



**Mwanzia v Mwakio & another (Environment and Land Appeal E015 of 2024)  
[2025] KEELC 1 (KLR) (Environment and Land) (13 January 2025) (Judgment)**

Neutral citation: [2025] KEELC 1 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT VOI  
ENVIRONMENT AND LAND  
ENVIRONMENT AND LAND APPEAL E015 OF 2024  
EK WABWOTO, J  
JANUARY 13, 2025**

**BETWEEN**

**ANN SYOMBUA MWANZIA ..... APPELLANT**

**AND**

**WILHELM MWANDAU MWAKIO ..... 1<sup>ST</sup> RESPONDENT**

**SIBLINAH MAJALA MWANDAU ..... 2<sup>ND</sup> RESPONDENT**

*(Being an appeal from the Ruling of Hon. E.M. Kadima (P.M) Delivered  
on{{^}} 28th August 2024 in Taveta MCELC Case No. E004 of 2023)*

**JUDGMENT**

1. In a ruling delivered on 28<sup>th</sup> August 2024, the trial court found the Appellant herein in contempt of the court orders issued on 15<sup>th</sup> June 2023 before the trial court. The trial court then proceeded to cite the Appellant for contempt and ordered that she be remanded for six (6) months or pays a fine of Ksh 200,000/- or purges the said contempt.
2. Being dissatisfied with the said ruling, the Appellant filed a Memorandum of Appeal before this court citing the following grounds;
  1. That the Learned Magistrate erred in law and fact by failing to note that the decree issued on 15<sup>th</sup> June 2023 did not have a penal notice.
  2. That the Learned Magistrate erred in law and in fact in finding that the Appellant was in contempt of court in total disregard of the evidence adduced before Court challenging the contempt proceedings



3. That the Learned Magistrate erred in law and in fact by placing too much reliance on the Decree dated 15<sup>th</sup> June 2023 as the same was not endorsed with penal consequences.
  4. That the Learned Magistrate erred in law and in fact in failing to appreciate that a penal notice is a mandatory requirement in contempt of court proceedings.
  5. That the Learned Magistrate erred in law and in fact by disregarding the Appellant's submissions and authorities.
3. The Appellant thus prayed for;
    - a. The ruling delivered on the 28<sup>th</sup> August 2023 be set aside.
    - b. The Appeal be allowed.
    - c. Costs of this Appeal be borne by the Respondents
    - d. Any other relief that this Honourable Court may deem fit to grant.
  4. Pursuant to the directions issued by this court, the Court directed that the Appeal be canvassed by way of written submissions and parties were granted specific timelines to comply. The Appellant filed brief submissions dated 27<sup>th</sup> December 2024 while the Respondents filed their written submissions dated 23<sup>rd</sup> December 2024 for consideration by the court.
  5. As first Appellate Court, I shall re-evaluate the evidence and come to own conclusions, except, giving allowance of the fact that it neither saw nor heard the witnesses; matters of demeanor are best observed by the trial court.
  6. The main issue for consideration is whether the Appeal is merited and if so, what are the appropriate reliefs that this Court can issue.
  7. According to Section 5 of the Judicature Act:
 

“(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.”
  8. The procedure in the High Court of Justice in England was considered in detail by the Court of Appeal in *Christine Wangari Gachege vs. Elizabeth Wanjiru Evans & 11 Others* [2014] eKLR.
  9. Rule 81.4, 81.5, 81.7 and 81.8 of the English Civil Procedure Rules (Amendment No. 3) Rules, 2020 provides for the requirements of a contempt application, the manner of service of the application, directions for hearing of contempt application and hearings of such applications.
  10. In this case when the trial court directed the Appellant to file her response to the said application of contempt before it, the Appellant failed to put any response and the trial court proceeded to render its decisions citing her for contempt and sentencing her to six months and in the alternative, she pays a fine of 200,000/-. From the proceedings before the trial court, the Appellant was not able to pay the sum of Ksh 200,000/- and she was committed to serve six (6) months civil jail at Wundanyi Women Prison.
  11. Three out of the five grounds raised in the memorandum of appeal were to the effect that the Learned Magistrate erred in citing the Appellant for contempt on the grounds that the decree issued on 15<sup>th</sup> June 2023 did not have a penal notice.



12. On this particular issue the Respondents submitted that the issue of lack of a penal notice was not raised before the trial court by the Appellant. It was also submitted that contempt proceedings cannot be impeached for want of a penal notice for so long as the contemnor is aware of the Court judgment or order and the following cases were cited in support; Republic v Mwaura & 12 others; Obura & another (Ex parte) (Application 126 of 2020) (2024) KEHC 44 (KLR), Justus Kariuki Mate & another vs Martin Nyaga Wambora & another (*CA 24/2014*) Nyeri, and Shimmers Plaza Ltd v NBK (2015) eKLR Karanja, Mwera, Mwilu JJA. Among other authorities which the Court has considered.
13. In this regard, the Court notes that the requirement of attachment of the penal notice has slowly been done away with as was held in Civil Appeal No. 33 of 2012 Shimmers Plaza Limited vs National Bank of Kenya Limited [2015] eKLR (Karanja, Mwera & Mwilu, JJ.A)
- “On the other hand however, this Court has slowly and gradually moved from the position that service of the order along with the penal notice must be personally served on a person before contempt can be proved.”
14. In Civil Case No. 111 of 2016 Cecil Miller vs Jackson Njeru & Another [2017] eKLR the Court listed the elements of civil contempt as follows; -
- “The element of a Civil Contempt as espoused in a book titled “Contempt in Modern New Zealand, were set out as follows:
- 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 conduct was deliberate.
- These four elements must be proved to make a case for Civil Contempt. Although the proceedings are civil in nature, it is well established that the degree of proof is almost that beyond reasonable doubt but definitely higher than on balance of probability.”
15. The above mentioned four elements that must be proved to make a case for civil contempt, the Court finds that the terms of the order were clear, the Appellant had knowledge of the order, she subsequently had not complied with the terms of the said decree as at the time when she was cited for contempt by the trial court. The court agrees with the Respondents’ submissions on the said issue.
16. It was the duty of the Respondents to discharge the burden of proof in these proceedings before the lower court by demonstrating that the Appellant disobeyed the orders of this court. Having carefully perused the proceedings before the trial court, it is my view that the Respondents discharged the burden of proof and the trial court properly cited the Appellant for contempt of its orders. The Appellant failed to demonstrate why she had not complied with the said the orders. In the circumstances it is the finding of this Court that the Appeal is not merited.
17. In the course of these proceedings it emerged that the Appellant has been serving her civil jail term at Wundanyi Women Prison from the 18th September 2024 on account of disobedience of the Orders issued by the lower court on 15th June 2023.



18. In view of the foregoing and having considered the fact that the Appellant has been serving her sentence from the 18<sup>th</sup> September 2024, this Court is obligated to consider the period upon which the Appellant has served her civil jail term which shall be taken into account in the final orders of this Court.
19. In Conclusion, this Court makes the following final orders in respect to the Appellant's appeal;
  - a. The Appeal is dismissed for lack of merit.
  - b. Considering the Appellant's period served in civil jail, the six months sentence is hereby substituted with the period already served and the Appellant shall be released forthwith from Wundanyi Women Prison unless otherwise lawfully held.
  - c. Each party to bear own costs of this Appeal.
  - d. The file is closed.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT VOI THIS 13<sup>TH</sup> DAY OF JANUARY 2025.**

**E. K. WABWOTO**

**JUDGE**

In the presence of:-

Ann Syombua Mwanzia the Appellant in person.

Ms. Mugenye h/b for Mr. Omulama for the Respondents.

Court Assistant; Mary Ngoira.

