

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT
KITALE

ELC PETITION NO. E008 OF 2025

CHESHARI CHEPYAGAN-----1ST
PETITIONER

TUMBO STANLEY-----
2ND PETITIONER

CHUMBE TIMOTHY-----3RD
PETITIONER

WASAMA NATHAN-----4TH
PETITIONER

NGAINA EDWIN-----5TH
PETITIONER

MABANI MESHACK-----6TH
PETITIONER

CHEPTAI JOHN-----7TH
PETITIONER

CHEPRUM JACKSON-----8TH
PETITIONER

WASAMA KIPKONY-----9TH
PETITIONER

KENNEDY BERA TEGEI-----
10TH PETITIONER

SIMON MUNYOLE-----
11TH PETITIONER

SILAS OMETURU-----
12TH PETITIONER

GAMALIEL OKANYA SILALI-----
13TH PETITIONER

VERSUS

C.S. INTERIOR & GOVERNMENT

**COORDINATION-----1ST
RESPONDENT
INSPECTOR GENERAL OF POLICE-----2ND
RESPONDENT
KENYA FOREST SERVICE-----3RD
RESPONDENT
COUNTY COMMISSIONER-----4TH
RESPONDENT
HON. ATTORNEY GENERAL
(WESTERN REGION)-----5TH
RESPONDENT**

AND

**NATIONAL LAND COMMISSION-----1ST
INTERESTED PARTY
NATIONAL ENVIRONMENT MANAGEMENT
AUTHORITY-----2ND
INTERESTED PARTY
COUNTY GOVERNMENT OF
BUNGOMA-----3RD
INTERESTED PARTY**

**CONTEMPT APPLIATION WITHIN THE SAME
PETITION NO. E008 OF 2025**

BETWEEN

**RICHARD KENNEDY
MASINDE-----APPLICANT**

AND

**JOSEPH B'WONJIRI-----1ST
RESPONDENT
FRED CHESEBE KAPONDI-----2ND
RESPONDENT
THOMAS SANKEI-----3RD
RESPONDENT**

**KIPSANG SIGEI-----4TH
RESPONDENT**
**EUNICE YETO-----5TH
RESPONDENT**
**LAW SOCIETY OF KENYA-----1ST
INTERESTED PARTY**
**KENYA NATIONAL COMMISSION OF
HUMAN RIGHTS-----2ND
INTERESTED PARTY**

RULING

1. By an application dated **21/11/2025**, the court is asked to find the 1st - 5th respondents guilty of contempt of court orders issued on **9/10/2025**, which had been served upon them. The court is further asked to order the respondents to purge the contempt by compensating the National Environment Management Authority (NEMA) expert and his team of nine Associates with **Kshs. 5,000,000/=**, or any other amount out of the losses to material property, interruption, and expenses occasioned, and lastly for the court to provide adequate, effective, and continuous security to the NEMA expert team to resume and complete the Environmental and Social Impact Assessment (ESIA) exercise.

2. The court is also asked to restrain the respondents from interfering with the remaining part of the ESIA exercise.
3. The application is based on the reasons on its face and in the supporting affidavits of Richard Kennedy Masinde, Chesari Chepyagan, Nathan Wasama Masai, Stanley Tumbo, and Moses Ngaina Chonge on **21/11/2025**.
4. Contempt of court is defined under *Black's Law Dictionary, 9th Edition*, as conduct that defies the authority or dignity of a court. In **Republic -vs- Abolfathi Mohammed & Another [2019] eKLR**, the court said that when there is an affront to judicial authority, the court is at liberty and empowered to mete out penalty for such conduct, in a proper cause, to vindicate its authority, uphold its conduct among advocates, not to safeguard its processes for assuring compliance, to sustain the rule of law and the administration of justice. **Section 29** of the Environment and Land Court Act provides that any person who refuses, fails, or neglects to obey an order or direction of the court commits an offence and shall be liable on conviction for a fine not exceeding **Kshs. 20,000,000/=**, or an imprisonment term of **2 years**, or both.

5. Court orders are not made in vain and must at all times be respected. They cannot be trashed with impunity. They are not optional as held in **Shimmers Plaza Limited -vs- National Bank Of Kenya Limited [2013] KEHC 363 (KLR)**. Since contempt proceedings are quasi-criminal in nature, due to the severity of the consequences, the standards of proof are higher than in a balance of probabilities in civil cases, as held in **Mutitika -vs- Baharini Farm Ltd [1985] KLR 229 at 234**.
6. To succeed in such an application, an applicant must prove that:
- (a) **The terms of the order were clear, unambiguous, and binding on the respondent.**
 - (b) **Knowledge of the terms by the respondent.**
 - (c) **Failure by the respondent to comply with the terms of the order.**
 - (d) **Deliberate conduct by the respondent.**
7. The manner of handling contempt of court proceedings was discussed in **Stephen Maina Githiga & 5 others -vs- Kiru Tea Factory Company Ltd [2020] eKLR**. The rights of the parties must be upheld at all times, even during contempt proceedings. All parties, including those affected by a court order, have an obligation to

obey it even if they believe the order to be irregular or void. See **Wildlife Lodges Limited -vs- County Council of Narok & Another [2005] 2 EA 344.**

8. Obeying court orders is what differentiates civilized societies from those applying the law of the jungle, at times referred to as a banana republic. Courts, as held in **Awadh vs Marumbu [2004] KLR 458,** will not condone deliberate disobedience of their orders nor waiver from their responsibility to deal decisively with the approved contemnors.
9. The law relating to contempt of court was extensively discussed recently, in **Kioko & 6 Others -vs- Muli & Others Civil Appeal No. 528 of 2019 [2026] KECA 693 [KLR] (25th March 2026) (Judgment).**
10. The trial court had issued an order restraining the appellants from conducting an extraordinary and annual general meeting of the 1st respondent, pending an interpartes hearing on an interlocutory application that was scheduled for **25/6/2014**. The appellants, however, proceeded to hold what they termed a special general meeting on **22/5/2014**, leading to an application for contempt of court, which was allowed.
11. On appeal, the court reiterated that the current statutory base of contempt of court is **Section 5** of

the Judicature Act and **Section 63(e)** of the Civil Procedure Act. The court held that obedience to court orders is not optional and that disobedience of a court order has repercussions, since it undermines the rule of law. The court said that the power to punish for contempt of court is inherent in the court and is essential in maintaining the authority and dignity of the judicial process.

- 12.** The court cited **Wekesa & 2 Others -vs- Munialo [2025] KECA 679 [KLR]** and **Samuel M.N. Mweru & Others -vs- National Land Commission & Others [2020] eKLR**, where the ingredients of establishing contempt of court were discussed.
- 13.** The court emphasised that the order said to have been disobeyed must be clear, unequivocal, unambiguous, and specific in detail, as held in **Mukuha -vs- Gashwe & Others [2023] KECA 1482 [KLR]**. The court held that a party cannot evade compliance with a court order by clear drafting or semantic ingenuity.
- 14.** As to knowledge of the court orders, the court cited **Shimmers Plaza Ltd -vs- National Bank of Kenya (supra)** and **Wekesa & Others -vs- Munialo (supra)**, that awareness of court orders through parties' lawyers, supercedes formalities

such as personal service. The court said that the appellants should not have disregarded the order to defeat its purpose, and if the order was unclear to them, then they should have moved to court to seek clarification on the scope of the order, as opposed to ingeniously circumventing it, as held in **Hadkinson -vs- Hadkinson [1953] ALLER 567.**

15. As to whether the disobedience is willful and intentional, the court cited **Mukuha -vs- Gashwe & Others** (*supra*), that the refusal to obey should be both willful and *mala fides*, and that unreasonable non-compliance, provided it is *bona fide*, does not constitute contempt. The court said that willfulness may be inferred from deliberate conduct consistent with a subsisting order. The court said that the standard of proof in a contempt case is one commonly referred to as intermediate, that is to say, lying in between the standards of proof in civil cases and criminal cases.

16. In **Teachers Service Commission -vs- National Union of Teachers [2013] eKLR**, the court cited **Mutitika -vs- Baharini Farm Ltd** (*supra*), for the principle that a person who knowingly breaches an injunction or stay order obstructs justice and is liable for contempt. Punishment for contempt of

court is not about protecting judicial ego, but safeguarding the supremacy of the law.

17. In this application, the proposed contemnors are Joseph B'Wonjiri, Advocate for Hon. Fred Kapondi MP, Hon. Fred C. Kapondi MP, Thomas Sankei Kipsang, and Hon. Eunice Yego. None of them was a party to this petition, the application dated **20/8/2025**, and the order issued on **9/10/2025**. There is no evidence that the alleged contemnors were, in the 1st instance, served with the court order or the pleadings leading to the court order.

18. Secondly, there is no evidence that the alleged contemnors were aware of the contents of the order. Other than allowing for the provision of adequate security during the scheduled public participation exercise relating to the removal and or cutting down of the fig tree situated at Toroso primary school, Mt. Elgon, and Endebess in Trans Nzoia, as requested by the petitioners through the supporting affidavit of Chesari Chepyagan, the court did not deal with, and is not expected until the petition is heard and determined, to give any other orders in relation to the manner of carrying out the exercise of public participation.

19. The order issued by this court was granted to the petitioners at their request. The beneficiaries of the

order, who are the petitioners, are not the ones who have filed the application for contempt of court. The applicant remains a 4th interested party in this matter and not a petitioner. He has now assumed a capacity of acting as a petitioner to advance their claim, yet the law is that an interested party must come to terms with the reality that in any suit or petition, issues for determination remain those of the principal parties.

20. The advocate on record for the petitioners is silent on how the other deponents to the application for contempt of court, namely the 1st, 2nd, and 3rd petitioners, have now assumed another character through the 4th interested party, to relinquish their powers in this suit and not bring the application under their names, if at all the respondents to the application have ignored the court order.

21. The deponents to the supporting affidavit have made spurious allegations against the proposed contemnors which border on criminality, yet no single complaint letter, petition, or OB report have been attached to show that the applicant made official reports to the relevant security organs for investigations, including to the National Police Service, Law Society of Kenya, if at all the 1st proposed contemnor and his client, the Hon. Fred

Kapondi, incited members of the public or disrupted a peaceful public participation exercise.

22. Looking at the material before the court, I find that the application is not only incompetently filed, but also lacking merit. It is dismissed with no order as to costs.

23. Orders accordingly.

Ruling dated, signed, and delivered via **Microsoft Teams/Open Court** at **Kitale** on this **22nd** day of **April 2026**.

In the presence of:

Court Assistant - Dennis

Mr. Nyamu for the 1st, 2nd, and 5th alleged contemnor

Hon. Kapondi present

Onjiri present

Eunice Yego present

Applicant Richard Masinde absent

Odero for petitioners present

Miss Mulomi for the 4th DCC present

National Land Commission absent



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