



REPUBLIC OF KENYA



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**County Government of Kilifi v Ngala (As Administrators of the Estate
of Tsangwa Ngala Chome) & 5 others (Civil Appeal (Application)
127 of 2018) [2025] KECA 933 (KLR) (23 May 2025) (Ruling)**

Neutral citation: [2025] KECA 933 (KLR)

REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT MOMBASA
CIVIL APPEAL (APPLICATION) 127 OF 2018
SG KAIRU, KI LAIBUTA & GWN MACHARIA, JJA
MAY 23, 2025

BETWEEN

COUNTY GOVERNMENT OF KILIFI APPLICANT

AND

**HASTLINGS TSANGWA NGALA (AS ADMINISTRATORS OF THE ESTATE OF
TSANGWA NGALA CHOME) 1ST RESPONDENT**

KETRACO COMPANY LIMITED 2ND RESPONDENT

MWABEJA, MWAMUDU & MWAKAI CLANS 3RD RESPONDENT

KATEMBE NZEMBE LEWA & 13 OTHERS 4TH RESPONDENT

THE ATTORNEY GENERAL 5TH RESPONDENT

THE NATIONAL LAND COMMISSION 6TH RESPONDENT

*(Being an appeal from the Judgment of the Environment and Land Court of
Kenya at Malindi (Angote, J.) dated 19th July 2018 in ELC Case No. 243 of 2015)*

RULING

1. The 3rd respondent, namely Mwabeja, Mwamudu & Mwakai Clans, (the applicant) has moved the Court by Notice of Motion dated 28th October 2024 seeking orders that the County Commissioner, Kilifi Mr. Josephat Biwott and the Officer Commanding Station (OCS) Mariakani Police Station Mr. Titus Mwaya be cited “for contempt of this Court’s Order issued on 15th April 2024 by wilfully failing, refusing and/or neglecting to comply with the orders directing them to provide adequate securities to the parties in the appeal and other occupants who are not party to the appeal together with their respective surveyors and Kilifi County Surveyor while ascertain the areas occupied in the property known as Kilifi/Madzimbani/Mitangoni/B/1”. The applicant also seeks an order that because of their



- acts of contempt Mr. Josephat Biwott and Mr. Titus Mwaya be detained in prison for a period of six (6) months or such period as the Court pleases.
2. In his affidavit in support of the application, Julius Nyamawi Kazungu, a member of Mwabeja Clan deponed that the Order of this Court issued on 15th April 2024 was duly served on the County Commissioner, Kilifi Mr. Josephat Biwott and the Officer Commanding Station (OCS) Mariakani Police Station Mr. Titus Mwaya but they have disobeyed the same; that despite the applicant having raised an amount of Kshs.1,500,000 which was demanded by Mr. Titus Mwaya, the OCS, Mariakani Police Station, the OCS has neither taken that money nor complied with the Court; that a Penal Notice was served on the said officers on 19th June 2024 but they have persisted in non-compliance; that on account of the disobedience with the said Order, the mediation process, which should have been concluded in sixty days, has gone on for the last nine months and is about to collapse; and that it is in the interest of justice that the orders sought be granted.
 3. In his replying affidavit in opposition to the application, Mr. Titus Mwaya, the OCS, Mariakani Police Station, deponed to the precariousness and volatility of the situation on the property; that on or about 27th January 2024, some parties to the dispute were killed escalating tension on the land; that against that background, upon being served with the Court order issued on 15th April 2024, in conjunction with the mediator and sub-county security team and some of the parties to the dispute, a public baraza was convened to enlighten members of the public on the court order, the purpose thereof, the road map and the expected results but the applicant and its advocates, despite being aware of that meeting, were absent.
 4. He deponed further that the mediator and the parties were advised to undertake sensitization and mobilise resources to provide adequate police officers for the exercise to be undertaken to avoid a repeat of the violence; that further sensitization meetings that were scheduled could not proceed on account of anti-Finance Bill demonstrations; that due to the vastness of the land in question, the parties and the Mediator were advised to provide finance in accordance with the Police Service Act for the hire of additional officers to cater for 16 days exercise, but provision of that budget was not made; that some parties to the dispute indicated that they were withdrawing from the mediation process further jeopardising the exercise; and that, as a result, “the team is unable to act and enforce the orders of the court as it cannot do so in the absence of the parties.”
 5. Mr. Mwaya deponed further that the Court order issued on 15th April 2024 was issued within the process of mediation to aid the parties reach agreement; that mediation having failed, the order cannot be implemented in isolation and outside the mediation framework but that the police and the County Commissioner “have always been ready and willing to implement the order of the court” and are not in contempt.
 6. The application is also opposed by the 1st respondent, the estate of Mumba Chome Ngala, deceased. In their replying affidavit sworn on 4th November 2024, Hastings Tsangwa Ngala, Mumba Tsangwa Ngala and Kilelo Tsangwa Ngala deponed that the applicant misapprehended the Orders of this Court issued on 15th April 2024; that they withdrew from the mediation process because it “was hijacked by various persons, whose concerted efforts were to legitimize illegal title deeds”; that the survey process was part and parcel of the mediation process and could not be utilized for any other purpose; and that the 1st respondent was therefore justified in withdrawing from the mediation process in the interests of justice and for preservation of their legal rights.
 7. During the hearing of the application before us on 4th December 2024, learned counsel Mr. Ondabu appeared for the applicant; Mr. Binyenya, learned counsel, appeared for the appellant/respondent;



Mr. Eredi, learned counsel, appeared for the 5th respondent; while Mr. I. Onyango, learned counsel, appeared for the 6th respondent. Mr. Onyango did not take a position on the application.

8. In his written submissions which he orally highlighted during the hearing of the application, Mr. Ondabu urged that despite being aware of the said Court Order, the County Commissioner, Kilifi Mr. Josephat Biwott and the Officer Commanding Station (OCS) Mariakani Police Station Mr. Titus Mwaya have "flagrantly disobeyed"; that the disobedience has negatively impacted ongoing mediation efforts arising from the appeal, potentially leading to their collapse despite the prescribed 60-day timeline; and that this has prejudiced the applicant and undermined the administration of justice.
9. It was submitted that the said officers were undoubtedly aware of the court orders. The decision of this Court in *Shimmers Plaza Limited vs. National Bank of Kenya Limited* [2015] eKLR, was cited for the holding that "knowledge of a court order is sufficient for purposes of contempt proceedings, even if personal service is not effected." Counsel emphasized that in this case, personal and electronic service were indeed effected; that their failure to comply with the court orders, despite having knowledge of them, constitutes "deliberate disobedience," which undermines the "dignity and authority of the court." In that regard, the Supreme Court case of *Republic vs. Ahmad Abolfathi Mohammed & Another* [2018] eKLR, which reaffirmed that "obedience to court orders is not optional but mandatory" was cited. It was urged that the said officers have offered no justification for their non-compliance, further confirming their wilful disregard.
10. Counsel submitted further that the Court has "inherent powers to punish for contempt to preserve the rule of law and enforce compliance with their directives" and in that regard quoted *Econet Wireless Kenya Limited vs. Minister for Information & Communication of Kenya & Another* [2005] eKLR for the proposition that "it is essential for the maintenance of the rule of law and good order that the authority and dignity of our courts are upheld at all times."
11. The Applicant urged the Court to impose "punitive sanctions," including "committal to civil jail for a period of 6 months and/or fines," to deter future disobedience.
12. In opposing the application Mr. Eredi for the 6th respondent who was supported by Mr. Binyenya for the appellant submitted that the application has no merit and should be dismissed; that the OCS Mariakani Police Station Mr. Titus Mwaya has explained in detail the steps taken to give effect to the Order made by this Court on 15th April 2024; that the suit property is vast and the situation there is very volatile; that a sensitization exercise, a baraza that was organised, was misinterpreted and the applicant failed to attend thereby frustrating the exercise; that additional police officers were required and an estimate of the cost of doing so in accordance with Section 104 of the *Police Service Act* was provided whereupon the applicant should have submitted an application to the Inspector General; that in any event the mediation process appears to have failed; and that the named officers are not in contempt. Counsel urged the Court to dismiss the application with costs.
13. We have considered the application, the affidavits, the submissions and the authorities cited. In the case of *Shimmers Plaza Limited vs. National Bank of Kenya Limited* (Civil Appeal No. 33 of 2012) [2015] KECA 945 (KLR), this Court expressed, in clear terms, that:

Court orders must be obeyed. Parties against whom such orders are made cannot be allowed to trash them with impunity. Obedience of court orders is not optional rather it is mandatory and a person does not choose whether to obey a court order or not. For as Theodore Rousevelt, the 26th President of the United States of America once said "No man is above the law and no man is below it; nor do we ask any man's permission to obey it. Obedience to the law is demanded as a right; not as a favour". The courts should not fold



their hands in helplessness and watch as their orders are disobeyed with impunity, left right and center. This would amount to abdication of the sacrosanct duty bestowed on us by the Constitution. The dignity, and authority of the court must be protected, and that is why those who flagrantly disobey them must be punished lest they lead us all to a state of anarchy...”

14. Earlier, in the famous English case of *Hadkinson vs. Hadkinson*, (1952) ALL ER 567, Romer, L.J. stated that:

“It is the plain and unqualified obligation of every person against, or in respect of, whom an order is made by a court of competent jurisdiction to obey it unless and until that order is discharged. The uncompromising nature of this obligation is shown by the fact that it extends even to cases where the person affected by an order believes it to be irregular or even void.

15. As regards the standard of proof in contempt matters, in the case of *Mutitika vs. Babarini Farm Limited* [1985] KLR 229, this Court stated that the standard of proof in contempt matters must be higher than proof on the balance of probabilities, almost but not exactly, beyond reasonable doubt. Has the applicant discharged that burden in the present case? Has the applicant demonstrated wilful disobedience of the court order?

16. As already stated, Mr. Titus Mwaya, OCS Mariakani Police Station has explained in his affidavit, the steps taken in compliance with the order of 15th April 2024 which directed his office and the County Commissioner Kilifi, to provide security. He explained that following receipt of the Order, he convened a public baraza to enlighten members of the public on the court order, and the purpose of the exercise; and that the applicants absented themselves from that baraza, which in his view, sent “mixed signals to the residents”.

17. Mr. Mwaya explained further that on account of “the vastness of the land and the volatile security situation” the hiring of additional police officers was necessary, and the applicants were required to procure the additional officers in accordance with the *Police Service Act*.

18. There is also evidence, in the form of the replying affidavit filed on behalf of the 1st respondent, of the withdrawal from the exercise by parties to the dispute, which according to Mr. Mwaya, further jeopardized the exercise.

19. Based on the foregoing explanation, we are not satisfied that the 3rd respondent/applicant has discharged its burden of proof, to the required standard, that either the County Commissioner or the OCS Mariakani Police Station have wilfully disobeyed the Orders of this Court. As the Supreme Court of Kenya cautioned in explaining the rationale for higher

standard of proof in contempt matters in the case of, *Republic vs. Mohammed & Another* (Criminal Application 2 of 2018) [2018] KESC 51 (KLR), the power, to commit a person to jail, must be exercised with utmost care, and exercised only as a last resort and that:

It is of utmost importance, therefore, for the respondents to establish that the alleged contemnor’s conduct was deliberate, in the sense that he or she willfully acted in a manner that flouted the Court Order.”

20. In our view, the applicant has fallen short in proving wilful disobedience of the Court order. The application fails and is dismissed with costs to the Attorney General, being the only party that actively defended the application.



DATED AND DELIVERED AT MOMBASA THIS 23RD DAY OF MAY, 2025.

S. GATEMBU KAIRU, FCIArb

.....

JUDGE OF APPEAL

DR. K. I. LAIBUTA, CArb, FCIArb.

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JUDGE OF APPEAL

G.W. NGENYE-MACHARIA

.....

JUDGE OF APPEAL

I certify that this is a true copy of the original.

DEPUTY REGISTRAR

