

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ELDORET
ELC APPEAL No. E055 OF 2024

STEPHEN CHERONO Alias
SAEED SAEED CHERONO

APPELLANT/APPLICANT

VERSUS

DANIEL LADAMA
RESPONDENT

RUTO

RULING:

1. The application before court is dated 16th April, 2025 wherein the Appellant/Applicant seeks the following orders:-
 - (a) Spent
 - (b) THAT the respondent be cited for contempt of court for disobedience of the court orders issued on 25th December 2024.
 - (c) THAT the Respondent be committed for Civil Jail for a period of 6 months.
 - (d) THAT the Respondent be condemned to pay costs of this application.
2. The application is based on grounds on the face of it and on the Appellant/Applicant's Supporting Affidavit of even date. The Appellant states that on 25th December, 2024, this court issued an order of stay of execution of the judgment delivered on 29th November, 2023 in Eldoret CM ELC No. E078 of 2023. The Appellant claims that the Respondent's Counsel was served with the said order on 31st December, 2024.
3. The Appellant deponed that despite service, the Respondent has ploughed the land ready for planting and has put construction materials on site ready to commence construction.

The Appellant states that he is troubled by the Respondent's failure to obey the court's orders. The Appellant urged that it is in the interest of justice that this court find the Respondent in contempt of the orders of 25th December, 2024. He claimed that he stands to suffer irreparable loss and damage if the Respondent continues to disregard the orders of this court.

4. The Respondent filed a Replying Affidavit sworn on 10th February, 2026 opposing the application. The Respondent denied being in contempt of any court order. He explained that the judgment was actually delivered on 29th November, 2024 and not 28th November, 2024. He stated that the judgment did not impose any positive obligation on him or order anything capable of execution as would prejudice the Appellant, and that he had not sought to execute.
5. The Respondent denied that his Advocates had been served with the order as the said office was closed from 20th December, 2024 to 20th January, 2025 being the festive season. That he was also not served with the said order, either personally or by post, and neither was it pinned on the suit premises. The Respondent further deponed that the order for stay is ambiguous, uncertain and unclear as to what he was restrained from doing. Further, that the order issued was to last until the hearing of the Application and not the main appeal, thus the extraction thereof was forgery of court orders.
6. The Respondent averred that the building materials were deposited by one Joash Bitok Anderson, the Appellant's agent, who had filed Eldoret ELC Case No. E030 of 2025(OS) after judgment herein, claiming to have acquired the land through adverse possession. That the said Joash Bitok had sworn an

Affidavit in the said suit claiming he and his family are in possession of the land, had cultivated and utilised it, and that the Respondent had not entered the land. The Respondent claimed that one John Ole Kasitet, also a servant of the Appellant, had applied for letters of Administration over the land claiming that the Respondent was dead, which matter is under police investigation.

7. The Respondent averred that there is nothing to show that he had deliberately disobeyed the court order. He clarified that when he obtained constructive knowledge of the court order, he left the land to remain fallow save for the aforementioned disturbances by the Appellant and his agents. With regards to the standard of proof in contempt, the Respondents deponed that it has not been shown that he is the one who deposited the building materials or tilled the land as he lives in Narok County and had done nothing against the court order.
8. Reacting to the Respondent's Replying Affidavit, the Appellant filed a Supplementary Affidavit. The Appellant deponed that the judgment in CM ELC No. E078 of 2023 was delivered on 28th November, 2024 and the date of 29th November, 2024 indicated in the judgment is an error, as that is the day the judgment was published. The Appellant averred that the status quo at the time of issuance of the interim orders is that the land was unoccupied by either party.
9. The Appellant deponed that the Respondent's actions after the order of stay was issued amounts to contempt. As to service of the order, the Appellant claimed that the firm of Chebii was served by email, and thereafter refused to effect physical copies claiming they already had the emailed copy. The

Appellant deponed that the interim orders were always extended and thus remain valid. He confirmed that he had seen the Respondent depositing the building materials and accused the Respondent of blaming individuals who were not parties to this suit.

10. The Appellant averred he was a stranger to the said Joash Bitok Anderson, and that no one, other than the Respondent, had interfered with the suit property. He asserted that the Respondent's advocate had been duly served and he had thus been aware of the existence of the court order, yet he had gone on to prepare the land for planting. He urged that he had provided evidence to confirm that the Respondent is in contempt of the order issued by the court, and asked that the application be allowed.

Submissions:

11. The court directed that the present application be canvassed by way of written submissions. The parties complied, with the Appellant filing his submissions dated 22nd March, 2026. The Respondent filed his submissions which are dated 12th February, 2026.

Analysis and Determination:

12. I have considered the application before me alongside the Affidavits filed in support thereto and the Replying Affidavit. The court has also taken time to read through the rival submissions filed on behalf of the parties. The only issues for determination by this court is whether the Defendant is in contempt of the order of court made on 25th December, 2024.

(a) **Whether the Defendants are in contempt of the order of court granted on 25th December, 2024;**

13. The duty to obey court orders imposed on all persons is necessary in the maintenance of the rule of law, good order and the due administration of justice. The disobedience of court orders is what constitutes contempt of Court, which is defined in the **Black's Law Dictionary, 11th Edition at Page 397** as:-

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

14. Courts possess the inherent power to enforce compliance with their lawful orders through sanctions imposed through contempt of court. The instructive provision granting courts power to punish for contempt of Court orders is section 5(1) of the Judicature Act. In addition, the Environment and Land Court at Section 29 also empowers this court to punish for contempt and it provides that:-

29. Offences

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.

15. The reason why courts are clothed with power to punish for contempt is explained in the case of **Samuel M. N. Mweru &**

Others vs National Land Commission & 2 others (2020)

eKLR, where Mativo J. (as he was then was) stated that:-

“31. A court without contempt power is not a court. The contempt power (both in its civil and criminal form) is so innate in the concept of jurisdictional authority that a court that could not secure compliance with its own judgments and orders is a contradiction in terms, an “oxymoron.” Contempt power is something regarded as intrinsic to the notion of court; even obvious, I would say. In the common lawyer’s eye, the power of contempt “is inherent in courts, and automatically exists by its very nature.”

16. Similarly, in the case of **Teachers Service Commission vs Kenya National Union of Teachers & 2 Others (2013)**

eKLR, Ndolo J (as she then was) observed that:-

“The reasons why courts will punish for contempt of court then is to safeguard the rule of law which is fundamental in the administration of Justice. It has nothing to do with the integrity of the judiciary or the court or even the personal ego of the presiding Judge. Neither is it about placating the applicant who moves the court by taking out contempt proceedings. It is about preserving and safeguard the rule of law...”

17. The elements that must be proved in an application for civil contempt were laid out in **Katsuri Limited vs Kapurchand Depar Shah (2016) KEHC 6447 (KLR)** as follows:-

- (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 order;
- (c) the defendant has acted in breach of the terms of the order; and
- (d) the defendant's conduct was deliberate.

18. The first element is that the terms of the order must be clear and unambiguous and must be binding on the Respondent. As the Respondent in this Appeal as well as the present Application, there is no doubt that the interim order of stay was binding on him.
19. As to the clarity of the order, the Respondent claims that the order was ambiguous as it was not clear on what exactly he was restrained from doing. The Respondent further claims that the order sought to be stayed was non-existent owing to the fact that there was no judgment delivered on 28th November, 2024.
20. The order that is subject of this present application was made on 25th December, 2024. On the said date, the court allowed the application dated 18th December, 2024 in terms of prayer (b) which was to the effect that:-

“THAT there be stay of execution of the ex-parte judgment delivered on 28th November 2024 by Hon. P. Areri in ELDORET CMCC ELC No. E078 OF 2023, DANIEL LADAMA RUTO VS STEPHEN CHERONO ALIAS SAEED SAEED CHERONO together with all consequential orders pending hearing of this application inter-partes.”

21. From a reading of the above order, it was clear that the Respondent was stopped from executing the judgment delivered in the lower court. Indeed, only one judgment was delivered in the lower court in ***Eldoret CMCC ELC No. E078 OF 2023, Daniel Ladama Ruto vs Stephen Cherono Alias Saeed Saeed Cherono***. This is the judgment of 29th November, 2024.
22. This far, despite the clear error in the dates of delivery of judgment, there is no ambiguity as to what judgment was the subject of the Application dated 18th December, 2024. The Respondent himself has deponed that judgment was actually delivered on 29th November, 2024 thus he cannot claim that there was any ambiguity as to the judgment sought to be stayed by the Court's order.
23. The Respondent also urged that the judgment did not impose any positive obligation on him capable of being executed. However, a stay of execution of the trial court's judgement in this case would mean that the injunction issued that was intended to restrain the Appellant from accessing the suit property is not operational until the Application herein was heard. In addition, the payment of the general damages by the Appellant herein would also be suspended until the application was heard and determined.
24. The second requirement is that the Respondent must have had knowledge of, or proper notice of the terms of the order. It is important that the court satisfies itself beyond any shadow of a doubt that the person alleged to be in contempt, committed the act complained of with full knowledge of the existence of the order of the court forbidding it.

25. The Appellant states that the order was extracted and duly served on the Respondent's Advocate. The Appellant has attached to his supporting affidavit herein annexure SC-2, which is an Affidavit of Service sworn by Rhitter Luseria Advocate. According to the said affidavit of service, the order was initially served by email on the Respondent's advocate. Thereafter, physical copies were tendered on 6th January, 2025 on the Respondent's advocate, but his clerk declined to receive claiming they had already printed the email copies.
26. The Respondent denies the alleged service, claiming that his advocate's office was closed on the said date. However, there is no denial that the email was received once the said office resumed operations in January. Moreover, if indeed the advocate was not served and the affidavit of service is full of falsehoods, there was no request by either the Respondent or his Advocate to cross-examine Advocate Rhitter Luseria on the contents of her Affidavit. The Respondent was therefore duly informed of the order through his advocate on record in the matter.
27. The Respondent further claims that he was not personally served with the order, yet in contempt proceedings, personal service is a necessity. On this, I would cite the decision of **Shimmers Plaza Limited vs National Bank of Kenya Limited (2015) KECA 945 (KLR)**, in which the Court of Appeal had this to say with regard to the issue of service of the order:-
- “We now revisit the issue of service. Was there service of the order said to have been disobeyed on the respondent? There is no dispute that no formal order was extracted and personally served on the***

respondent and an affidavit of service filed to that effect.

In that respect, this case can be distinguished from Justus Kariuki Mate & Another vs Hon. Martin Wambora (Wambora case) supra cited by learned counsel for the applicant.

On the other hand however, this Court has slowly and gradually moved from the position that service of the order along with the penal notice must be personally served on a person before contempt can be proved. This is in line with the dispensations covered under 81.8 (1) (supra).

Kenya's growing jurisprudence right from the High court has reiterated that knowledge of a court order suffices to prove service and dispense with personal service for the purposes of contempt proceedings. For instance, Lenaola J in the case of Basil Criticos vs Attorney General and 8 Others (2012) eKLR pronounced himself as follows:-

“...the law has changed and as it stands today knowledge supersedes personal service.....where a party clearly acts and shows that he had knowledge of a Court Order; the strict requirement that personal service must be proved is rendered unnecessary”

This position has been affirmed by this Court in several other cases including the Wambora case (supra)...

It is important however that the court satisfies itself beyond any shadow of a doubt that the person alleged

to be in contempt committed the act complained of with full knowledge or notice of the existence of the order of the Court forbidding it. The threshold is quite high as it involves possible deprivation of a person's liberty."

28. The Court of Appeal further held in ***Shimmers Plaza Limited vs National Bank of Kenya (ibid)***, that knowledge of the order by the advocate of the alleged contemnor would suffice for contempt proceeding. Therefore, his advocate having been served, the Respondent is presumed to have had sufficient knowledge of the order.
29. In any event, from the court record, after issuance of the interim order of stay, it was extended severally, and by the time this present application was filed on 24th April, 2025 the interim order of stay was still in existence and valid. These extensions of the order were done in the presence of the Respondent's advocate and he never raised any issue that they were unaware of the order that was being extended or what its effect was.
30. I note also that the Respondent has argued that the order was issued pending hearing of the application, and that its extraction verges on forgery of a court order. The fact that the order was issued in the interim pending hearing of the application does not mean that it was any less than a final order. There can be no claim of forgery of the court order since it was indeed issued by this court and thus did require obedience. Therefore, for as long as the order remained in force, the Respondent was duty bound to obey it. See the case of ***Econet wireless Kenya Limited vs Minister for***

Information & Communication of Kenya & Another, where the court stated as follows;

“It is essential for the maintenance of the rule of law and order that the authority and the 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 of 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.”

31. The third limb is that it must be shown that the Respondent has acted in breach of the terms of the order. The act complained of in the instant application is that the Respondent has ploughed the suit property despite the existence of the court orders of stay. The Appellant further claims that the Respondent has deposited building materials on the land ready to start construction.
32. In response to this allegation, the Respondent contends that he did not plough the suit land or deposit the construction materials, but that the said actions were done by the Appellant’s named agents. He claims that upon knowledge of the order, he left the land fallow, and that he cannot be held

responsible for the acts complained of as he is away in Narok County.

33. To determine whether the Respondent has acted contrary to the court's order, it is necessary to consider what the effect of the stay order was. Notably, the judgment declared that the Appellant's interference with the Respondent's ownership of the suit property is illegal and amounts to trespass. The court then issued a permanent injunction restraining the Appellant from trespassing into, taking possession of, interfering with the Respondent's ownership or in any way dealing with the suit land. The court also condemned the Appellant to pay KShs. 200,000/- general damages for trespass.
34. The temporary order of stay, in effect, only suspended the operation of the permanent injunction and the payment of the award of damages for trespass issued against the Appellant herein. From the judgment of 29th November, 2024, the trial court did not direct any eviction of the Appellant or even cancellation of any title as it had satisfied itself that the Respondent already held title. Strictly speaking therefore, the Respondent cannot be said to be in contempt of the order of 25th December, 2024. As a result of the foregoing, the Respondent's conduct cannot be said to have been deliberate, wilful and intentional disobedience of a court order.
35. That aside, in **Beijing Industrial Designing & Researching Institute vs Lagoon Development Limited (2015) KECA 365 (KLR)**, the Court of Appeal was clear on the standard of proof in civil contempt, and held that:-

“Contempt of court proceedings are quasi-criminal (see IN RE BRAMBLEVALE LTD (1970) CH 128). That

explains the reason why in this jurisdiction the standard of proof in contempt of court case has been held to be “higher than proof on the balance of probabilities, almost but not exactly, beyond reasonable doubt.” (See MUTITIKA V. BAHARINI FARM (1982-88) 1 KAR, 863. Clearly, criminal or quasi-criminal proceedings ought not to be terminated at the exclusive instance or discretion of the party alleged to be a perpetrator of a criminal or quasi-criminal act.”

36. In this instance, the Appellant claims that he personally saw the Appellant deposit the building materials on the suit property. However, despite the fact that the said conduct was not expressly prohibited, there is no concrete proof of the Appellant’s claim. As a result, the Appellant has failed to prove his claims to the required standard. The Application must therefore fail.

37. With regards to costs of the Application, I note that the Appeal herein is yet to be heard on its merits. Consequently, I will direct that the costs of this application be costs in the main appeal.

Orders:-

38. Flowing from the above, this court hereby makes the following findings:-

- (a) The Application dated 16th April, 2025 is without merit and the same is hereby dismissed.

(b) The costs of this application shall be costs in the main appeal.

39. Orders accordingly.

DATED, SIGNED and DELIVERED in ELDORET this 23RD day of APRIL, 2026.

**HON. C. K. YANO
JUDGE**

Ruling delivered in the presence of: -

Ms. Luseria for Appellant.

Dr. Chebii for Respondent.

Court Assistant - Laban

ORIGINAL