



Kobado & 3 others v Pristine Holdings Ltd & 2 others (Environment and Land Appeal E014 of 2024) [2025] KEELC 5969 (KLR) (26 August 2025) (Judgment)

Neutral citation: [2025] KEELC 5969 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MIGORI
ENVIRONMENT AND LAND APPEAL E014 OF 2024
FO NYAGAKA, J
AUGUST 26, 2025**

BETWEEN

**JOHN OWUOR KOBADO 1ST APPELLANT
ANDREW MWERA 2ND APPELLANT
ZACK OGUTU ACHAR 3RD APPELLANT
WINNIE OGUTU OGOLA 4TH APPELLANT**

AND

**PRISTINE HOLDINGS LTD 1ST RESPONDENT
MIGORI COUNTY GOVERNMENT 2ND RESPONDENT
RONGO MUNICIPALITY BOARD 3RD RESPONDENT**

*(Being an Appeal from the Ruling by Hon. C.N. Oruo PM
in Rongo ELC No. E028 of 2020, delivered on 2nd July 2024)*

JUDGMENT

1. By way of an Application dated 29th May 2024, the Respondents approached the trial court seeking for the following orders;
 - a. That pending the inter parte hearing and determination of the instant application, the honourable court be and is hereby pleased to issue an order of debarment of audience against the 1st and 2nd Respondents’ Contemnors on any other matter in these proceedings, save for responding to the Contempt as alleged in this application, and demonstrating purging of the non-compliance with the orders of the Honourable Court on 17/05/2024, by immediately halting the ongoing works/construction and removing and or bringing down the wall already



being constructed, and also removing any building/construction materials brought to the suit plot and complying with the court order issued on 17/05/24.

- b. That pending the inter-parte hearing and determination of the instant application the Inspector General of Police or the Officer Commanding Police Rongo sub county or the Officer Commanding Station- Kamagambo police station also known as Rongo Police Station or any other officers deputed by them, be and are hereby ordered to enforce and immediate compliance with the subsisting injunctive orders issued on 17/05/2024 by the Honourable Court.
 - c. That pending the inter partes hearing and determination of the instant application, the Honourable Court be pleased to issue summons requiring the personal attendance of OWUOR KOBADO, the county' Executive committee member [CECM] department of lands, Migori County Government, Andrew Mwera, Chief Lands Officer department of lands and housing. County Government of Migori, Zackary Ogutu Achar, sub county Administrator Rongo Sub County and Winnie Ogolla, Board member Rongo Municipal board, being employees and or personal representatives of the 1st and 2nd Respondents/ Contemnors respectively, who have either directly disobeyed the court order and or are the relevant officers with the mandate to effect the court order, on a date and time to be determined by this honourable court for them to show cause why they should not be punished for their wilful, deliberate disobedience and defiance of the court order issued on 17/05/2025 and contemporaneously proceeding with the construction and interference with the applicant/ plaintiff's use and occupation over the suit property.
 - d. That in default of attendance and upon issuance of summons the honourable court be pleased to issue warrants of arrest to be executed and enforced by the Officer Commanding Station – Kamagambo Police Station under the supervision and direction of the Inspector general, National Police Service, under the command of the Officer Commanding Police Division – Rongo Sub County and County Commander Migori County.
 - e. That the honourable court be pleased to cite the 1st and 2nd Respondents/Contemnors, their employees and/or servant, agents and representatives for contempt of the honourable court, and their wilful and deliberate disobedience and defiance of the Order of the honourable court issued on 17/05/2024, in contemptuously proceeding with construction and interference with the Plaintiff/Applicants use and occupation over the suit property, and sentence them to custodial sentence of not less than one (1) year, amid a monetary fine of not less than Kenya shillings One Million (Kes. 1,000,000/=) for contempt of court.
 - f. That the honourable court be pleased to issue any further orders and/or directions as it deem necessary to give effect to the orders sought herein and that it may deem fit in the Interest of justice.
 - g. That the cost of this application be provided for on a full indemnity basis.
2. There was no response from the Appellants and the trial court, upon considering the pleadings and the Applicants' submissions issued orders vide the ruling dated 2nd July 2024, finding the Appellants herein guilty of contempt. They were sentenced to pay a fine of Kshs. 100,000/- in default of which they would serve six months imprisonment.
 3. Being aggrieved with the decision of the trial court, the Appellants instituted the present appeal vide a memorandum of appeal dated 5th July 2024 premised on the following grounds



1. That the trial magistrate erred in law and fact to condemn the appellants unheard.
2. The ruling and order made by the trial magistrate against the appellants were irregular and in breach of the law on contempt of court process.
3. No orders were made against the appellants that would form basis or justification for their condemnation for contempt of court before the trial court.
4. The ruling and order appealed were made and issued in breach of appellants' fundamental freedoms and rights guaranteed under Article 25 of *the Constitution* of Kenya.
5. The ruling and order appealed constitute injustice against the appellants.

Appellants' Submissions

4. Learned counsel for the appellant submitted that the principles guiding civil contempt are well established thus; (a) Proof of clear terms of the order binding upon the defendant; (b) Proof of proper service of the order upon the defendant or the defendant had knowledge of same; (c) Proof that defendant acted in breach of the order and (d) The defendant's conduct is wilful or deliberate. He urged that these elements must be established beyond reasonable doubt since contempt of court proceedings are quasi- criminal in nature hence contemnors are plainly accused persons. He cited the cases of Samuel N.M. Mweru & Others VS National Land Commission & 2 Others (2021) eKLR, Alfred Mutua V Boniface Mwangi (2022) eKLR in this regard.
5. Counsel posited that in the case at hand the following material facts were established: The Appellants were not parties in the original suit and in the application for contempt; No leave of court has ever been sought or obtained making appellants parties to the suit or contempt proceedings before the court; The Appellants never participated in the proceedings and were never served with any pleadings other than summons to appear to be punished for alleged contempt and no injunctive orders were issued against appellants by the court. Further, that the orders of temporary injunction made by the court on 17/05/2024 were issued against Migori County & Rongo Municipality Board, not against Appellants and additionally, it was not established that appellants were personally served with the orders or that they had knowledge of same and wilful or deliberately acted in disobedience.
6. Counsel urged that there is no proof that appellants played any role in the activities complained by Pristine Holdings Ltd on the suit plot or that they had capacity to interfere with the activities being carried out thereon. They had no capacity to implement the court order which was not directed against them and additionally, that the trial magistrate erred in relying on his own evidence gathered from his observation of the site of construction to find appellants guilty of contempt. Counsel reproduced the extract of the ruling of 25th June 2024 and urged that it clearly shows the magistrate acted contrary to the principles governing contempt of court proceedings and fair trial thereby infringing on constitutional rights of the appellants.
7. Counsel submitted that the right to fair hearing is protected under Article 50 and 25 (c) of *the Constitution* and that the principles of fair hearing ought to be upheld in all judicial proceedings without exemption. He placed reliance on the decision in Abdiwahab Sheikh Osman Hathe V Mohamed Ali Sheikh & 3 others (2018) eKLR.
8. Counsel urged that a cardinal element of fair trial is opportunity to be heard and defend oneself, pointing out that the Appellants were never informed of the charges against them and were not given opportunity to defend themselves. They were convicted in absentia then summoned to appear in court



to be sentenced and penalized. He urged the court to find the orders appealed were wrongfully made against appellants hence ought to be vacated. He prayed the court allow the appeal as prayed.

2nd and 3rd Respondents Submissions

9. Learned counsel for the 2nd and 3rd respondents filed submissions in support of the appeal. They urged that the impugned order ought to be set aside as the Appellants who are employees of the 2nd and 3rd Respondents were not parties to the suit in the lower court and were never enjoined in any capacity in the contempt proceedings. Further, that the order of temporary injunction and the penal notice was never served upon the Appellants and they were directed at the 2nd and 3rd Respondents herein and not the Appellants.
10. Counsel further submitted that the trial magistrate disregarded the critical point that standard of proof in contempt of court proceedings was never complied with, citing the case of Jackson Omwenga T/A Jackson Omwenga & Co. Advocates v. Harambee Sacco Society Ltd & another [2014] eKLR in this regard. He submitted that contempt of court proceedings, like the current one cannot be sustained where there is no personal service of an order with a penal notice, citing the holding of Mativo J. in the case of Samuel M.N Mweru & Others v National Land Commission & 2 others [2020] eKLR.
11. Counsel submitted that Rajab O. Otieno, the alleged process server was not a licensed court process server as at the month of May 2024 when he allegedly effected the said service. Further, that personal service was contested and that the process server's allegation that he served the Appellants via their WhatsApp telephone is untenable. He maintained that the trial court erred in making a finding that the court order was duly served upon each of the Appellants, and thereby arrived at a wrong conclusion that the Appellants were in contempt of court.
12. Counsel submitted that as at the time of issuing the injunction orders on 17th May 2024 there was no mention of the individuals who the 1st Respondent sought to be held in contempt of court. The said order was also not directed to the Appellants individually bearing in mind that the 2nd and 3rd Respondent are government agencies. He cited the case of Jihan Freighters Ltd v Hardware & General Stores Ltd and in A.B. & Another v. R.B. [2016] eKLR in this regard and urged that the 1st Respondent could not therefore, from the blues, cite the Appellants for contempt seeking for their arrest and imprisonment without seeking leave of court to cite them for contempt as employees of the defendants who are the parties to the case.
13. On whether the Appellants can be said to have deliberately disobeyed the court order issued on 17th May 2024, counsel stated that the Black's Law Dictionary defines the term 'Deliberate' as, well advised; carefully considered not sudden or rash; circumspect; slow in determining. He urged that as there was no personal service of the order on the defendants or the defendant's cited employees and having submitted that the cited employees were not and are not parties to the main case and the contempt application, there was therefore no deliberate disobedience of the court order issued on 17th May 2024. He additionally placed reliance on the decision of The Supreme Court in Republic v Ahmad Abolfathi Mohammed & Another [2018] eKLR.
14. Counsel urged that a perusal of the court proceedings does not indicate that a site visit of the suit property was ever done and there's nothing conspicuously identifiable in the property's description in the pleadings save for the claim that there was a purported intended construction of a recreation park thereon. He urged that court orders cannot be made in vain, and further, that an order citing an individual for contempt of court must meet the set legal standards. Counsel urged the court to set aside the impugned ruling and allow this appeal so that the substantive suit in the magistrate's court is heard and determined on its merits.



1st Respondents' Submissions

15. Learned counsel for the respondent laid down the history of the matter and urged that the trial court, on 17/05/2024 issued a temporary injunction order restraining the 2nd and 3rd Respondents which was extracted and served upon the 2nd and 3rd Respondents' offices on 17/05/2024 and 20/05/2024 respectively. That despite having knowledge of the court order, the 2nd and 3rd Respondents continued construction in the said suit property with the Appellants/Applicants herein being their employees/ servant and or agents being directly and actively involved in the said constructions in one way or the other, prompting the 1st Respondents to serve each of them personally with the court order issued on 17/05/2024.
16. He urged that despite receipt of the Court Order, the Appellants were still actively participating and supervising the continuation of the on-going construction contrary to the said court order, thus necessitating the 1st Respondent to commence application for contempt of court order vide an application dated 29/05/2024. After issuing summons on notice to show cause why they shouldn't be held for contempt of court order the Applicants failed to file a response and continued with the construction in the suit parcel. The trial then court decided to issue orders for contempt of court orders.
17. On whether the trial Court's orders of contempt of court were justified and warranted, counsel cited the case of *Kioni & 3 others v National Disciplinary Committee of the Jubilee Party & 2 others; Chege (Contemnor)* (Civil Appeal E630 of 2023) [2024] KEHC 11441 (KLR) and urged that the Appellants contention that the contemnors/appellants were not parties to the suit is baseless. Further, that taking into consideration the wording of the orders, no objection that the appellants are employees/agents and or servants of the 2nd Respondent herein, and that the appellants also duly participated in the contempt proceedings in Court and therefore cannot allege lack of participation.
18. Counsel placed reliance on the finding in *Kenya Union Of Post Primary Teachers & 3 Others -V- Njeru Kanyamba* (2018) eKLR and urged that the Appellants were duly served with the Trial court order dated 17/05/2024, and reiterated that it is not disputed that they are indeed employees/ servants/agent of the 2nd and 3rd Respondents. He stated that by the terms of the said order, they were stopped from interfering or continuing with construction in the suit property. Further, that the affidavit of service on record relied upon by the Court clearly confirms the appellants were served and thereafter either appeared in Court in person and or represented by their Advocate on Record.
19. He reiterated that despite being served personally with the said court order, and summons to show cause why they should not be held in contempt of the court order, the Appellants, profusely continued to defy the rule of law. It defeats the cause of justice, that it's the very same Appellants who didn't pay any regard to court orders that are again before this Honourable court to seek redress and protection from the very same rule of law that they choose to hold in low regard.
20. Counsel urged that the ingredients and issues in regards to contempt of court orders are outlined in the case of *Felicity Mutete Mutula v Nairobi County Government* (2021) eKLR, with the same reiterated in *Lukano (Suing As The Legal Representative Of The Estate Of Evans Siema Lukano (Deceased)) v Director of Occupational Health and Safety; Jamly Services & another (Interested Parties)* (Judicial Review E133 of 2021) [2023] KEHC 21435 (KLR). He submitted that all the ingredients stated were adequately dealt with before the trial court issued contempt of court order against the Appellants. He maintained that the terms of the order were clearly written in simple plain English language with no ambiguity whatsoever, reproducing an excerpt of the same. Counsel reiterated that the Appellants



were directly and actively involved in various projects in the said suit property in contradiction to the terms of the trial court order urging that they were aware of the order.

21. The respondent repeatedly stated that the appellants were rightfully found in contempt and urged the court to dismiss the appeal.

Analysis And Determination

22. This court's duty as a first appellate court is to re-evaluate all the evidence availed before the lower court and to reach its own conclusion, taking into account the fact that it had no opportunity of hearing or seeing the parties as they testified, and make an allowance in that respect. See the cases of *Selle & Another v Associated Motor Boat Co. Limited & others* [1968] EA 123.

23. The role of the Appellate Court was also stated by the Court of Appeal in the judicial decision of *Gitobu Imanyara & 2 others Vs Attorney General* [2016] eKLR. It was held as follows;

“An appeal to this Court from a trial by the High Court is by way of retrial and the principles upon which this Court acts in such an appeal are well settled. Briefly put, they are that this Court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowances in this respect.”

24. At the same time, it is trite that an appellate court should not interfere with a trial court's exercise of discretion unless the same was not exercised judiciously or the trial court erred in principle in its approach to the issues before it or did not consider some factors he ought to have taken into account or included factors he ought not to have done so, or arrived at a decision which was wholly wrong or made a decision so unreasonable that a judicial officer or judge acting judicially could not have reached it. In the words of Sir Charles Newbold, P. expressed in this often-cited *Mbogo & Another V. Shah* [1968] EA 98 decision as follows:

“.....a Court of Appeal should not interfere with the exercise of the discretion of a judge unless it is satisfied that the judge in exercising his discretion has misdirected himself in some matter and as a result has arrived at a wrong decision, or unless it is manifest from the case as a whole that the judge has been clearly wrong in the exercise of his discretion and that as a result there has been misjustice.”

25. The instant matter arises from a decision that the trial magistrate exercised discretion while considering the evidence before him. Thus, in deciding this Appeal this Court proceeds on the principles enunciated in the above decisions.

Whether the trial court erred in finding the appellants in contempt of court

26. Contempt of court, although its process is quasi-judicial, is a serious offence. It portends anarchy and both civil and rule of law breakdowns which would lead to social disorder and humanity's self-destruction. It cannot be countenanced in a modern and civil society as ours. Often when the Courts come across such conduct and it is proven to exist deliberately, they are called upon and often do stamp their authority by denying audience to the contemnors. This, the trial court was intent on doing and could have been right to do save for the fundamental constitutional and natural law flaw that was inherent in the facts leading to the issuance of the orders appealed from herein.



27. In *Hadkinson Vs. Hadkinson* [1952] 2 All ER 562, the English Court of Appeal firmly held;

“Held (per Somervell and Romer, L.JJ.), that it was the unqualified obligation of every person against, or in respect of whom, an order had been made by a court of competent jurisdiction, to obey it unless and until that order was discharged; that the mother in the present case had not brought herself within any of the exceptions to the general rule which debarred a person in contempt from being heard by the courts whose order he had disobeyed; and that she being in continuing contempt by retaining the infant out of the jurisdiction her appeal could not be heard until she had taken the first and essential step towards purging her contempt by returning the child within the jurisdiction.

Held Per Denning L.J.,: The fact that a party to a cause had disobeyed an order of the court was not of itself a bar to his being heard, but if his disobedience was such that, so long as it continued, it impeded the course of justice in the cause, by making it more difficult for the court to ascertain the truth or to enforce the orders which it might make, then the court might in its discretion refuse to hear him until the impediment was removed. The present case was a good example of a case where the disobedience of the party impeded the course of justice.”

28. In denying audience to the Attorney-General of Ontario who had been in flagrant and prolonged contempt of court orders, the Court of Appeal for Ontario, Canada, held, in *Ontario Attorney General Vs. Paul Magder Furs Ltd* 10 O.R. (3d) 46;

“As previously observed, even following the finding of contempt of court and while invoking the court’s jurisdiction in appealing the order of Chilcott J., the appellant persisted in its defiance of the law.

It is in this context that the appellant seeks to have the discretion of the court exercised in its favour and to stay the hands of the Crown from enforcing the penalties imposed by Chilcott J.

This is not a case of an appellant who has been found to have committed an act of contempt and is fined, who has a record of committing such offences in the past and who, while the appeal is pending, has ceased to commit the act which is the subject matter of the contempt proceedings. Under those circumstances, it may well be that the fine should not be enforceable until the appellant has had a reasonable opportunity to exercise its right of appeal.

In this case for a period of over 11 years the appellant has exhibited a brazen disregard for the rule of law, has shown contempt for the orders of the superior trial court of this province and sought to make a mockery of the administration of justice. At the same time, it seeks to invoke the judicial process to suspend the operation of the very orders that it has defied for years. To stay the order of Chilcott J. pending appeal would be to countenance that conduct and to bring the administration of justice into disrepute.”

29. Similarly, in Kenya, the Court of Appeal in *Fred Matiang’i the Cabinet Secretary, Ministry of Interior and Co-ordination of National Government v Miguna Miguna & 4 others* [2018] KECA 789 (KLR) held as follows:

“In deserving cases, this Court has itself set its face firmly against granting contemnors audience until and unless they first purge their contempt and it shall continue to do so in



such cases as evince a headstrong contumaciousness proceeding from a bold impunity, open defiance or cynical disregard for the authority of the Court and the integrity of the judicial system. Such pernicious conduct cannot be countenanced and those hell-bent on it will find neither help, nor refuge under a convenient and self-serving appeal to natural justice when their impudent conduct threatens the very foundation of the rule of law. While the right to fair hearing is sacrosanct and is one of the non-derogable rights in Article 25 of the Constitution, we affirm with this Court in *A. B. & Another vs. R.B.* 2016 eKLR that there may be instances where due to the risk of the rule of law being deliberately undermined, such right may be denied and the hearing of an application for stay denied until there is full compliance with the orders of the High Court. (See also *Communications Commission Of Kenya Vs. Tetra Radio Ltd*, [2013] Eklr.”

30. That said, the application from which the impugned ruling arises from sought contempt orders against Migori County Government (sic) and the Rongo Municipality Board, arising from the orders issued on 17th May 2024. Both defendants are described in the respective statutes that establish them, that is to say, County Governments Act, No. 17 of 2012 and the Urban Areas and Cities Act, No. 13 of 2011 respectively, as bodies corporate capable of suing and being sued. They have, in terms of the parents Acts, executive officers through whom decisions are enforced in their structures.
31. It is evident that the Appellants were not parties to the suit as per a reading of the impugned order. However, they are described as officers of the Respondents/ Defendants. This was the justification by the trial court, for the issuance of orders citing the appellants for contempt. Of course, it is not lost sight of the fact that these are not the principal officers of the Defendant by whom enforcement of the orders of the Court could be made and any questions arising from them answer by.
32. I have carefully analysed the facts regarding the issuance and existence, and the alleged service of the orders said to have been disobeyed by the alleged contemnors. There is no evidence that the contemnors were served with the orders as individuals or that indeed they were notified personally of the existence of the orders or if they were there is no such evidence. Additionally, they were enjoined to the suit before or after the orders, either in their individual or official capacities. But it is not clear why these individuals who were not the principal officers of the Defendants in the suit before the trial Court were singled out, and this Court does not wish to speculate it, for breach of the Court orders which they were not the direct enforcement officers of the Defendants.
33. Section 37(a) of the County Governments Act provides for the role of the county executive committee in the process of planning, formulation and adoption of integrated development plans of municipalities among other functions. Section 44(1) provides for the appointment of the county secretary who shall be the secretary to the county executive committee. Section 48(1) decentralizes the provision of services of each county to, among others, urban areas and cities as envisioned in the Urban Areas and Cities Act. Further, the executive committee is the one, in terms of Section 37(d) of the County Governments Act, that is tasked with the duty to resolve issues of disputes or differences in connection with planning, formulation and adoption or review of integrated development plans.
34. Further, Section 12(1) of the Urban Areas and Cities Act provides that,

“The management of a city and municipality shall be vested in the county government and administered on its behalf by— (a) a board constituted in accordance with section 13 or 14 of this Act;”
35. The totality of the above provisions show that the Municipality Boards exercise delegated decentralized authority of the County Executive Committee which has its secretary. Thus, in my humble view, the



actions complained of as having constituted a disobedience of the orders of the Court lay under the management of the 1st Defendant which through its County Executive Committee appoints the six (6) members of the Board (the 2nd Defendant). It means the Board does not act independent of the directions of the county government. Therefore, in the instant matter the responsibility still lay on the executive officer, that is the County Secretary, of the 1st Defendant to enforce and ensure compliance with the orders of the Court, if any.

36. The requirements for a person to be found in contempt of court were set out in the case of Samuel M. N. Mweru & Others v National Land Commission & 2 others [2020] KEHC 9233 (KLR) where Justice John Mativo (as he then was) stated as follows;

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* [47] 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.

37. In the trial court, there was no proof that the Appellants had knowledge of terms of an order that were binding on them. The 2nd and 3rd defendants conceded to the fact that the appellants were never directly the subject of the order, or parties to the suit.

38. As there was no proof of service of the orders on the appellants as individuals, or that they were liable for orders against the respondent therein, it follows that the first limb for contempt was not satisfied.

Whether there was deliberate disobedience of the order

39. The trial court, in making its decision on contempt, based the findings on 'judicial notice' of the continued construction on the suit property as it was located close to the court. There was no site visit conducted or any report tendered in court as proof of said construction. The nature of contempt proceedings is quasi criminal and therefore, there is a burden of proof that is required to be satisfied before one is found in contempt of court. It was held in *Mwangi H.C. Wangondu vs Nairobi City Commission*, Nairobi Civil Appeal No. 95 of 1998 that the threshold of proof required in contempt of



Court is higher than that in normal civil cases, and one can only be committed to civil jail or otherwise penalized on the basis of evidence that leaves no doubt as to the contemnor's culpability.

40. Additionally, it was held by the Court of Appeal in *Woburn Estate Limited vs Margaret Bashforth* [2016] eKLR as follows:

“We reiterate that contempt proceedings being of quasi –criminal in nature and since a person may lose his right to liberty, each stage and step of the procedure must be scrupulously followed and observed. We bear in mind the often-cited passage attributed to Lord Denning In *Re Bramblevale Ltd* [1970] 1 CH 128 at page 137 that;

“A contempt of court is an offence of criminal character. A man may be sent to prison for it. It must be satisfactorily proved showing that when the man was asked about it, he told lies. There must be some further evidence to incriminate him.”

41. I come to the inevitable conclusion that the 1st Respondent having failed to establish whether the terms of the order were binding on the appellants, and further that they (appellants) had proper notice of the orders or that they had acted in breach of the same, it is my considered view that the trial court decision was erroneous and must be set aside. To allow the same to stand would be tantamount to participating in the violation of the rights of the Appellants under Article 50 which enshrines a right to a fair hearing and due process of the law.

42. In the case of *Thomas Edison ltd v Bathock* 1912 15 C.L.R 679 it was held thus:

“There is a primary precept governing administration of justice that no man is to be condemned unheard and therefore ,as a general rule, no order should be made to the prejudice of a party unless he has the opportunity being heard in defence, but instance occur where justice could not be done unless the subject matter of the suit is preserved and, if that is in danger of destruction by one party or if irremediable by one party interim orders may issue to give room for the court to determine the dispute on the merits.”

43. Having considered the record of appeal and the submissions of the parties, it is my considered view that the appeal is merited. In the premises, the appeal succeeds in its entirety. The ruling of the trial court dated 2nd July 2024 is set aside and the Appellant are acquitted of the contempt of court and set at liberty unless otherwise lawfully held for other allegations than those that gave rise to the instant successful appeal.

44. The 1st Respondent (being *Pristine Holdings Limited*) shall bear the costs of the Appeal. This file is closed, subject only to the payment of the costs ordered.

45. Orders accordingly.

JUDGMENT DATED, SIGNED AND DELIVERED VIA THE TEAMS PLATFORM THIS 26TH DAY OF AUGUST 2025

HON. DR. IUR FRED NYAGAKA

JUDGE

In the presence of,

Mr. Nyasimi Advocate for the Appellants.

Mr. Otieno Advocate holding brief for Jura for the for 2nd and 3rd Respondents.



Ms. Okal Advocate for the 1st Respondent.

