

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KILGORIS
ELC 4 OF 2023

CHARLES CHRISTOPHER MAKORI ONGINA RWOMA.....
.....PLAINTIFF

VERSUS

PETER NTURURU.....1ST

RESPONDENT

HON. ATTORNEY GENERAL (For and on behalf of THE LAND REGISTRAR KILGORIS LANDS REGISTRY AND CHIEF LANDS REGISTRAR)2ND RESPONDENT

RULING

1. The Notice of Motion dated 28th October 2025 subject of this Ruling, seeks orders that; -
 - (i) The Honourable court finds that the 1st Respondent is in contempt of court by willful disobeying the lawful court order issued on 7th of February 2022 by a competent court.
 - (ii) The Honourable court be pleased to impose a fine or commit the 1st Respondent to civil jail for a period of 6 months or both for disobeying the lawful court order issued on 7th day of February 2022.
 - (iii) That costs of this application be provided for by the 1st Respondent.
2. The application is premised on grounds *inter alia*, that; -
 - (i) The court issued a temporary injunction or order restraining the 1st Respondent from grazing, damaging, cultivating, alienating or dispensing off the piece of land known as Transmara/Nkararo/158 pending hearing and determination of this suit.

- (ii) That on the 19th day of May 2025 the 1st Respondent took advantage of the demise of Charles Rwoma Ongina the Plaintiff who died on the 14th day of March 2025, willfully disobeyed the said order issued on 7th February 2022.
 - (iii) That the 1st Respondent has been respecting or obeying the said lawful orders, but after the burial of the plaintiff he averred that he is free to utilize the suit land as without any interruption.
3. The application is supported by the affidavit of the Applicant Christopher Makori Rwoma, the Administrator of the Estate of Charles Rwoma Ongina, who reiterates the grounds in support of the application and annexed photographs of tractors ploughing the suit land on 19th of May 2025; and a copy of the order dated 2nd February 2022 under the hand of Hon. M.I.G Moranga (SPM) who issued the orders.
4. The 2nd Defendant/Respondent choose not to participate in the application as the same was filed against the 1st Respondent, who filed a Replying affidavit and deposes *inter alia* that; -
- (i) He has never been served with a court order issued on 7th of March 2022, and in any event the order was issued by mistake since the Respondent lived and farmed on Transmara/Nkararo/158 having been issued with a title deed in respect of the said land; and the order issued by the court was issued per incuriam.
 - (ii) That he depends on the suit property for his daily upkeep.
 - (iii) The photograph exhibited indicated that the parcel was ploughed by none of the parcel is ploughed while the photograph of sugarcane is not in relation to the parcel.
 - (iv) That the order was issued in favour of a person who has since died and is thus misleading, frivolous and vexatious.
 - (v) That 1st Respondent annexed copy of a search in relation to the suit property, photographs of cattle.

5. The application was canvassed by way of written submissions, same are summarized as follows; -

Applicant's Submissions

6. The Applicant submits the ground for contempt to be *inter alia* that there was a willful disobedience of the court order, hence deliberate or intentional failure to comply with the judgment or decree, and/or breach of an undertaking meaning willful breach of a promise made to court.
7. The Applicant submits that the 1st Respondent was represented by his Advocates hence was aware of the terms of the court order and cites the case of Shinners Plaza Limited Vs. National Bank of Kenya Limited (2015) eKLR.
8. The 1st Respondent is deemed to have been aware of the orders since he sought, through his then counsel Ms. Ogwe and Associates Advocates, to set aside the orders dated 2nd of February 2022 vide two applications one dated 21st of March 2022 and 14th of March 2022. Hence the 1st Respondent cannot feign ignorance of the court orders which he willfully disobeyed.
9. The Applicant submits that the 21st Respondent willfully disobeyed the court order by ploughing sugarcane on the disputed property, which he sought to be allowed to harvest vide the two previous applications alluded to.
10. The Appellant thus urged the court to allow the application.

Respondents' Submissions

11. The Respondents submits that the standard of proof in contempt proceedings is higher than in normal civil cases, that no survey or report was filed, and hence the same was not proven.

12. The 1st Respondent submits that the ingredients order to be proven in order for a contempt application to succeed are;
- (i) The terms of the order/or injunction or undertaking, were clear and unambiguous and were binding on the defendants.
 - (ii) The defendant has knowledge of or proper notice.
 - (iii) The defendant's conduct was deliberate.
13. The 1st Respondent further submits that the above ingredients have not been satisfied and the standard of proof not met, the 1st Respondent thus urges the court to disallow the application.

Issues for Determination

14. The issues for determination arising from this application is
- (i) Whether the application has met the threshold for contempt of court application, and
 - (ii) Whether the application is merited?
 - (iii) What orders ought to issue?
 - (iv) Who bears the costs of the application?

Analysis and Determination

15. It is not disputed by the 1st Respondent that he is carrying on activities on the suit property, it is equally not disputed that before transfer of the suit to this court for hearing and determination, the Chief Magistrates Court Kilgoris issued orders prohibiting the 1st Respondent from undertaking certain activities on the suit property. The very same activities, grazing and cultivation which were prohibited by the said injunction, are the ones that the 1st Respondent has conceded undertaking on the suit property.
16. Mr. Ochwangi Learned counsel for the 1st Respondent has rightly stated the ingredients of court which ought to be proved for an application for contempt of court to succeed. These ingredients were stated in Samuel M.N. Mweru and Others Vs. National Land

Commission and 2 Others (2020) KEHC 9233 KLR where at paragraph 40, Mativo J (as he then was) observed as follows; -

“It is an established principle of law that in order to succeed in civil contempt proceedings, the applicant has to prove

(i) The terms of the order (iii) knowledge of these terms by the Respondent, (iii) failure by the Respondent to comply with the terms of the order. Upon proof of these requirements the presence of willfulness and bad faith on the part of the Respondent would normally be inferred, but the Respondent could rebut this inference by contrary proof on a balance of probabilities. Perhaps the most comprehensive of the elements of civil contempt was stated by the learned authors of the book of contempt in modern new zealand who succinctly stated “There are essentially four elements that must be proved to make the case for civil contempt, the applicant must proof to the requ4ed standard (in civil contempt cases which is higher than civil cases) that; -

(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.”

17. I have observed above that the terms of the injunction issued were unambiguous, as they prohibited undertaking of certain activities on the suit property, I have equally observed that 1st defendant has conceded undertaking the prohibited activities, he has annexed

photographs of cows, grazing in suit property, but has denied planting sugarcane on the suit property.

18. The question arising, is whether the two other elements have been proven was the knowledge and/or notice of the order by the 1st Respondent, and to wit, were the actions deliberate?
19. The Applicant has annexed a copy of the order which the 1st Respondent is said to have breached. In respect of the said order the court notes that the order was given on 2nd of February 2022 and issued on 7th of March 2022. The said order was issued in the absence of both parties, and order No. 2 required service of the same upon the 2nd Respondent within 7 days; from the date it was given.
20. The 1st Respondent has feigned knowledge of the said order at paragraph 3 of his Replying affidavit. It was incumbent upon the applicant to adduce evidence of service of the order by way of an affidavit of service, or knowledge of the order.
- 21.** The Applicant in his submissions alluded to two previous applications that the 1st Respondent had sought to set aside the said order. He however did not file a further affidavit to bring to the court's attention the said two applications. He attempted to introduce evidence by way of submissions, while its trite law that submissions cannot take the place of evidence, as was Daniel Toroitich Arap Moi Vs. Mwangi Stephen Mureithi and Another 2014 (eKLR) where the court stated *inter alia* ***"Submissions cannot take place of evidence. The 1st Respondent had failed to prove his claim by evidence. What appeared in submissions could not come to his aid. Such a course only militates against the law and we are unable to countenance it. submissions are generally parties, "Marketing language, each side endeavouring to convince that his case is a better one. Submissions we reiterate do not constitute evidence at all. Indeed, they are many cases decided without hearing submissions but based only on evidence presented..."***

22. It follows therefrom that the Applicant did not prove the element of knowledge of the order or notice of the order by the 1st Respondent and hence the action by the 1st Respondent cannot be said to have been deliberate.
23. In view of the fact that two elements were not proven, the court finds that the Applicant has not met the threshold and proven contempt of court by the 1st Respondent in light of the required standard of proof as was stated in Mutitika Vs. Baharini Farm Limited (1985) KLR 229, where the court held as follows; ***“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, criminal cases. It is not safe to extend it to an offence which can be said to be quasi criminal in nature...”***
24. Thus, in answer to issue No. 1 the application has not met the threshold of proof for civil contempt cases and it is therefore not merited, and it is hereby dismissed and costs shall be in the cause.
25. The court notes that the 1st Respondent has denied planting sugarcane and/or crops on the suit property, and hence directs in light of the existence of the court orders which the 1st Respondent is now deemed to have knowledge of, there shall be no more grazing on the suit land by the 1st Respondent and all the crops on the sugarcane shall be destroyed by the Applicant within 14 days from today and a destruction report filed in court.

Dated at Kilgoris this 28th day of April, 2026.

Hon. M.N Mwanyale
Judge

In the presence of

Mr. Nyauma h/b for Mr. Rana for 2nd and 3rd Defendant

Ms. Nyaata h/b for Mr. Ochwangi for 1st Defendant

Mr. Okemwa for Plaintiff/Applicant