [2012] KECA 2 (KLR). Counsel insisted that the Respondents should be punished for contempt of Court. Counsel further submitted that the Respondents' continued construction in blatant violation of the Court order amounts to contempt of court. To support this point, Counsel relied on *Republic v County Chief Officer, Finance & Economic Planning, Nairobi City County (Ex Parte David Mugo Mwangi)* [2018] KEHC 8750 (KLR).
38. Counsel argued that the Respondents' actions have undermined the dignity of the Court, calling for committal to enforce compliance and uphold the authority of the Court. Counsel relied on *Teachers Service Commission v Kenya National Union of Teachers & 2 others* (20113) eKLR. In the alternative, Counsel relied on *Kenya Human Rights Commission v Attorney General* (2018) to submit that a fine would serve as a punitive and deterrent measure.
39. In conclusion, Counsel urged the Court to find the Respondents guilty of contempt and to sentence them to six months in jail or impose a fine of Kshs 200,000/= each.

### **The Respondents Submissions**

40. The Respondents filed their submissions dated 6<sup>th</sup> November 2025.
41. On behalf of the Respondents, Counsel outlined the following issues for the Court's determination:
  - a) Whether the Respondents should be cited for contempt.
  - b) Whether the Applicant is entitled to the reliefs sought.
42. Regarding the first issue, Counsel relied on the Supreme Court of Canada in *Cary v Laiken*, 2015 SCC, and the English Civil Procedure Rules (Amendment No. 3), Rules 2020 to argue that the Applicant has not established the elements of contempt of court. Counsel submitted that the construction activities shown in the photographs were carried out before the Court order was issued.



43. Counsel further submitted that the Respondents were not served with the order and that the Respondent directors were not parties to these proceedings. It was submitted that the orders were directed to the company, not to its directors. It was submitted that the Applicant should have lifted the veil before going after the directors of the Respondents companies. To support this argument, reliance was placed on *Katsuri Limited vs Kapurchand Depar Shah* (2016) eKLR.
44. Counsel further submitted that the Applicant has not demonstrated that the Respondents deliberately disobeyed the orders. It was argued that the Applicant had approached the court with unclean hands and therefore is not entitled to the orders sought.
45. Counsel further submitted that the orders were not served on the Respondents' directors, and they were not aware of the same

### **Analysis And Determination**

46. Having considered the applications, the responses, and the rival submissions, the following issues arise for determination:
  - a) Whether the Applicant has met the threshold for the grant of an injunction; and
  - b) Whether the Respondents are in contempt of court orders.
47. Regarding the first issue, the conditions required for the grant of an injunction were outlined in the case of *Giella v Cassman Brown & Co Ltd* [1973] EA 358 as follows:
  - a) First, an applicant must show a prima facie case with a probability of success.
  - b) Secondly, an interlocutory injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury, which would not adequately be compensated by an award of damages.
  - c) Thirdly, if the court is in doubt, it will decide an application on the balance of convenience.
48. The first issue for determination is whether the Applicant has established a prima facie case with a probability of success. A prima facie case was defined by the Court of Appeal in *Mrao Ltd v First American Bank of Kenya Ltd & 2 others* [2003] KLR 125 as follows:

“A prima facie case in a civil application includes but is not confined to a genuine and arguable case”. It is a case which, on the material presented to the court, a tribunal properly directing itself will conclude that there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter.”
49. The Applicant argued that his rights as the owner of the suit property have been infringed due to the construction carried out by the Respondents. The Respondents and Interested Parties alleged that the Applicant is not the owner of the suit property and therefore lacks standing to seek the orders. There are two Certificates of Title on record, one in favour of the Applicant and another in favour of the Interested Parties. Additionally, ELC NO. 300 of 2022 is ongoing, and the issue of ownership between the Interested Parties and the Applicant is in dispute in that case.



50. In the case of *George Gikabu Mbutia vs Jimba credit Corporation Ltd* 988 KLR 1, the court held that;
- “In an application for interlocutory injunctions, the court is not required to make final findings of contested facts and law and the court should only weigh the relative strength of the parties cases.”
51. In the matter at hand, the ownership right the Applicant relies on cannot be established at the interlocutory stage. At the interlocutory stage, the Court is not supposed to determine the issue that are in controversy. Additionally, while the photos on record show some damage to the property, they do not adequately prove that the damage occurred on property owned by the Applicant.
52. Based on the evidence presented before me, I find that the Applicant has not established a prima facie case.
53. In an application for interlocutory injunction, the Applicant must satisfy three conditions before an injunction is granted. In *Nguruman Limited vs Jan Bonde Nielsen & 2 Others* [2014] eKLR, the Court of Appeal stated as follows: -
- “...these are the three pillars on which rest the foundation of any order of injunction, interlocutory or permanent. It is established that all the above three conditions and stages are to be applied as separate, distinct and logical hurdles which the applicant is expected to surmount sequentially... if the applicant establishes a prima facie case that alone is not sufficient basis to grant an interlocutory injunction, the court must further be satisfied that the injury the respondent will suffer, in the event the injunction is not granted will be irreparable. In other words, if damages recoverable in law are an adequate remedy and the respondent is capable of paying, no interlocutory order of injunction should normally be granted, however strong the applicant’s claim may appear at that stage. If a prima facie case is not established, then irreparable injury and the balance of convenience need no consideration.
54. Having found that the Applicant has failed to establish a prima facie case with a probability of success, it will be immaterial to delve into the other limbs that are to be considered for the grant of a temporary injunction. In so finding, I am persuaded by the holding in the case of *Commercial Finance Co. Ltd vs Afraha Education Society & Others* C A Civil Appeal No. 142 of 1999, where the Court held that:
- “.....the judge should address himself sequentially on the conditions for granting an injunction instead of proceeding straight away to address himself on the third condition because where the Applicant has no registered interest in the land comprised in the title dispute and thereof has not demonstrated that it has a prima facie case with a probability of success no interlocutory injunction would be available.”
55. The Applicant also sought permanent injunctive relief. In *Kenya Power & Lighting Co. Limited v Sheriff Molana Habib* [2018] eKLR, the court held that:
- “A permanent injunction, which is also known as a perpetual injunction, is granted upon the hearing of the suit. It fully determines the rights of the parties before the court and is thus a decree of the court. The injunction is granted upon the merits of the case after evidence in support of and against the claim has been tendered.”



56. The relief can only be issued after the suit is heard on its merits. The claim for permanent injunctive relief also fails.
57. Regarding the second issue, Black's Law Dictionary, 9<sup>th</sup> Edition, defines contempt of court as follows:
- “conduct that defies the authority or dignity of the court. Because such conduct interferes with the administration of justice, it is punishable usually by fine or imprisonment.”
58. Section 5 of the *Judicature Act* provides that:
- 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.
59. In *Econet Wireless Kenya Ltd vs Minister for Information & Communication of Kenya & Another* (2005) eKLR, the Court observed as follows:
- “It is essential for the maintenance of the Rule of Law and order that the authority and dignity of our courts are upheld at all times. The court will not condone deliberate disobedience of its orders and will not shy away from its responsibility to deal firmly with proved contemnors. It is the plain and unqualified obligation of every person against or in respect to whom an order is made by the court of competent jurisdiction, to obey it unless and until that order is discharged. The uncompromising nature of this obligation is shown by the fact that it extends even to cases where the person affected by an order believes it to be irregular or void.”
60. The law applicable to the present application is Order 40 Rule 3(1) of the Civil Procedure Rules, which states that:
- In cases of disobedience, or of breach of any such terms, the Court, granting an injunction, may order the property of the person guilty of such disobedience or breach to be attached and may also order such person to be detained in prison for a term not exceeding six months unless in the meantime the court directs his release.
61. The High Court of South Africa in the case of *Carla Burchell v Barry Grant Burchell*, Eastern Cape Division, Case No 364 of 2005, held that to succeed in civil contempt proceedings, an Applicant must prove:
- i) The terms of the order
  - ii) Knowledge of these terms by the respondent
  - iii) Failure by the respondents to comply with the terms of the order.
62. In *Samuel M.N. Mweru & Others v National Land Commission & 2 Others* (2020) e KLR, the Court set out the elements to be proved in an application for contempt of court as follows:
- “Perhaps the most comprehensive of the elements of civil contempt was stated by the learned authors of the book *Contempt in Modern New Zealand*, who succinctly stated, 'there are



essentially four elements that must be proved to make the case for civil contempt. The applicant must prove to the required standard (in civil contempt cases, which is higher than civil cases) that:

- a) The terms of the order (or injunction or undertaking) were clear and unambiguous and were binding on the defendant;
- b) The defendant had knowledge of or proper notice of the terms of the knowledge.
- c) The defendant has acted in breach of the terms of the order and
- d) The defendant's conduct was deliberate".

63. The first issue for determination is whether the terms of the order were clear.

64. The order at the center of this application was issued on 9<sup>th</sup> May 2024 on the following terms:

The Court hereby do issue a status quo order to be observed by all parties which means there is no sale, no transfer, no construction, transacting, no dealing, no alienating, no action to be taken on the suit property whoever is on the suit property as at 9<sup>th</sup> May 2024 remains on it without any dealings whatsoever until the suit is heard and determined. Meaning the application dated 18<sup>th</sup> April 2024 is canvassed as such.

65. While it is clear what conduct the Court proscribed and that the order was directed to all the parties, it is unclear what the subject of the order is. It refers to the 'suit property'. However, the certificate of urgency on which the orders were founded referred to two properties, L.R. No. 1870/III/417, which the Applicant claims to own and which he claims is being interfered with by the construction carried out by the Respondents; and L.R. No. 1870/III/233, the adjacent land owned by the 1<sup>st</sup> Respondent and on which the construction is being carried out. The order did not make it clear which property was being referred to when it said 'suit property.

66. The next issue for determination is whether the Respondents were served or had proper notice of the order. The Respondents contend that the directors were neither personally included nor served with the application.

67. The Applicant contended that the Respondents were aware of the order because it was issued in the presence of their Advocates.

68. In contempt proceedings where committal is sought, the alleged contemnor must be specifically identified, joined, and served in his or her personal capacity because individual liberty is at stake. A corporate or statutory body acts only through natural persons, and when penal consequences are sought, the individual responsible must be clearly named and given an opportunity to respond. In *Republic v Principal Secretary Ministry of Defence ex parte George Kariuki Waithaka* (2019) eKLR, the Court held that:

“Where an order of committal is sought, the alleged contemnor must be personally cited, served, and given an opportunity to show cause since the proceedings are penal in nature.”



Similarly, in *Teachers Service Commission v Kenya National Union of Teachers & 2 others* (2013) eKLR, the Court held that:

“Orders of committal affect personal liberty and must therefore strictly comply with procedural safeguards.”

69. In the matter at hand, the Respondents are corporate bodies and act only through natural persons. The omission to join the directors in their individual capacities are not mere technicalities; they go to the root of the application and offend the principles of natural justice. On this ground alone, the application is rendered incompetent.
70. Regarding whether the Respondents have deliberately breached the Court order, the Applicant bears the burden of proving his case on the balance of probabilities. This is because contempt of court is in the nature of criminal proceedings, and the liberty of the subject is usually at stake. To succeed in contempt proceedings, the Applicant must prove wilful and deliberate disobedience of the court. In *Gatharia K. Mutikika v Baharini Farm Ltd* (1985) KLR, the court held that:

“A contempt of court is an offence of a criminal nature. A man may be sent to prison. It must be proved satisfactorily.....It must be higher than prove on a balance of probabilities, almost but not exactly beyond reasonable doubt. The standard of proof beyond reasonable doubt ought to be left where it belongs, to wit criminal cases. It is not safe to extend it to offences which can be said to be quasi-criminal nature.”

71. The Applicant has a duty to prove beyond a balance of probabilities that the Respondents are constructing on the suit property.
72. The Applicant produced photographs showing construction activities. However, the photographs do not establish a nexus between the alleged construction and the Respondents. No evidence was presented showing that the construction was carried out on the suit property at the Respondent's behest or with the Respondent's authority, or that it occurred after service of the orders and with the Respondents knowledge.
73. In light of the foregoing, I find that the Applicant has not demonstrated that the Respondents are in contempt of court.
74. The upshot of the foregoing is that the application dated 18<sup>th</sup> April 2024 and 31<sup>st</sup> July 2024 is dismissed. Costs to abide by the outcome of the suit.

**RULING DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS THIS 19<sup>th</sup> DAY OF MARCH, 2026.**

.....

**T. MURIGI**

**JUDGE**

In The Presence Of:-

Kiamba holding brief for Mbalu for the Plaintiff

Vena- Court Assistant

