



REPUBLIC OF KENYA



**KENYA LAW**  
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**Kipkenda & Kiprono t/a Kipkenda & Co Advocates v Wanjiru  
& Nyambane t/a Ikua & Partners Advocates LLP (Civil Case  
E237 of 2024) [2026] KEHC 5495 (KLR) (Civ) (30 April 2026) (Ruling)**

Neutral citation: [2026] KEHC 5495 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CIVIL**

**CIVIL CASE E237 OF 2024**

**JN MULWA, J**

**APRIL 30, 2026**

**IN THE MATTER OF KIPKENDA & CO. ADVOCATES**

**AND**

**IN THE MATTER OF THE ADVOCATES ACT**

**AND**

**IN THE MATTER OF ENFORCEMENT OF A PROFESSIONAL UNDERTAKING**

**BETWEEN**

**STEPHEN KIPKENDA & DOROTHY KIPRONO T/A KIPKENDA & CO  
ADVOCATES ..... PLAINTIFF**

**AND**

**JACKSON IKUA WANJIRU & SHARON BARONGO NYAMBANE T/A IKUA &  
PARTNERS ADVOCATES LLP ..... DEFENDANT**

**RULING**

1. For determination is the Motion dated 01/10/2025 filed by Stephen Kipkenda & Dorothy Kiprono t/a Kipkenda & Co. Advocates (hereafter the Plaintiff/Applicant) as against Jackson Ikua Wanjiru & Sharon Barongo Nyambane T/A Ikua & Partners Advocates LLP pursuant to Section 1A, 1B, 3A & 63(c) of the *Civil Procedure Act* (CPA), Section 5(1) of the *Judicature Act* and Order 40 Rule 3 of the Civil Procedure Rules (CPR) seeking inter alia -:
  - a. Spent.



- b. That the Honorable Court do find Jackson Ikua Wanjiru & Sharon Barongo Nyambane t/a Ikua & Partners Advocates LLP herein in contempt of the Court orders made by this Honorable Court on 03/07/2025.
  - c. That upon the finding of contempt the Honorable Court be pleased to commit the said Jackson Ikua Wanjiru & Sharon Barongo Nyambane T/A Ikua & Partners Advocates LLP to civil jail for at least six (6) months.
  - d. That in the alternative to the above, the Honorable Court do issue penal consequences against Jackson Ikua Wanjiru & Sharon Barongo Nyambane T/A Ikua & Partners Advocates LLP.
  - e. That the costs of the application be provided for.
  - f. That the Court do issue any further orders it may deem fit and just.
2. The motion is premised on grounds amplified in the supporting affidavit sworn by Dorothy Kiprono on even date, who cites being an advocate and partner at the Plaintiff/Applicant firm well conversant with the matter hence competent to depose the affidavit.
  3. Jackson Ikua Wanjiru & Sharon Barongo Nyambane t/a Ikua & Partners Advocates LLP (hereafter the Defendant/Respondent) oppose the motion by way of replying affidavit deposed by Jackson Ikua Wanjiru, dated 15/10/2025
  4. Directions were taken on disposal of the Plaintiff/Applicant's motion by way of written submissions. The parties duly complied. That said, the Court has considered the rival material and submissions on record, to wit, it postulates that the issues for determination concern: -
    - a. Whether the Court ought to find the Defendant/Respondent in contempt of orders made on 03/07/2025?
    - b. Whether the Court ought to commit the Defendant/Respondent to civil jail for a period of at least six (6) months?
    - c. Who ought to bear the costs of instant motion?

**Whether the Court ought to find the Defendant/Respondent in contempt of court orders made on 03/07/2025 and whether it ought to commit the Defendant/Respondent to civil jail for a period of at least six (6) months?**

5. The Court proposes to concomitantly address the above questions. In presenting the instant application, the Plaintiff/Applicant relies on among others Section 3A of the CPA which specifically reserves “the inherent power of the court “to make such orders as may be necessary for ends of justice or to prevent abuse of the process of the court”, to wit, this Court’s inherent powers was judiciously addressed by the Court of Appeal in *Rose Njoki Kingau & another v Shaba Trustees Limited & another* [2010] KECA 87 (KLR) and requires no restatement.
6. Alongside the above, the Applicant equally cites Section 5 of the *Judicature Act*, in seeking to have this Court cite the Defendant/Respondent in contempt of its order issued on 03/07/2025. That said, arising from the declaration of unconstitutionality of the *Contempt of Court Act* vide the decision of this Court in *Kenya Human Rights Commission v Attorney General & another* [2018] eKLR,



applications for contempt are brought pursuant to Section 5 of the [Judicature Act](#), which 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.”

7. Black’s Law Dictionary (Ninth Edition), defines contempt of Court as “conduct that defies the authority or dignity of a court.” The Court of Appeal in *Christine Wangari Gachege v Elizabeth Wanjiru Evans & 11 others* [2014] KECA 840 (KLR) held that in punishing contempt, the Court exercises ordinary criminal jurisdiction. In *Stewart Robertson v Her Majesty’s Advocate*, 2007 HCAC 63 it was stated that:

“Contempt of Court is constituted by conduct that denotes willful defiance of or disrespect towards the Court or that willfully challenges or affronts the authority of the Court or the supremacy of the law, whether in civil or criminal proceedings.”

8. The Supreme Court of Kenya in *Ahmad Abolfathi Mohammed Case* explained that the reason why Courts punish for contempt, is that contemnors demean the integrity and authority of Courts but also deride the rule of law, which must not be countenanced.

9. The Court went on to explain the rationale for the high standard of proof of contempt as follows;

“(28) ...We are also conscious of the standard of proof in contempt matters. The standard of proof in cases of contempt of Court is well established. In the case of *Mutitika v. Baharini Farm Limited* [1985] KLR 229, 234 the Court of Appeal held that:

“In our view, the standard of proof in contempt proceedings must be higher than proof on the 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, in criminal cases. It is not safe to extend it to an offence which can be said to be quasi-criminal in nature.”

(29) The rationale for this standard is that if cited for contempt, and the prayer sought is for committal to jail, the liberty of the contemnor will be affected. As such, the standard of proof is higher than the standard in civil cases. This power, to commit a person to jail, must be exercised with utmost care, and exercised only as a last resort. It is of utmost importance, therefore, for the respondents to establish that the alleged contemnor’s conduct was deliberate, in the sense that he or she willfully acted in a manner that flouted the Court Order.



(30) The question that begs an answer, thus, is: did the applicant willfully disobey this Court's Orders?"

10. The two (2) related ingredients of willful disobedience and knowledge of the order are critical towards success of contempt proceeding. In the past, it was held by superior Courts that for an applicant to succeed in contempt proceedings, he must prove personal service of the subject order and the attendant penal notice upon the alleged contemnor. See the Court of Appeal decision in *Nyamodi Ochieng Nyamogo & Another v Kenya Posts & Telecommunications Corporation* [1994] KECA 114 (KLR).
11. However, in recent years, superior Courts have stated that where an Applicant is able to demonstrate awareness by such alleged contemnor of the subject orders and not necessarily personal service of the order upon the contemnor, such awareness is sufficient. See *Kenya Tea Growers Association v Francis Atwoli & 5 others* [2012] KEHC 2747 (KLR).
12. Notably, the Courts emphasize the high degree of proof required and reiterating the exhortations in *Mutitika* (supra), that;-

“A contempt of court is an offence of a criminal character. A man may be sent to prison. It must be proved satisfactorily.... It must be higher than proof 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 in nature.

However, the guilt has to be proved with such strictness of proof as is consistent with the gravity of the charge... Recourse ought not to be had to process of contempt of court in aid of a civil remedy where there is any other method of doing justice. The jurisdiction of committing for contempt being practically arbitrary and unlimited, should be most jealously and carefully watched and exercised with the greatest reluctance and the greatest anxiety on the part of the judge to see whether there is no other mode which is not open to the objection of arbitrariness and which can be brought to bear upon the subject... applying the test that the standard of proof should be consistent with the gravity of the alleged contempt... it is competent for the court where contempt is alleged to or has been committed, and or an application to commit made, to take the lenient course of granting an injunction instead of making an order for committal or sequestration, whether the offender is a party to the proceedings or not.”

13. Before proceedings any further, it would be pertinent to set out in brief the history leading hereto.  
The Plaintiff/Applicant filed suit by way of Originating Summons seeking judgment by way of an order as against the Defendant/Respondent to honor its professional undertaking of 04/10/2023. The suit was heard and determined in favour of the Plaintiff/Applicant on 03/05/2025 wherein this Court ordered the Defendant/Respondent to honour its professional undertaking dated 04/10/2023 within sixty (60) days of the said judgment. It is on the backdrop of the latter order that the Plaintiff/Applicant has since moved the Court vide the instant motion to cite the Defendant/Respondent for contempt.
14. The Plaintiff/Applicant by the affidavit in support of the motion depose that despite this Court's decision on 03/07/2025 and service of the said decision upon the Defendant/Respondent on 09/07/2025, the latter has disobeyed this Court's order and continues to hold the Land Title in dispute. It is further deposed that despite the latter declaring its intention to challenge this Court's decision of 03/07/2025, the said order emanating therefrom has not been discharged, varied, stayed



nor set aside. Therefore, it is in the interest of justice that the orders sought herein be granted towards the effective administration of justice.

15. The Defendant/Respondent concedes to being aware of the judgment of this Court rendered on 03/07/2025 and the resulting order emanating therefrom. However, the Defendant/Respondent assailed the motion by stating that it has since preferred an appeal as against the said decision of this Court by way of filing a Notice of Appeal, to the Court of Appeal, which has since been served on the Plaintiff/Applicant. The Defendant/Respondent goes on to depose that in pursuit of the appeal, it has filed before the Court of Appeal an application seeking stay of execution of this Court's decision rendered on 03/07/2025, which motion is actively pending before the said Court.
16. That the instant motion is calculated at overreach, embarrass the appellate proceedings and or pressurize the Defendant/Respondent into submission. The deponent concludes by stating that the contempt allegations are unfounded, made in bad faith, to wit, the Defendant/Respondent's lawful exercise of the right of the appeal cannot be construed to be a deliberate attempt at disobedience of this Court's orders. The Court was urged to find the motion as being an abuse of the Court process and thus ought to be dismissed with costs.
17. As to whether there was willful disobedience of this Court decision, the purport of this Court's decision and or directions issued on 03/07/2025 had been set out earlier in this ruling and thus requires no restatement. In essence, this Court's decision required the Defendant/Respondent to ensure and or process the conversion of the title, to a new parcel number, in respect of LR. No. 209/17158 (IR No. 112982) and completion of the transfer of the latter to one Brigid Chepkemboi Konga pursuant to a sale agreement. The totality of the above was to occur on or before 01/09/2025.
18. As is, there has been no evidence of compliance by the Defendant/Respondent save for the blanket assertion that there is pending before the Court of Appeal, its application seeking stay of execution pending hearing and determination of its appeal. That said, as rightly argued by the Plaintiff/Applicant, presently this Court's decision rendered on 03/07/2025 has yet to be discharged, varied, stayed nor set aside therefore I find no credence in the Defendant/Respondent's argument that the present motion, in the face of its pending application, would not only preempt the appellate proceedings but risk rendering it futile.
19. Here, the Plaintiff/Applicant being the successful litigant, is entitled to enjoy the fruits of successful litigation. And where a decree-holder is prevented from such realization the latter is at liberty to move the Court appropriately to crystallize the Court's decree. Hence the instant proceedings. Further, this Court's directions on 03/07/2025 were express and unambiguous. The Defendant/Applicant does not dispute the purport of the order and by extension acquiesces to knowledge of the same.
20. In any event, if there was doubt as to the latter, the Plaintiff/Applicant has exhibited vide "Annexure SRM-1" that the Defendant/Respondent was duly informed and aware of this Court's directions as at 10/07/2025. The totality of the aforesaid, transcends the fact that the Plaintiff/Applicant having successfully established the twin ingredients earlier set out in this ruling, I need not belabor further on the same.
21. Redundantly, without any order discharging, varying, staying or setting aside this Court's directions issued on 03/07/2025 alongside the Defendant/Respondent's continued non-compliance, in my considered view, constitutes deliberate and willful disobedience of this Court directions. On the latter,



I can do no better than echo the words of Ojwang, J (as he then was) in *B vs. Attorney General* [2004] 1 KLR 431 that:

“The Court does not, and ought not to be seen to, make orders in vain; otherwise, the Court would be exposed to ridicule, and no agency of the Constitutional order would then be left in place to serve as a guarantee for legality, and for the rights of all people.”

22. Meanwhile, the Supreme Court cautioned in *Ahmad Abolfathi’s case* (*supra*) while citing the South African case of *Burchell vs Burchell* that-;

“Failure to enforce court orders effectively has the potential to undermine confidence in recourse to law as an instrument to resolve civil disputes and may thus impact negatively on the rule of law.”

23. Consequently, the Court is persuaded that the motion dated 01/10/2025 is merited. It is allowed by way of a finding *Jackson Ikua Wanjiru & Sharon Barongo Nyambane t/a Ikua & Partners Advocates LLP* in contempt of this Court’s orders and or directions issued on 03/07/2021.

24. As to the question of committal to civil jail, in light of the finding of contempt, the Court in *Braeburn Limited vs. Gachoka and Another* [2007] 2 EA 67 intricately addressed itself by stating as follows -;

“Rules 18 and 32 of Order 21 of the Civil Procedure Rules do meet and in a very special way in relation to a debtor surpass the standard laid down in the *Constitution* for the deprivation of a person’s liberty. This is so because the deprivation of a person’s liberty whether for contempt of court (under section 72(1)(b) of the *Constitution*), or for default to pay a money decree, is in the nature of criminal proceedings and for a person to suffer the loss of liberty, it must be in the words of that hackneyed phrase, be proved beyond reasonable doubt, that he has the means to pay but that he has refused and/or neglected to pay...To Conform with that high standard proof, the discretion conferred upon the court to either issue a warrant of arrest and instead issue a notice calling upon the judgment debtor to appear before the court on a day to be specified in the notice and show cause why they should not be committed to civil jail, must be construed, strictly, that is to say mandatorily, that upon an application by a decree holder for execution of a money decree by way of arrest and committal to prison the court to which an application is made for issue of a warrant of arrest shall in the instance first issue a notice to the judgment debtor to appear in court and show cause why he should not firstly be arrested, and secondly, committed to prison. That is the first step towards the execution of a decree for payment of money...The second step is the examination o...If however the debtor appears to the notice to show cause, which is mandatory, in terms of the said Order 21, rule 35, or pursuant to his arrest and appearance before he can be committed to prison, it is the duty of the decree holder (who has sought the arrest and committal of the judgement debtor to prison) to satisfy the court that the judgement debtor is not suffering from poverty or any other sufficient cause and is able to pay the decretal sum that: (i) the judgement debtor, with the object or effect of obstructing or delaying the execution of the decree: (a) is likely to abscond or leave the local limits of jurisdiction of the Court; (b) has, after the institution of the suit, in which the decree was passed, dishonestly transferred, concealed or removed any party of his property or committed any other act of bad faith in relation to his property; or (ii) the judgement-debtor has or has had since the date of the decree , the means to pay the amount of the decree, or some substantial part thereof and refuses or neglects or has refused or neglected, to pay the same, but in calculating such means there shall be left out of account any property which is exempted from attachment,



in execution of the decree; or (iii) that the decree is for a sum for which the judgement-debtor was bound in a fiduciary capacity to account (trustees or persons holding moneys in a professional capacity or in trust)...In essence, the judgement debtor should be examined in the manner envisaged in Order 21, rule 36 as to the debtor's total wealth and indebtedness to determine the judgement debtor's total ability or inability to pay and whether such inability to pay is from poverty or other sufficient cause. It is only after the court is satisfied of these matters, after subjecting the judgement-debtor to due process in the manner construed, the requirements of mandatory notice, before a warrant of arrest may be issued for his arrest and compulsion to attend or appear before a court can decree for payment of a money debt be executed upon a judgement debtor by way of arrest and committal to prison... The execution of a judgement decree by way of arrest and committal to prison is extreme in nature. It deprives a citizen of his liberty, to do so, the highest standards, that is to say, the constitutional safeguards as to due process by way of notice of intended execution of the decree by way of arrest and committal be given to the judgement debtor as a first step and as a second step, a due inquiry and satisfaction to the court, by the decree holder, as to judgement debtor's ability to pay and refusal and/or neglect to pay, and therefore the necessity to punish him for contempt of a court order by depriving him of his liberty...It is clear under both section 38 of the *Civil Procedure Act* and Order 21, rule 35(1) that no judgement-debtor will, on account of his inability from poverty or other sufficient reason, be arrested and committed to prison...The section is not vindictive and the Court, in the exercise of its discretion would not order the imprisonment of a defaulting trustee unless it was likely to be productive of payment..."

25. Thus, in light of the above, notice shall forthwith issue to both Jackson Ikua Wanjiru and Sharon Barongo Nyambane t/a Ikua & Partners Advocates LLP to appear in person to show cause why either of them and or both of them should not be punished for the contempt by way of committal to civil jail for a period of at least six (6) months

**Who ought to bear the costs of instant motion?**

26. Applying my mind to the provisions of Section 27 of the *Civil Procedure Act* (CPA), I award costs of the motion to the Applicant/Plaintiff.

Orders Accordingly.

**DELIVERED DATED AND SIGNED AT NAIROBI THIS 30<sup>TH</sup> DAY OF APRIL 2026.**

**JANET MULWA.**

**JUDGE**

