



**Mboroki v Mboroki (Environment & Land Case 44 of 2019)  
[2024] KEELC 965 (KLR) (19 February 2024) (Ruling)**

Neutral citation: [2024] KEELC 965 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MERU  
ENVIRONMENT & LAND CASE 44 OF 2019  
CK NZILI, J  
FEBRUARY 19, 2024**

**BETWEEN**

**JOHN GIKUNDA MBOROKI ..... PLAINTIFF**

**AND**

**ISAAC KIRIMI MBOROKI ..... DEFENDANT**

**RULING**

1. On 7.2.2024, this court found the contemnors namely guilty of contempt of court and gave them time to file mitigation statements before sentencing on 16.02.2024.
2. An affidavit jointly signed by the contemnors on 15.2.2024 was filed before the court. They told the court through their counsel, Mr. C.P Mbaabu, to find that the contemnors were remorseful and had purged the contempt by erecting the beacons as per a private land surveyor's report and a sketch map attached to the joint affidavit. Further, the court was told there were medical reports to show that the 1<sup>st</sup> and 3<sup>rd</sup> contemnors were elderly, sickly, and unable to pay any fine or serve a jail term. The court was told the 2<sup>nd</sup> contemnor has a young family, was a casual worker, and was unable to pay any fine. Learned Counsel urged the court to find that since his clients had purged the contempt, to exercise mercy and find his clients worthy to be pardoned and unconditionally discharged.
3. Mr. Karanja, advocate for the decree-holder, termed the surveyor's report as unverifiable since he was served late with the affidavit on the morning of the hearing of the mitigation, his client was not involved or notified of the implementation, and the contemnors were not remorseful at all.
4. Counsel submitted that it did not require the contemnors to be cited and found guilty of contempt to obey court orders, and given the inordinate delay, a strong message should be sent to these contemnors and other litigants that to disobey a court order or decree was not an option, by punishing them.
5. Counsel urged the court to find the medical reports were over general ailments. Further, counsel relied on the case of *Rael Tapsabei v David Rono* (2013) eKLR.



6. In a rejoinder, Mr. Mbaabu advocate urged the court to find the cited authority as persuasive and distinguishable, since his clients have purged the contempt.
7. There is no evidence that the plaintiff/decreed-holder, the area chief, or the land surveyor who had erected the beacons on the land in the first instance was involved by the contemnors in the alleged purging of the contempt. The named parties would have confirmed that the earlier beacons, by the government surveyor, have been re-fixed to the same place, locality or boundary as the one before the contemnors allegedly removed them.
8. The survey report and map before the court were not submitted or filed to the office of the government land surveyor for endorsement or confirmation. The sketch map has no coordinates for the four beacons initially fixed by the district land surveyor. The contemnors did not bother to conduct the decreed-holder or his lawyers on record to ascertain and confirm compliance with the court decree until late through an alleged consent brought to the court's attention during this delivery of the ruling.
9. Whereas the contemnors plead remorse, sorry for their actions, and seek mercy and lenience, unfortunately, their actions speak volumes that they do not wish to fully comply with the implementation of the court decree. I do not think the contemnors understand and appreciate the seriousness of obstruction or ignoring of court orders and or decrees. The court gave the contemnors enough time to purge the contempt and involve the relevant government agencies and the decreed-holder to effect the decree. Still, they have been recalcitrant belligerent and taken the court in cycles as if compliance with a court decree was negotiable. The dignity of this court is at stake. Judicial authority is derived from the people of Kenya and has to be exercised as per the Constitution and the laws of the realm. Section 29 of the [ELC Act](#), grants this court powers to sentence for contempt. It is over a year since the decree was made, yet the decreed-holder is yet to enjoy the fruits of his litigation due to obstruction by the contemnors. Kenyans and the decreed-holder expect the rule of law and not the rule of men to prevail. If we were to let the conduct of the contemnors prevail, then there would be a mockery of justice and the administrators of justice. See [Republic v Ahmed Abolfathi Mohamed & another](#) (2019) eKLR. The court finds the affidavit sworn by the contemnors lacks substance or merits. It is otherwise spiteful and scandalous. It shows the contemnors still have utter contempt for the decreed-holder and the decree issued in his favor. The defendant still thinks and behaves as if the decree is a mere piece of paper not worthy of the ink it is written in. No one is above the law and no man is below it. Obedience to the law is demanded as a right and not as a favour going by the word Theobore Roosevelt the 26<sup>th</sup> President of the United States of America cited in [Shimmers Plaza Ltd v NBK](#) (2015) eKLR. Instead of leading his family out of an unfortunate situation like his counsel on record was helping him, he was busy pulling in the opposite direction towards the gallows. In the exercise of my powers; I pardon the wife to the respondent on condition that she continues to obey the court decree.
10. The law and punishment for contempt of court do not exist to protect the personal dignity of the judiciary and not the private rights of the parties or litigants but where the jurisdictional supremacy of the law which is challenged. See [TSC v KNUIT & others](#) (2013) eKLR, [BOM Moi High School Kabarak & another v Malcolm Bell](#) (2013) eKLR, [Akber Abdullah Kassam Esmail v Equity Agencies Ltd & 4 others](#) (2014) eKLR.
11. The respondent and his son are fined Kshs.500,000/= each in default six months civil jail imprisonment sentence to be served at Meru G.K prison. See [Miguna Miguna v Fred Matiang'i C.A Ministry of Interior](#) (2018) eKLR.

Orders accordingly.



**DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT MERU ON  
THIS 19<sup>TH</sup> DAY OF FEBRUARY 2024**

**In presence of**

C.A Kananu

C.P Mbaabu for the contemnors/defendants

Mr. Mwirigi Kaburu for the plaintiff/applicant

**HON. CK NZILI**

**JUDGE**

