



**Nzomo v Mwandoto (Environment and Land Case E002 of 2021)
[2025] KEELC 5848 (KLR) (17 July 2025) (Ruling)**

Neutral citation: [2025] KEELC 5848 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KWALE
ENVIRONMENT AND LAND CASE E002 OF 2021**

LL NAIKUNI, J

JULY 17, 2025

BETWEEN

SAMUEL MWOLOLO NZOMO PLAINTIFF

AND

REUBEN BISHON MWANDOTO DEFENDANT

RULING

I. Introduction

1. What is before the Honourable Court for its determination is the Notice of Motion application dated 20th November 2024 by Samuel Mwololo Nzomo, the Plaintiff/Applicant herein. The application was filed pursuant to the provisions of Section 5 of the *Judicature Act*, Cap. 8, Sections 1A, 1B, 3A & 63 of the *Civil Procedure Act*, Cap. 21, Article 159 [2] of *the Constitution* of Kenya, 2010 and the *Contempt of Court Act* [sic] of the Laws of Kenya.
2. While opposing the said application, the Respondent filed a Replying Affidavit sworn by Steve Mokaya the Land Registrar and filed before court on 28th March 2025 and whose contents were further contested by a further affidavit sworn by the Applicant on 4th April 2025.

II. The Applicants case

3. The Applicant sought for the following orders: -
 - a. That the County Land Registrar Kwale do appear before the court to show cause why he cannot be committed to jail for failure to comply with the courts decree issued on 27th November 2023
 - b. That the County Land Registrar do show cause why he cannot register the parcel of land Kwale/Gandini/210 in the name of Samuel Mwololo Nzomo.



- c. That the County Land Registrar Kwale be punished for contempt of this courts decree of 27th November 2023.
 - d. That the costs of this application be provided for.
4. The application was premised on the grounds, testimonial facts and the averments made out under the 8 Paragraphed supporting affidavit sworn by the applicant Samuel Mwololo Nzomo together with five [5] annextures marked as “SMN - 1 to 5” annexed thereof. He averred as follows that:
- a. On 27th November 2023 this Honourable Court passed a decree and ordered as follows:-
 - i. That a declaration be and is hereby made that Samuel Mwololo Nzomo, the Plaintiff herein has become entitled by adverse possession to 13 acres of land known as Kwale/Gandini/210 registered in the name of Reuben Bishon Mwandoto
 - ii. That Samuel Mwololo Nzomo be registered as the sole proprietor of 13 acres of the said parcel land Kwale/Gandini/210 in place of Reuben Bishon Mwandoto
 - iii. That the costs of subdivision and registration if any shall be met by the Plaintiff
 - iv. That the Deputy Registrar of this court is mandated to so execute the necessary documents to effect the orders of the court in the absence of the Respondent
 - v. That there shall be no orders as to costs.
 - b. Upon payment of the requisite fees he presented the order for registration and issuing of new title to himself through his advocate on record.
 - c. That the County Land Registrar one Mr. Mokaya did not register the land but instead send the advocate for a search at the adjudication office which was duly done. That it is therefore in the interest of justice that the Land Registrar comes to court to show cause why he could not comply with the decree and orders of the court.

III. The Responses by the County Land Registrar’s

5. The County Land Registrar Steve Mokaya filed a Replying Affidavit to the application. It was sworn on 25th March 2025 and filed before court on 26th March 2025. He averred as follows that:-
- a. He was the current Land Registrar under the Ministry of Lands and Physical Planning and currently stationed in County of Kwale.
 - b. He had read the application dated 20th January 2022 together with the supporting affidavit and as per the records held at the Kwale Lands Registry parcel no Kwale/Gandini/210 was registered in the names of the Respondent.
 - c. The deponent acknowledged receiving an order issued on 27th November 2023 by Lady Justice Dena requiring the Registrar to register the Applicant as the owner of the land.
 - d. He was however unable to comply with the said order as the process included gazetting the same and stating the intention to cancel the current title in order to pave way for the registration of the Applicant as the new owner unless the court issued an order directing that the same be done without gazettelement.



- e. There was no order cancelling the existing title and hence the Registrar had to take caution to gazette the same before cancelling which would allow the Applicant to be registered as the owner.
- f. The Registrar requested to be granted 90 days to enable his office gazette the same at the Applicants cost and thereafter register the applicant as the owner of the suit parcel in accordance with the order dated 27th November 2023.

IV. The Further Affidavit by the Applicants.

6. In a brief rejoinder to the averments raised by the Land Registrar. The Applicant filed a further affidavit dated 4th April 2025. He averred that:-
 - a. The affidavit contained falsehoods intended to hoodwink the court. At paragraph 6 he stated that when he filed his application for adverse possession he did a search and though the title number Kwale/Gandini/210 had been issued registered in the name of the Respondent but the same had never been issued.
 - b. He reiterated that the Land Registrar ought to be punished for contempt and be ordered to comply with the order immediately.

V. Submissions

7. On 8th April 2025 while all the parties were present in Court, they were directed to have the Notice of Motion application dated 20th November 2024 be disposed of by way of written submissions. Unfortunately, by the time of penning down this ruling, only the Applicant had complied with the ruling. The Honourable Court proceeded to reserve a ruling date on 7th July 2025 on its own merit accordingly.

VI. The Written Submissions by the Submissions

8. The Plaintiff/Applicant through the Law firm of Messrs. B W Kenzi & Company Advocates filed their written submissions dated 28th May 2025. Mr. Kenzi Advocate commenced his submission by a brief history of the genesis of the application which is based on implementation of the court orders issued on 27th November 2023 in a judgement by Lady Justice Dena.
9. It was submitted by Counsel that the order was fully extracted and served upon the County Land Registrar Kwale. That the order upon presentation to the Registrar he sought for verification from the court and the same was duly verified by the court at the instance of the Registrar. The Applicant paid all the requisite Registration fees and presented the order for issuing of New Title. The Receipts and application are duly annexed to the application.
10. The Counsel submitted that the Land Registrar never complied with the order. Instead, the Land registrar send the Applicant for a search at the Adjudication office which was duly done. The Registrar in blatant Violation of the court order had upto date not issued the Applicant with the title to the land Kwale/Gandini/210 as directed by the court. It was against the above background that the Applicant was seeking the orders in the application.
11. The Counsel highlighted the following issues for determination;
 - a. Was the Registrar/Served and or aware of the court order.
 - b. Is the Registrar in Contempt of the court order, and should be punished for the same?



- c. Who bears the costs.
12. Was the registrar served and or aware of the order. The Learned Counsel referred to paragraph 4 of the Replying affidavit whereby the Registrar admitted having received the Court order. Further, that the Land Registrar himself did seek verification of the court order which was done via letter of 6th June 2024. The Registrar also sought for a search from Adjudication office which was done. Therefore, it was clear that the Land Registrar was aware and duly served with the Order.
 13. On issue of service, the Learned Counsel relied in the case of:- “Basil Criticos v A-G & Others [2012] KLR” the Court said knowledge superceded personal service. He argued that where a party acts showed that he had knowledge of a court order the strict requirement that personal service must be proved was rendered unnecessary. The court was further referred to the case of: “Shimers Plaza Limited v N.B.K [2015] eKLR” the court said that knowledge of a court order sufficed to prove service and dispensed with personal service for purposes of contempt of court.
 14. On whether the Registrar was bound to obey the court order. It was submitted that the Land Registrar in his reply stated he could not comply with the order because to him it was erroneous. However, according to the Counsel, there was no excuse to refuse to comply with a court order even if a party believed the court was wrong. That to allow a situation whereby the Registrar directed the court what to do was a direct affront to the rule of law and should not be allowed.
 15. The court was referred to the Black Law Dictionary at page 336 13 9th Edition which defined contempt of court as conduct that defies the authority or dignity of a court for it interferes with the administration of Justice and is punishable by a fine or imprisonment. Additionally, reference was made to the holding in the case:- “Sammy Nyamweya & others v Kenya Premier League Limited & others”. [2015] eKLR, the court observed that the power to punish for contempt of court has never been about protecting a Judge's feelings ego or dignity but to safeguard the rule of law and its supremacy.
 16. Further that it had nothing to do with the integrity of the judiciary on the court or even the personal ego of the Presiding Judge. It was not about placating the applicant who moved the court by taking out the contempt proceedings. It was about assuring a party who walked through the Justice door with a court order in his hands that the order would be obeyed by those to whom it was directed. Further the court observed that a court order requiring compliance was not a mere suggestion or an opinion or a point of view. It was a command that was issued after much thought and with circumstances. The court said that an order must be complied with and it is in the interest of every person that it remains the case otherwise to see it any other way is to open the door of chaos and anarchy. That additionally the court said that anyone dissatisfied with an order of a court has avenue to challenge it, otherwise defiance should not be an option. That in view of the above, the Registrar has no option -other than to obey the court order.
 17. On whether the Land Registrar was in contempt of court order and should be punished for it. The Learned Counsel contended that the Land Registrar, Mr. Steve Mokaya was in contempt of the court order dated 27th November 2023. That this court had powers under the provision of Section 29 of the Environment & Land Act, No. 19 of 2011 to punish for contempt and should do so. The Counsel further urged that the Land Registrar paid the costs of the application.



VII. Analysis and Determination

18. I have considered the Notice of Motion application dated 20th November 2024 herein, the reply, the written submissions, the authorities cited herein, the relevant provision of *the Constitution* of Kenya, 2010 and the Statutes.
19. To arrive at an informed, fair and reasonable decision, the Honourable Court has framed three [3] issues for its determination. These are: -
 - a. Whether the Notice of Motion application 20th November 2024 by the Applicant was merited.
 - b. Whether the parties are entitled to the reliefs sought.
 - c. Who bears the costs of the application?

ISSUE NO. A). Whether the Notice of Motion application 20th November 2024 by the Applicant was merited.

20. Under this sub–title, the Honourable Court will critically examine main substratum on whether there was breach of the Court order. If the answer will be in the affirmative, what will be the consequences as provided for by law thereof. To begin with, taking the seriousness of the issues herein, it is imperative for the Court to briefly extrapolate on the facts of the case. From the court record, after a full hearing of the suit herein, Lady J Justice A. Dena, then sitting at this on 27th November 2023 after delivery of a Judgement thereafter issued a Decree under the following terms:-
 - a. That a declaration be and is hereby made that Samuel Mwololo Nzomo, the Plaintiff herein has become entitled by adverse possession to 13 acres of land known as Kwale/Gandini/210 registered in the name of Reuben Bishon Mwandoto.
 - b. That Samuel Mwololo Nzomo be registered as the sole proprietor of acres of the said parcel of land Kwale/Gandini/210 in place of Reuben Bishon Mwandoto.
 - c. That the costs of subdivision and registration if any shall be met by the Plaintiff.
 - d. That the Deputy Registrar of this Court is mandated to so execute all the necessary documents to effect the orders of the court in the absence of the Respondent.
 - e. That there shall be no orders as to costs
21. Fundamentally, Court orders are not proposals, suggestions, cosmetic nor a formality. To sustain the dignity of the Court, the orders are to be obeyed at all costs. The only option available for any party who feels aggrieved by the order is to come back to court seeking for its review or varying or preferring an appeal. Consequently, courts do not condone deliberate disobedience of orders and will deal firmly with proved contemnors. Courts possess inherent power to enforce compliance with their lawful orders and impose sanctions through contempt of court. Hence, the issue herein is whether the Land Registrar was in disobedience of the afore stated Court or not which is the main pith and substance of this application by the Applicant herein. Legally speaking, the power for the rectification and cancellation of a title was provided for under the provision of Sections 79[2] and 80 of the *Land Registration Act*, No. 3 of 2012. Part VIII of the Act makes provisions for the rectification of title, which can be done by either the Registrar or by Court Order. Rectification by the Registrar under Section 79 which provided “inter alia”:-

- [1] The Registrar may rectify the register or any instrument presented for registration in the following cases—



- [a] In formal matters and in the case of errors, mistakes or omissions not materially affecting the interests of any proprietor;
 - [b] In any case and at any time with the consent of all affected parties; or
 - [c] If upon resurvey, a dimension or area shown in the register is found to be incorrect, in such case the Registrar shall first give notice in writing to all persons with an interest in the rectification of the parcel;
 - [d] For purposes of updating the register;
 - [e] For purposes of correcting the name, address or other particulars of the proprietor upon the written application by the proprietor in a prescribed form.
22. The foregoing provisions envision rectification that does not affect the rights/interest of registered property loosely translated, basic and apparent errors or mistakes. The rectification can only occur with the proprietor's consent unless:
- [a] The proprietor has by fraud or lack of proper care caused or substantially contributed to the error, mistake or omission; or
 - [b] It would for any other reason be unjust for the alteration not to be made.
23. On the other hand, rectification by Court Order occurs as pursuant to provided Section 80 of the same Act, which provides:-
- [1] Subject to subsection [2], the Court may order the rectification of the register by directing that any registration be cancelled or amended if it is satisfied that any registration was obtained, made or omitted by fraud or mistake.
 - [2] The register shall not be rectified to affect the title of a proprietor, unless the proprietor had knowledge of the omission, fraud or mistake in consequence of which the rectification is sought, or caused such omission, fraud or mistake or substantially contributed to it by any act, neglect or default.
24. Rectification by the Court of a title obtained by omission or mistake or fraud or by corrupt scheme, it is the Court that has that legal mandate in as far as the cancellation or amendments of title is concerned based on the circumstances of which are provided above. On the contrary, the Land Registrar does not therefore have the power to cancel title of a registered proprietor, unless under the express Order of the Court.
25. For this to take place, the registered proprietor is issued with a 90 Days' Notice of the intention to alter the register. The Registrar will then duly enter the details in the register as per the changes. An aggrieved party may then seek recourse in Court.
26. In the instant case, the Land Registrar in his affidavit in response to the application has stated that there is a process through which the register can be rectified and the orders of court issued on 27th November 2023 implemented. He sought for 90 days to be able to implement the court order. With this in mind and further bearing the provisions of Section 79 of the *Land Registration Act*, it is my opinion that the 90-day period sought is necessary for the Land Registrar to carry out his duties pertaining implementation of the court order.



ISSUE No. b). Whether the parties are entitled to the reliefs sought.

27. Under this Sub-heading, the Honourable Court will now examine the viability of reliefs sought by the parties herein. On the prayer for the Land Registrar being punished for contempt of the rectification orders issued. The power to punish for contempt is meant to ensure that court processes are not abused and the authority and dignity of the courts is upheld at all times because contempt of court by its very nature demeans the integrity and authority of Courts and disparages the rule of law. Court orders are neither proposals, suggestions, formalities nor cosmetic. They have to be obeyed.....
28. The Black's Law Dictionary [11th Edition] defines contempt of court as:-
“Conduct that defies the authority or dignity of a court or legislature. Because such conduct interferes with the administration of justice, it is punishable usually by fine or imprisonment.”
29. The instructive provision on contempt of court is founded under Section 5 [1] of the *Judicature Act*, Cap. 8. It grants the High Court and the Court of Appeal the power to punish for contempt. Additionally, for this court the provision of Section 29 of the *Environment and Land Court Act*, No. 19 of 2011 provides that:-
“Any person who refuses, fails or neglects to obey an order or direction of the Court given under this Act, commits an offence, and shall, on conviction, be liable to a fine not exceeding twenty million shillings or to imprisonment for a term not exceeding two years, or to both.”
30. Analytically, in my view, the sentencing regime would fall under the provisions of Section 63 [c] of the *Civil Procedure Act*, Cap 21 of the Laws of Kenya; Order 40 Rule 3 of the Civil Procedure Rules, 2010 and Section 29 of the *Environment and Land Court Act*, No 19 of 2011. Specifically, they provide as follows :-
Section 63[c] of the *Civil Procedure Act*, 2010 :-
“In order to prevent the ends of justice from being defeated, the court may, if it is so prescribed grant a temporary injunction and in case of disobedience commit the person guilty thereof to prison and order that his property be attached and sold”
31. The provision of Order 40 Rule 3[1] of the Civil Procedure Rules, 2010:-
“3[1] In case of disobedience or breach of any such terms, the court granting an injunction may order the property of the person guilty of such disobedience or breach to be attached and may also order such person to be detained in prison for a term not exceeding six months unless in the meantime the court directs his release”
32. The provision of Section 29 *Environment and Land Court Act*: -
“Any person who refuses, fails or neglects to obey an order or direction of the court given under this Act, commits an offence, and shall, on conviction, be liable to a fine not exceeding twenty million shillings or to imprisonment for a term not exceeding two years, or to both.”
33. Therefore, this Court, has been vested with inherent powers under the afore stated statutes herein. Ideally, the jurisdiction of the superior courts to punish litigants for contempt of court upon their



failure, breach or refusal to obey express court orders is aimed at protecting the dignity and legitimacy of the courts. The test applicable in an application for contempt was well set out in the case of:-

“Samuel M. N. Mweru & Others v National Land Commission & 2 others [2020] eKLR”
where the court held that:-

“40. 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, [ii] 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 wilfulness 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 *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 prove to the required 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’.”

34. Additionally, this court makes reference to the provisions of Section 5[1] of the *Judicature Act*, Cap. 8 grants the High Court and the Court of Appeal the power to punish for contempt. It provides:

[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 that power shall extend to upholding the authority and dignity of subordinate courts.

35. Mativo J. restated the test for establishing contempt in his decision in the case of “Samuel M. N. Mweru & Others [Supra]” where he stated: –

“40. 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,
- [ii] 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 wilfulness and bad faith on the part of the Defendant 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 *Contempt in Modern New Zealand* who succinctly stated: -

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- [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.”

36. The nature and purpose of contempt proceedings was summarised in the case of:- “Samuel M. N. Mweru [Supra] where the Court further stated:-

“Contempt of court is not merely a mechanism for the enforcement of court orders. The jurisdiction of the superior courts to commit recalcitrant litigants for contempt of court when they fail or refuse to obey court orders has at its heart the very effectiveness and legitimacy of the judicial system. That, in turn, means that the court called upon to commit such a litigant for his or her contempt is not only dealing with the individual interest of the frustrated successful litigant but also, as importantly, acting as guardian of the public interest”.

37. Further, the Constitutional Court of South Africa in the case of “Kristen Carla Burchell v Barry Grant Burchell, Eastern Cape Division Case No. 364 of 2005” stated as follows: -

“Compliance with court orders is an issue of fundamental concern for a society that seeks to base itself on the rule of law. *The Constitution* states that the rule of law and supremacy of *the Constitution* are foundational values of our society. It vests the judicial authority of the state in the courts and requires other organs of state to assist and protect the courts. It gives everyone the right to have legal disputes resolved in the courts or other independent and impartial tribunals. 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.”

38. It follows therefore, that the first question to be determined with regard to contempt of court, is whether there is a valid order capable of being obeyed. This limb also requires that the order is within the knowledge of the contemtor, must be clear and unambiguous. In the instant case, I reiterate that the Honourable Court rendered its Judgement on 27th November 2023. Undoubtedly, it was in favour of the Plaintiff as against the Defendant herein. Accordingly, in enforcing the afore said Judgement, the Plaintiff approached the lands office for implementation of the order. However, the Land Registrar has not executed the said order as expected. Instead, he has stated his inability on immediately effecting the terms of the order as guided by the due process for the following reasons. Firstly, according to him, the Court order was never proceeded to cancel nor revoke the current Certificate of title deed in accordance with the provision of Section 80 [1] of the *Land Registration Act*, No. 3 of 2012. Arising from that short – coming, there was need for the land Registrar to publish the order through a notice in the Kenya Gazette. Secondly, there was need for him to give the Court order a grace period of 90 days to enable



notify all and sundry of the intention to cancel the title deed before the said office effecting the said order. Indeed, the provisions of law provide for the process.

39. I am in agreement with the Land Registrar when he states that the orders could not be implemented immediately or soon after service upon him. A reading of Section 79 of the *Land Registration Act*, No. 3 of 2012 is clear, a notice ought to be given to the Respondent and gazette of the intended rectification. Odunga J [as he then was] in “Alfred Mutua v Boniface Mwangi [2022] eKLR held that:

“In my view, considering the seriousness with which the Court takes contempt of court proceedings, every stage of the hearing must be expressly clear to the Defendant and any ambiguity must be resolved in favour of the Defendant since such proceedings are quasi-criminal in nature, otherwise, a benefit of doubt would inure to the benefit of the Defendant.”

40. Be that as it may, the Honourable Court is well aware of the fact that the Land Registrar clearly was committed to effecting the court orders within 90 days. In the given circumstances, the Honourable Court does not find the Land Registrar directly liable and hence incline to giving him a benefit of doubt. For that reason, the court is hesitant to punish for contempt given the circumstances of the case.

ISSUE NO. C). Who will bear the costs of the application?

41. It is well established that the issue of costs is at the discretion of the Court. Costs mean the award that is granted to a party upon the conclusion of any legal action and proceedings. The provision of Section 27 [1] of the *Civil Procedure Act*, Cap. 21 holds that costs follow the events. By events it means the outcome and result of the legal action.

42. In the instant case, based on the circumstances thereof, each party will bear its own costs.

Conclusion & findings.

43. Consequently, upon causing an indepth analysis of the framed issues herein, the Honourable Court proceeds to issue the following specific orders:-
- a. That the Notice of Motion application dated 20th November 2024 be and is hereby partially allowed upon the fulfilment of the Pre-conditions stipulated herein below.
 - b. That an order made hereby directing the Land Registrar – County of Kwale County to have Mr. Samuel Mwololo Nzomo forthwith registered in the land Registry/Entries as the sole Legal and absolute proprietor of 13 acres of the said parcel land known as land Reference Numbers Kwale/Gandini/210 in place of Reuben Bishon Mwandoto within the next forty five [45] days from the date of this ruling hereof without failure whatsoever.
 - c. That failure to comply with the order under Clause No. [b] above there be issued Notice to Show Cause [NTSC] against the said land Registrar Kwale – Mr. Steve Mokaya to personally appear in Court to explain the reasons for the non-compliance and/or disobedience of the Court order and to purge the contempt proceedings to ensue thereof.
 - d. That there be a mention of this matter on 29th October, 2025 to ascertain progress made from the orders granted herein and further direction thereof.
 - e. That the costs of all the statutory processes including the sub - division and registration of the suit land, if any, shall be met by the Plaintiff
 - f. That each party to bear their own costs in relation to the instant application.



44. It Is Ordered Accordingly.

**RULING DELIVERED THROUGH THE MICRO-SOFT TEAMS VIRTUAL MEANS, SIGNED
AND DATED AT KWALE THIS 17TH DAY OF JULY 2025**

**HON. MR. JUSTICE L.L NAIKUNI,
ENVIRONMENT & LAND COURT, KWALE.**

Ruling delivered in the presence of: -

Mr. Daniel Disii, the Court Assistant.

Mr. B. W Kenzi Advocate for the Appellant/Applicant.

No appearance for the Respondent.

