



Mutai & 3 others v Mutai & another (Sued as the Legal Representatives of the Estate of Lilian Jepkosgei Mutai) (Environmental and Land Originating Summons E003 of 2022) [2026] KEELC 2794 (KLR) (6 May 2026) (Ruling)

Neutral citation: [2026] KEELC 2794 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KITALE
ENVIRONMENTAL AND LAND ORIGINATING SUMMONS E003 OF 2022**

CK NZILI, J

MAY 6, 2026

BETWEEN

**IRENE CHEPCHUMBA MUTAI 1ST APPLICANT
LYDIA CHERUTO 2ND APPLICANT
GLADYS CHELAGAT 3RD APPLICANT
JULIET CHECHIRCHIR MUTAI 4TH APPLICANT**

AND

**WILSON BARMAO MUTAI 1ST RESPONDENT
JAMES KIGEN ROTICH 2ND RESPONDENT
SUED AS THE LEGAL REPRESENTATIVES OF THE ESTATE OF LILIAN
JEPKOSGEI MUTAI**

RULING

1. Contempt of court is what the application dated 12/3/2026 seeks the court to find as committed by Wilson Barmao Mutai. The grounds are found on the face of the application and in a supporting affidavit of Gladys Chelangat, sworn on the even date.
2. It is deposed that orders for maintenance of the status quo with no eviction of the applicants or destruction of their properties were issued on 27/4/2022 and served. Further, it is deposed that on 10/2/2026, this court confirmed the same, explained their implications on the respondent in open court, and the consequences of not honoring them.
3. The applicant deposes that in gross contravention of the said order, the respondent, on 10/3/2026, went to the suit premises and proceeded with the constructive destruction of her house and further



- threatened to demolish the other houses in the premises, should she fail to vacate the land, leading to an OB report at Naisambu Police Station, attached as annexure marked D.
4. The applicant deposes that the rule of law is under threat and, unless the court intervenes, they stand to suffer irreparably, as court orders seem to mean nothing, given that the conduct of the contemnor has characterized them as a mere piece of paper.
 5. The applicant deposes that it is in the interest of the administration of justice and the rule of law that the application be granted to restore the integrity of the judiciary, rule of law, and protect against the otherwise devastating violation of constitutional rights and freedoms.
 6. The applicants say that the respondent did this knowingly and willfully to disobey, disregard, thwart, and undermine the efforts and purposes of the said orders, or take reasonable steps to ensure that the said orders are obeyed.
 7. Contempt of court proceedings were discussed in *Stephen Githiga & Others v Kiru Tea Factory Co. Ltd* SCOK Appl. No. 12 of 2019. The court held that contempt proceedings are a matter of public interest, more so when allegations are made that one party, who is ignoring the orders, goes to the detriment of the other party. The court said that there should be fairness and compliance with due process, since such proceedings may lead to imprisonment of the contemnor, and that due process should be followed to ensure that the rights of the contemnor are also safeguarded.
 8. Contempt of court proceedings are governed by Section 5 of the *Judicature Act*, Section 63(e) of the *Civil Procedure Act*, Order 40 of the Civil Procedure Rules, Section 29 of the *Environment and Land Court Act*, and Section 36 of the High Court Organization and Administration Act, Cap 8(C).
 9. Contempt of court is not merely a mechanism for the enforcement of court orders. Courts have the power to commit a recalcitrant litigant, for contempt of court, when they fail or refuse to obey court orders, to protect the very effectiveness and legitimacy of the judgment.
 10. In *Samuel M.N. Mweru & Others v National Land Commission & Others* [2020] eKLR, the court said that when called upon to commit such a litigant, for contempt, it is not only dealing with the individual interest of the frustrated successful litigant, but also acting as the guardian of the public interest.
 11. Contempt of court, therefore, is constituted by conduct that denotes willful deviance of, or disrespect toward, the court or that willfully challenge or affront the authority of the court or the supremacy of the law, whether in civil or criminal proceedings, as held in *Philip Chepkwony v Benjamin Tarus & Others* [2019] eKLR.
 12. An applicant, therefore, must show that there was an intentional and willful violation of the orders of the court. See *Sheila Cassatt Issenberg & Another v Antony Machatha Kinyanjui* [2021] eKLR.
 13. Proof for contempt of court was discussed in *Mutitika v Baharini Farm Ltd* [1985] KECA 60 [KLR]. The standard of proof must be above an ordinary balance of probabilities but not beyond a reasonable doubt.
 14. In *Kioko & 6 Others v Muli & Others* Civil Appeal No. 528 of 2019 [2026] KECA 693 [KLR] (25th March 2026) (Judgment), the court cited *Wekesa & Others v Munialo* [2025] KECA 679 [KLR], which approved the ingredient of contempt of court as stated in *Samuel M.N. Mweru* (supra), which are;
 1. The terms of the order must be clear, unambiguous, and binding on the defendant.



2. The defendant had knowledge of or proper notice of the terms of the order.
3. The defendant acted in breach of the terms of the order.
15. An applicant must prove that the defendant's conduct was deliberate. The court held that courts look at the substance rather than the form of an act, and that a party cannot evade compliance with a court order by clever drafting or semantic ingenuity.
16. Regarding knowledge, the court cited *Shimmers Plaza Ltd v National Bank of Kenya Ltd* [2015] KECA 9457 [KLR], that knowledge of a court order suffices to prove service and dispense with personal service for contempt proceedings. The court cited *Wekesa & Others v Munialo* [2025] KECA 679 [KLR], that the contemnor's awareness of the court order over formalities such as personal service.
17. The court cited *Hadkinson v Hadkinson* [1952] ALLER 567, that every person against, or in respect of whom an order is made by a court of competent jurisdiction, has an obligation to obey it unless, and until that order is discharged, even if he believes it to be irregular, or even void. What amounts to willful and intentional disobedience was discussed in *Mukuha v Gashwe & Others* [2023] KECA 1412 [KLR].
18. The court said that whether the refusal to obey the order should be both willful and malicious, 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 with a subsisting order.
19. Applying the cited case law to the instant facts, there is no dispute that the order issued here was clear, precise, and incapable of misunderstanding. This is confirmed by the fact that, by a ruling delivered on 10/2/2026, this court reiterated its contents to the respondent in open court.
20. The court order stopped the respondent from evicting or destroying any properties belonging to the applicants in the suit premises. It is alleged that the respondent, on 10/3/2026, proceeded to the locus in quo and constructively evicted the applicant by demolishing her house and further threatening to demolish other houses therein, unless the applicant leaves the suit land.
21. Looking at the ingredients of contempt of court vis-à-vis the allegations made against the alleged contemnor, and the response made thereto, I am satisfied that the 1st defendant willfully and deliberately breached the existing court orders. Even if there was a notice from the Kenya Power and Lighting Company Ltd, still the contemnor should have moved the court for the way forward instead of taking the law into his own hands. He is hereby cited for contempt of court and has an opportunity to offer mitigation before a sentence is issued.
22. Orders accordingly.

RULING DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT KITALE ON THIS 6TH DAY OF MAY 2026.

In the presence of:

Court Assistant - Dennis

Parties present

Miss Munyua for Oduor for the applicants present

Mr. Bett for the respondents present

HON. C.K. NZILI

JUDGE, ELC KITALE.

