

fully paid for the suit property, hence the justification to interfere with the status quo. The applicant urges the court to hold the respondent liable for contempt of court.

2. In support, of the application Lilian Atieno has sworn an affidavit on **6/11/2025** stating that though the order issued on **15/10/2025** was duly served, the respondent on **29/10/2025** made entry into the land, together with his workmates, tempered with and removed the existing boundary beacons and proceeded to fence off the property using barbed wire and wooden poles, thereby altering the condition of the land contrary to the order of maintenance of status quo.
3. The applicant has attached copies of photographs and the OB report to Waitaluk Police Station as annexures marked **LA-(2)** and **(3)**. The applicant terms the said acts as gross, willful, and deliberate contempt of lawful orders of this court, contrary to **Section 5** of the Judicature Act, **Section 29** of the Environment and Land Court Act, and **Articles 159** and **162 2(b)** of the Constitution.
4. The application is opposed through a replying affidavit of Jackson Ekim Omaid, sworn on **14/1/2026**. He admits that his wife was duly served on his behalf,

with the court order dated **23/12/2025**, as he was not present at the time. The respondent deposes that upon service with the order, he was informed of its contents and his advocate advised him of its meaning, hence sought to comply with it in good faith and without delay.

- 5.** The respondent says that in compliance with the said order, he has ensured that all structures that had been erected therein were removed to give the applicant possession of the suit land.
- 6.** The respondent undertakes to give quiet possession of the suit property to the applicant for a period of one year as directed by the court. The respondent terms the application as overtaken by events, as the applicant is currently in quiet possession of the suit property pursuant to his full compliance with the court orders.
- 7.** When the parties came for an interpartes hearing on **22/1/2026**, the alleged contemnor gave a sworn testimony on top of his replying affidavit. He confirmed that the applicant had bought some land from him. The respondent denied service with the initial order. Further, he explained the reasons for the fencing to ward off some squatters from his land.

- 8.** In cross-examination, the respondent admitted that he went to the suit property alongside a surveyor to erect some boundary poles, following a letter from the Land Surveyor and Land Registrar. The respondent confirmed that he was in the process of processing title deeds for the purchasers of the suit property, among them the applicant.
- 9.** Learned counsel Mr. Otieno submitted that, though contempt of court had been committed by the respondent, confirmation of purging it was not before the court, and or evidence that the respondent was willing to continue complying with the court order.
- 10.** Learned counsel submitted that the alleged surveyor's and land registrar's reports or letters were not before the court as attachments to the replying affidavit or a statement of defence.
- 11.** Learned counsel, Mr. Onyango, for the respondent, submitted that the photographs attached to the supporting affidavit do not show the respondent being on the suit property or infringing the court order. Learned counsel submitted that there was confusion on the land since there were some squatters who were also interfering with the suit property.
- 12.** Learned counsel submitted that the alleged contempt has been purged by restoring the fence and removing

the offensive materials. Learned counsel submitted that, given the full compliance with the order, the court should only issue a warning to his client that any recurrence of the same will be met with the full force of the law. Learned counsel asked that his client be pardoned with no payment of costs.

13. In ***Kioko & others -vs- Muli and others Civil Appeal 528 of 2019 (2026)KECA 693(KLR)(25 March 2026) Judgment***, the court said the current statutory framework on contempt is **Section 5** of the **Judicature Act** and **Section 63 (c)** of the Civil Procedure Act. The court held that obedience to court orders is not optional and disobedience thereof has repercussions, for it undermines the rule of law; its power to punish is inherent and is essential for maintaining the authority and dignity of the judicial process.

14. The ingredients of contempt of court were set out in ***Wekesa & Others -vs- Munialo [2025] KECA 679 KLR***. The terms of the order must be clear and unambiguous, the respondent must have proper knowledge or notice of the terms of the order, and the respondent must act in breach of the order. See ***Mutitika -vs- Baharini Farm Ltd [1085] KLR 229***

and **Shimmers Plaza Limited -vs- National Bank of Kenya Limited [2015] KECA 945 (KLR).**

15. In **Githinga & Others -vs- Kiru Tea Factory Co. Ltd (2019) (2023) KESC 41 (Judgment),** the court held that in contempt proceedings, the liberty of the subject is at stake. Further, the court held that the courts possess inherent powers to enforce compliance with lawful orders through sanctions imposed through contempt of court. The court observed that in enforcing compliance with lawful court orders, procedures adopted by the court must be fair, reasonable, and be such that a full opportunity is given to an alleged contemnor to defend himself or herself. The court cited **Republic - vs- Ahmed Abdul Mohamed & Another [2018] eKLR,** that contemnors demean the integrity and authority of courts, but also deride the rule of law, which acts must not be allowed to happen.

16. In this application, the respondent has admitted service of the order and the alleged contempt in the replying affidavit sworn **4/1/2026**. The de says that the failure to comply was not deliberate or willful.

17. He denies receipt of the order dated **15/10/2025**. The applicant has not provided evidence of service of the order personally to the respondent before the

events of **29/10/2025**. The issue of contempt belittles and undermines the authority and powers of the court. That is why an applicant has to establish that the actual act of contempt took place in utter disregard of an existing order. See **Titus Musyoki Nzioka -vs- John Kimathi Maingi & Another [2013] eKLR**.

18. Court orders must be obeyed by all who have been served with the order. In **Katsuri Limited -vs- Kapurchand Depar Shah [2016] eKLR**, the court held that the terms of the order, knowledge of the terms, and failure to comply have to be established.

19. In **Hadkinson -vs- Hadkinson [1952] 2 ALL ER 567**, the court said that disobedience which continues to impede the cause of justice by making it more difficult for the court to ascertain the truth or to enforce its orders, may lead to the respondent being denied audience.

20. The respondent has admitted that as soon as he was made aware of the order and advised by his advocate on the purport of the same, he purged the contempt. In **A.B. & Another -vs- R.B. [2016] eKLR**, the court held that compliance with court orders is an issue of judicial concern for a society that seeks to base itself on the rule of law, which is a fundamental virtue.

- 21.** Judicial authority of the state is vested in the courts, and gives everyone the right to have legal disputes resolved in court.
- 22.** Purging contempt includes apologising or paying a fine. The positive acts in compliance with the court order are what the respondent has indicated in his affidavit in reply. The applicant did not file a supplementary affidavit to deny that there is now full compliance with the order.
- 23.** The upshot is that I find the respondent has purged the contempt. He is henceforth warned to comply with the order until the suit is heard and determined.
- 24.** The application dated **6/11/2025** is marked as spent with costs to the applicant.
- 25.** Orders accordingly.

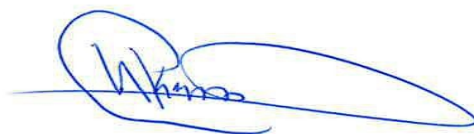
Ruling dated, signed, and delivered via Microsoft Teams/Open Court at Kitale on this 15th day of April 2026.

In the presence of:

Court Assistant - Dennis

Mr. Otieno for the plaintiff present

Cherono for Onyango for the defendant present



**HON. C.K. NZILI
JUDGE, ELC KITALE.**