

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT OF KENYA
AT KAPSABET

ELCL CASE NO. E017 OF 2024

**SAMWEL KIPKEMBOI SERONEY.....1ST PLAINTIFF
/APPLICANT**

**SOLOMON KIPYEGO BIWOTT (Suing on behalf of the
Estate of JOSHUA K. KOGO--DECEASED).....
2ND PLAINTIFF/APPLICANT**

**TERESA CHEMATIA KEMBOI.....3RD
PLAINTIFF/APPLICANT**

**DISMAS KIPKOECH.....4TH
PLAINTIFF/APPLICANT**

**RODGERS ROP.....5TH
PLAINTIFF/APPLICANT**

**TRANS-ELITE COUNTY SAVINGS & CREDIT CO-OPERATIVE
SOCIETY LTD (Formerly known as NANDI TEACHERS
SAVINGS AND CREDIT COOPERATIVE SOCIETY
LTD.....6TH PLAINTIFF/APPLICANT**

-VERSUS-

**COUNTY GOVERNMENT OF
NANDI.....DEFENDANT/RESPONDENT**

RULING

1. The present ruling pertains to an application by way of a Notice of motion dated 5th June 2025 by the six applicants through Cherono Chepkosgey and Company Advocates for the orders infra;

a. Moot

b. That the Defendant/Respondent and in particular, Dr. Francis Sang the County Secretary Nandi County and Hon. Hillary Serem the CECM in charge of Lands, Physical and Land Use Planning be cited for contempt of Court for disobeying and disregarding this Honourable Court's orders.

c. That this Honourable Court be pleased to summon Defendant/Respondent and in particular, Dr. Francis Sang the County Secretary Nandi County and Hon. Hillary Serem the CECM in charge of Lands, Physical and Land use Planning to show cause why they should not be committed to civil jail for a period of six months for blatantly disrespecting this

Honourable Court by disobeying its orders dated 17th October 2024.

- d. That this Honourable Court be pleased to order that the Respondent through its agent do restore the existing road reserve to land parcels KAPSABET MUNICIPALITY/390 and KAPSABET MUNICIPALITY/391 respectively
- e. That this Honourable Court be pleased to order that the Respondents through its agents do remove the fence placed on land parcel No. KAPSABET MUNICIPALITY/403 and KAPSABET MUNICIPALITY/416 respectively.
- f. That this Honourable Court be pleased to order that any ongoing works at the site be and is hereby stopped until the Court orders are obeyed.
- g. The Respondent be ordered to pay costs of this application.

2. The application is anchored upon the 1st applicant's supporting affidavit sworn on 5th June 2025 on behalf of his co-applicants and himself, the accompanying documents

and the grounds set out on the face of the application. In a nutshell, the applicants' complaint is that respondent deliberately violated this court's orders made on 17th October 2024 hence, liable for the orders sought in the application. That the respondent through its agents and or servants initiated construction works at the site on the suit parcels of land by disconnection of water, fencing off the place and interference with the existing road reserves. That therefore, the court should stop the ongoing construction works at the site and grant the prayers in the application in the interest of justice as that court orders are not issued in vain,

3. The defendant/respondent opposed the application by way of a replying affidavit of 21 paragraphs sworn on 23rd July 2025 by Dr Francis K. Sang, the County Secretary and Head of the County Public Service Board of the respondent and prayed that the same be dismissed with costs. It was averred in part, that to the knowledge of the respondent, service was of the order was done late on a secretary and not on the alleged contemnors or officers personally. That the respondent's agents, employees or servants have

never voluntarily or deliberately violated this Court's order given on 17th of October, 2024 or in any way undermined the authority of this Court as purported by the Applicants herein. That none of the Respondent's officials entered any of the suit parcels of land herein nor acted in a manner suggesting any encroachment or eviction of the Applicants herein from the suit parcels of land.

4. Moreover, the respondent averred that the alleged actions relate to the National Government. That the respondent is not an agent, servant or employee of the National Government which is also not an agent, servant or employees of the Respondent. That thus, the action of either is independent.
5. By a further affidavit sworn on 25th August 2025 by the 1st applicant together with the order and certificate of service marked as 'SK 2a and 2b' respectively, it is averred in part and in particular, at paragraph 6 that the respondent handed over the site to the National Government as per annexed Facebook post by the Governor (SKS 3a) and if the application is allowed, no prejudice would occasion on either party herein. That in the interest of justice to

protect the substratum of the suit property pending the outcome of the suit, the application be allowed.

6. Learned counsel for the applicants filed the submissions dated 3rd November 2025, referring to among others, the orders sought in the application and the grounds of the application as well as the issues for determination namely at least, four elements including clarity and unambiguity of the order, knowledge of the order and deliberate breach of the same which must be satisfied for a party to succeed in an application for contempt of court as set out in the case of **Samuel M. N. Mweru & others-vs-National Land Commission & 2 others (2020) eKLR**. Counsel submitted in part, that the orders of 17th October 2024 are in plain clear language with no ambiguity all. That the respondent had knowledge of the said orders since they were duly served as demonstrated by the return of service sworn on 23rd October 2024 being annexure 'SKS-2' of the affidavit in support of the application and the further affidavit and relied on inter alia, the case of **Shimmers Plaza Ltd-vs-National Bank of Kenya Limited (2015) eKLR**, to reinforce the submissions.

7. Additionally, counsel submitted that despite being served with the said orders, the respondent acted with impunity by handing over the site to the contractor for purposes of construction of the affordable projects. That the suit parcels of land were fenced as part of the construction site as shown in the photographs marked as 'SKS 5a-5b' and destroyed the existing road reserves and fences hence, denied the applicants access to the suit parcels of land. That therefore, the respondent deliberately disobeyed the court orders and pursuant to **section 29 of the Environment and Land Court Act 2015 (2011) alongside the cases, inter alia, Shimmers Plaza Limited (supra) and Suleiman Murunga-vs-Nilestar Holding Ltd & others (2019) eKLR**, the application is merited.

8. In the submissions dated 3rd December 2025 by Litigation counsel office of the County Attorney for the respondent, reference is made to application and the orders sought therein. Counsel delineated issues for determination including whether the terms of the order were clear and unambiguous and whether the contemnors had knowledge

or proper notice of the order. It was submitted that service of the order was done upon a secretary on 23rd October 2024 at 11.31 am being less than a day to the events of 24th October 2024. That there was no personal service of the order as the proceedings are quasi criminal in nature. That in order to convey knowledge of the existence of the orders, there is no penal notice at the foot of the order, That the current scenario is distinct from that of **Simmers Plaza Ltd case (supra)** where counsel for the party appeared and participated in the proceedings. In the instant case, the respondent did not participate in the proceeding that led to the orders allegedly disobeyed by the respondent.

9. Relying on section 5 of the Judicature Act Chapter 8 Laws of Kenya on the Rules on contempt of court as noted by the Court of Appeal in *Jacinta Njeru Kaitha vs David k. Kanyiri* {2015} KECA 647, the respondent submitted that the applicants have not demonstrated the alleged eviction or encroachment attributable to the persons sought to be cited for contempt. That the applicants did not display any order or decree for their eviction by the respondent. That

the applicants admitted that the National Government handed over the site to the contractor on 24th April 2023 at an event held at NEMA for the construction of Chesumei Affordable Housing Units. That to infer the respondent's knowledge of the order would be catastrophic on the contemnors or cited officers herein. That the application has not met the criteria for contempt of court and urged this court to dismiss it with costs to the respondent.

10. I have duly considered the entire application, the replying affidavit, the further affidavit and the rival submissions inclusive of the authoritative pronouncements cited therein. Thus, the duty of this court at this stage is to determine whether the application has attained the criteria for contempt of court and the orders to issue for the ends of justice.

11. It is noteworthy that this court's authority over contempt of court is rooted in **section 5 (1) of the Judicature Act (Cap 8 Laws of Kenya) as read with section 29 of the Environment and Land Court Act 2015 (2011)**. The quasi criminal nature of contempt of court was enunciated in the landmark English Court of

Appeal decision in the case of **Hadiknson vs Hadkinson {1952} P. 285; {1952} 2 All ER 567** that the contempt of court is a rare but powerful remedy where it must be established that the respondent had knowledge of the contents of the order of court and deliberately disobeyed the same.

12. The application relates to this Honourable court's orders made on 17th October 2024 and issued on 22nd of the same month thus;

a) 'That having found that there is no material placed before Court to challenge the certificate of titles issued to the Applicants, and having exhibited certificate to leases in respect of their portions of the suit properties, I find that the application have established prima facie case and the application before Court is merited.

b) That, a temporary injunction be and is hereby issued restraining the Defendant/Respondent, its agents, servants, employees and assigns whatsoever from encroaching and/or evicting the Plaintiffs/Applicants from KAPSABET

*MUNICIPALITY/390, KAPSABET MUNICIPALITY/391,
KAPSABET MUNICIPALITY/403, KAPSABET
MUNICIPALITY/405, KAPSABET MUNICIPALITY/441
and KAPSABET MUNICIPALITY/416.'*

c) That costs of the application shall be in the cause.'

13. The orders are in plain English language in consonant with Article 7 (2) of the Constitution of Kenya 2010 and section 23 of the Environment and Land Court Act 2015 (2011). Mweru case (supra)

14. Nonetheless, there is no penal notice prominently displayed or present on the front of the court order served on the alleged contemnor to ensure that the person is fully aware of the consequences of disobedience of them as contempt is treated as a quasi-criminal matter. Lack of personal service of the court orders and the penal notice which are mandatory renders the application premature or fatal.

15. In the case of Edward Njuguna Kangethe-vs-Joel Kiema Mutinda & another (2014) KLR, Havelock J held;

'.....In Highlands Plant Ltd -vs-Alice Wairimu Mwangi (2005) eKLR and Monica Waithera Munyua-

vs-Joshua Sorora & 3 others (2005) eKLR, the court held that personal service of the court order and penal notice is mandatory. In both instances, the applications for committal to civil jail were dismissed for failing to comply and adhere to the provisions of section 5 of the Judicature Act, as read together with Order 39 Rule 2 of the Civil Procedure Rules. These provisions are unequivocal and mandatory, and any applicant who wishes to bring contempt proceedings must adhere and comply with such set down procedure.'

16. Further, the alleged acts of relate to the national Government as averred at paragraph 7 of the respondent's replying affidavit. The **Fourth schedule** to the Constitution of Kenya 2010 is pretty clear on the distribution of functions between the National Government and the County Governments thus, the replying affidavit strikes a blow at the application.

17. The observation in **Mweru case** (supra) is that in an application such as the present one, a party has to satisfy four elements namely;

a) That the terms of the order (or injunction or undertaking) are clear and unambiguous and are binding on the Defendant.

b) That the Defendant has **knowledge of or proper notice** of the terms of the order

c) The Defendant has **acted in breach of the order**.

d) The Defendant's **conduct is deliberate**.

18. This court is very conscious of the character of contempt of court as stated in **Re Bramble Vale Ltd (1970) 1 CH 128 at 137 and Woburn Estate Ltd-vs-Margaret Bashforth (2016) eKLR**. So, an order made by a court of competent jurisdiction has to be obeyed.

19. Similarly, in the case of **Hadkinson (supra)**, it was held that;

'.....it is the plain and unqualified obligation of every person against, or in respect of whom, an order is made by a court of competent jurisdiction, to obey it unless and until that order is discharged.....'

20. It is therefore, notable that Contempt of court includes deliberate breach of clear, unambiguous lawful

orders by the respondent who had knowledge or properly notified of the existence of the orders. However, in the present application, the orders did not contain a penal notice on the face of it and not properly served on the respondent being County Government as prescribed under **Order 5 Rule 9 of the Civil Procedure Rules 2010** to convey the respondent's knowledge or notice of the same. That the alleged breach was by the National Government which is independent of the respondent. Therefore, the application has not satisfied all the requisite elements for contempt of court.

21. Accordingly, the instant application is devoid of merit and the same is hereby dismissed with costs in the cause.

22. It is so ordered.

DATED and DELIVERED at KAPSABET This 17th day of MARCH 2026.

G M A ONGONDO

JUDGE

In the presence of;

Ms E.Koech learned counsel for the applicants

Ms Chebet Keter learned counsel for the respondent

Walter, court assistant