



**Mandila & 2 others v Swali (Civil Appeal E020 of 2021)
[2026] KEHC 5902 (KLR) (30 April 2026) (Ruling)**

Neutral citation: [2026] KEHC 5902 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
CIVIL APPEAL E020 OF 2021
S MBUNGI, J
APRIL 30, 2026**

BETWEEN

ALFRED MANDILA 1ST APPELLANT

DAVID NAMBALE 2ND APPELLANT

PHILIP LUCHELI NDIWA 3RD APPELLANT

AND

MOSES SWALI RESPONDENT

RULING

1. The Court has already found and established that the Appellants are in contempt of court for disobedience of the orders issued on 20th November 2023, as confirmed in the ruling of 22nd October 2025.
2. The matter now for determination is limited to sentence, specifically whether the contemnors should be committed to civil jail, and on what terms.

Issue for Determination

3. The sole issue is:
 - a. Whether the contemnors should be committed to civil jail and, if so, the appropriate sentence and enforcement conditions.
4. Sentencing in contempt proceedings is not punitive in the ordinary criminal sense but is primarily:
 - i. Coercive, aimed at compelling obedience of court orders; and
 - ii. Protective, aimed at safeguarding the dignity, authority, and effectiveness of the court process.



5. This was affirmed in *Wildlife Lodges Ltd v County Council of Narok of Narok & Another*{2023}KEELC, the Court of Appeal held:

“Court orders are binding and must be obeyed until set aside. Disobedience undermines the rule of law.”

6. Further in *Mutitika v Baharini Farm Ltd*{1985}eKLR, the Court of Appeal of Kenya held

“The standard of proof in contempt is higher than in civil cases but once established, the Court has power to punish and compel compliance.”

7. The Court has carefully considered the mitigation offered by the contemnors, namely:

- i. That they have expressed apology and remorse
- ii. That they have indicated a willingness to comply with court orders
- iii. That they attribute the default partly to previous advocates and execution processes

8. The Court notes that apology is a relevant mitigating factor in contempt proceedings, as contempt jurisdiction is primarily aimed at securing compliance rather than revenge.

9. However, the Court also emphasizes that the apology does not nullify or erase contempt already established; court orders are not optional or negotiable; and parties are bound to obey orders until set aside.

10. The Court is further guided by the general principle of obedience to court orders as expressed in *Hadkinson v Hadkinson*{1952}2 All ER 567(CA) The Court stated:

“It is the plain and unqualified obligation of every person against whom an order is made to obey it unless and until it is discharged.”

11. The Court also notes the argument that failure arose due to advocates and auctioneers. In *Tuskys Supermarket Limited v Laxman Karsanbhai Patel*,{2019}eKLR the High Court of Kenya held:

“A litigant cannot escape liability for contempt by blaming his advocate. The duty to obey court orders lies squarely on the party.”

12. This Court is mindful that committal to civil jail is a serious measure affecting personal liberty. However, it is a lawful remedy where contempt has been established, compliance is still outstanding and the authority of the Court must be vindicated.

Conclusion

13. The contemnors have shown remorse and apology. However there is still need to enforce compliance with court orders.

14. The Court therefore finds that a conditional custodial sentence is appropriate.

15. Accordingly, the Court makes the following orders:

- i. Each of the contemnors is hereby sentenced to three (3) months’ civil jail for contempt of court.
- ii. The said sentence is hereby suspended.



- iii. The suspension is strictly conditional upon full compliance with the court orders of 20th November 2023.
- iv. In the event of any continued non-compliance or further disobedience, the suspension shall automatically lapse and the contemnors shall be taken into custody to serve the full three (3) months' civil jail sentence without further application to this Court in addition to any further sanction the Court might impose for the continued disobedience.
- v. The Respondent shall be at liberty to move the Court for execution upon filing an affidavit of non-compliance.
- vi. Costs of the application shall be in the cause.
- vii. Right of Appeal 30 days.

DATED SIGNED, and DELIVERED in OPEN COURT at KAKAMEGA THIS 30th OF APRIL, 2026.

S.N. MBUNGI

JUDGE

In The Presence of;

CA: Angong'a/Velma

1st Appellant absent.

2nd Appellant present.

3rd Appellant present.

Miss Rauto for the Respondent present online.

Mr. Otsyeno for the Contemnors absent.

The Court Assistant to upload the ruling in the CTS forthwith.

