



**Matafali v Luteshi (Environment & Land Case 168 of 2016)
[2024] KEELC 1470 (KLR) (19 March 2024) (Ruling)**

Neutral citation: [2024] KEELC 1470 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KITALE
ENVIRONMENT & LAND CASE 168 OF 2016
FO NYAGAKA, J
MARCH 19, 2024**

BETWEEN

JOHN WEKESA MATAFALI PLAINTIFF

AND

REBA KHAVERE LUTESHI DEFENDANT

RULING

1. Before me is a Notice of Motion that is dated 12/06/2023. It is brought under Order 51, Rule 1 of the Civil Procedure Rules 2010 and Sections 1A, 1B and 3A of the Civil Procedure Act, Sections 5, 27 (b) and 28 of their Contempt of Court Act 2016 and all enabling provisions of the law. It seeks the following orders:
 1. That the plaintiff respondent be summoned by this Honourable Court to show cause why he should not be committed to civil jail for being in contempt of a court order issued on 14/02/2022.
 2. ...spent
 3. That all other necessary and consequential orders or directions be given in order to meet the ends of justice and uphold the authority, dignity and honor of the Court.
 4. That Costs of this application be provided for.
2. The application was based on seven (7) grounds which were that vide a Plaint dated 19/11/2016, the Plaintiff instituted this suit which has been heard and determined by this Court through a judgment delivered on 23/10/2019. That on 20/02/2020 the Court issued orders by which it granted the defendant's Counterclaim aimed at implementing the Land Registrar's and County Surveyor's reports. The County Surveyor visited the suit land on 20/12/2022 in the presence of the Defendant and marked new boundaries as per the court Order of 14/02/2020, and immediately after the surveyor



- fixed the beacons and demonstrated the boundary the Plaintiff removed the said beacons and the marked boundaries. The actions of the relative constitute a blatant disregard of this Court's authority. That the application herein is made in good faith and for the interest of justice, and the conduct of the plaintiff is targeted at belittling and or undermining the authority, dignity and integrity of this Court.
3. The application was based on the affidavit of Reba Khavere Luteshi, sworn on 12/06/2023. In it she deposed by repeating the contents of the grounds but in deposition form. Then she annexed to the Affidavit and marked as RKL-1 copies of the judgment of this Court, RKL-2, the order issued on 14/02/2020, RKL-3 a copy of the surveyor's report, and RKL- 4 a compact disc (CD) video clip to demonstrate the destruction of the beacons. The CD, RKL-4 was accompanied by a Certificate made by Chrisple Amudoli Sungu under Section 106B of the Evidence Act, Chapter 80 of the Laws of Kenya. It was dated 15/08/2023. She deposed that the activities of the Respondent were a clear demonstration of contempt of Court and that the Plaintiff was aware of the order which he disobeyed.
 4. The application was opposed through a replying affidavit sworn by the Plaintiff sworn on 15/09/2023. He stated that he had, through the assistance of his wife, understood the contents of the application. He had been advised by his advocate that the application was frivolous, vexatious and an abuse of the process of the Court; it was brought under the wrong provisions of the law, especially the Contempt of Court Act, which was an obsolete statute; that the application was full of allegations and assumptions which did not meet the legal threshold; he was not aware of any invitation to survey the land, and no survey was done as stated, and no beacons were fixed as alleged; and no report of removal of the beacons was made available to the Police, and that the issue of removal of the beacons amounted to nothing but a surmise or presupposition by the Applicant. He prayed for the dismissal of the application.
 5. The Applicant filed a supplementary affidavit from in which she replied to the depositions in the replying affidavit. She stated that the application was brought under the Civil Procedure Rules and the Contempt Act of 2016 and not the law of contempt. Further, that Order 51 Rule 10 of the Civil Procedure Rules is clear that failure to state every rule or any statutory law shall not subject an application to rejection or refusal and neither shall any application be defeated for want of form that does not affect the substance.
 6. She deposed further that the video clip and the survey report annexed to her application would always tell the truth. Further, that the Respondent was present when the surveyor visited the land and adjusted the road as per the court Order. But the respondent removed the beacons and has refused to move his fence from the road reserve. That the respondent was not being truthful about the decree of this court. That the Respondent had not given any reason as to why the Order should not be implemented after he removed the beacons.
 7. That after the Respondent committed the acts of contempt of court, the Applicant had the option of reporting the matter to the police or cite him for contempt but she chose the latter. Further, that the Respondent, in the process, caused a commotion in the presence of the surveyor and police officers. That the Applicant had sufficient grounds and had demonstrated that there was enough evidence for the court to summon the Respondent to show cause why he should not be punished for contempt hence the application was merited and should be allowed.
 8. When the application was ready for hearing, this court invited both parties to attend the open Court session. The Respondent attended together with the individual who took the video clip. This was for the purpose of playing and watching the video clip. This happened on 01/02/2024 when the video clip marked as annexure RKL-4 was played in their presence. The defendant who was unwell was represented by her son, who also happened to be the one who recorded the video clip. The video was a 36 second clip.



9. After it was played on, learned counsel for the Respondent sought leave to cross-examine the maker thereof and it was granted. On cross-examination he stated that his name was Chrispo, Amudoli Sungu who resided in Kiminini in an area called Masaba land. He stated he knew the Respondent as his neighbour. The Applicant was his mother. On the 20/12/2023, when the surveyors visited the land to establish the boundaries, he was present. That the surveyor had given notices to the parties and the area chief together with the OCS Kiminini police station. That on that material date the surveyor visited the land and carried out the establishment of the boundaries, and established and fixed the beacons. He knew the surveyor as one Geoffrey, but did not know his other names. That when the surveyor had fixed the beacons, at first Mr. Matafali the plaintiff was not present, but he came towards the end of the exercise and then. He found the beacons or already erected and or/put on the site on the part of the land that Matufali claimed as his.
10. When he arrived, he started causing a commotion and began uprooting the beacons that were erected. That he (Mr. Chrispo) took a video of the actions of the Respondent. He demonstrated from a still photo of the video clip when stopped that in the foreground the direction was towards Kiminini and to the far right was the home of the late Maxwell another neighbour, and the maize that was on the foreground was of the Respondent and on the left side was the house of the Applicant's mother. He further demonstrated that there was an electric pole which was erected on the site when he was there and he applied for the way leave. Further, that the road is supposed to be 6 meters wide. He demonstrated that when the Respondent moved the boundary he encroached on to the road to Kiminini. And that when the surveyor moved it slightly inward to the Respondent's land. He found that there was a two-metre encroachment of the road.
11. He stated further that that the iron sheet structure shown in the video being on the land was constructed by the Respondent for his workers and it was built on the road reserve. He stated that the Respondent did not reside on the land but in a place called Muthangari, about one and half kilometres away from the suit land. He pointed out the surveyor, the Plaintiff and the Officer Commanding Station (OCS) and two police officers who had accompanied the OCS. Further, that at the 11th second of the Clip the Respondent was captured uprooting one of the beacons in presence of the parties who were present and he was heard (and indeed the Court heard from the video clip) saying that he had been waiting for the surveyor to come earlier but they did not. That they came without a letter this later time. He then was heard commanding them to leave, and he chased them away, saying, "About Turn". And the officers and the persons present left. That then he continued uprooting the beacon.
12. In cross examination, the witness stated that his name is Chrisple. That the surveyor had had issued a notice, which he himself received five days before he visited the land. He did not know whether the plaintiff had given a notice. But he stated that on the material date, on 20/12/2022, the area Chief called the said Respondent on phone. And that when the Area Chief called the Respondent, he said he would arrive later, and by 3:00 PM he came to the site. That was when he found out that part of the work had been done. He started the commotion as stated before. The witness explained how he took the video and how he burned it to a Compact Disc in a laptop which was working finally he stated that his mobile phone had a memory card and storage, but he did not specify where the video was stored.
13. On his part, the Respondent was called testify and to explain the actions in the video clip. He stated that his suit was dismissed and the counterclaim allowed. He stated that he was not given a notice that the surveyor was to visit the land. He admitted he had seen the video clip. That it was true, he went to the ground and found the Sub-chief, another person whom he knew as Chrispo and the police, but he did not know the others. He admitted he found posts already erected and the Sub-chief stood by. He admitted that he made noise because he was called about 2:00 PM of that date that the people were on the ground. By that time he was in a place called Cherangani.



14. He arrived at 3:00 PM. He was told that they had come to survey the land. He admitted that there was an earlier notice issued to them in 2021 that survey would be carried out. He stated that his complaint was that he was not informed this time round of the actions that took place on that date. He only arrived and found that they had erected posts. He admitted that he uprooted the posts. But he stated that there were no metallic beacons fixed to the ground.
15. On the cross examination, he admitted that the photo showed how the road was at the time of his actions. He admitted that he erected the structure on the ground but he did not agree to the road being moved. He stated that he had appealed against the judgment of the court since the court did not decide the case well.
16. He stated that on 20/12/2022 he was on the site as the video showed. Further, there were four posts already erected. That it was true he chased away the officers. And about the language he used he said it was a formal one because he used to be an army officer before. He said he did not understand the procedure of complaining about such actions as when a notice was not given.
17. In submissions, the Applicant stated that in the incident the Respondent was seen approaching a post and uprooting it. That he admitted to chasing away officers. She submitted further, the only complaint the Respondent had was that he was not informed about the work to be done on the material date. But if he was dissatisfied with it he should have asked for a resurvey or rather than remove the beacons that had been put or move the boundary established and erected as directed by the court. Thus, the Respondent was in contempt.
18. In her written submissions she stated that the application was brought under the [Contempt of Court Act](#) 2016. She relied on the annexures to the Supporting Affidavit and submitted further that the Respondent was fully aware of the decree of the court since he had on two occasions before come to this court to set it aside, vide the applications dated in 18/02/2021 and 28/01/2023. She submitted that for that reason, the Respondent was in contempt of Court. She relied on the case of [Joseph Tereto v Keep So Good Arab and Another](#) 2017 eKLR.
19. On his part, the Respondent argued that a party should not be condemned or punished for an order unless he was aware of it and the consequences of disobedience. Also, that there was an omission to inform him of the fixing of the boundary by the surveyor. That he did not understand the procedure of raising a complaint and so when he found the acts done, that is why he did it. Further, that he was a stammerer and had hearing impairment which may have made him fail to understand the procedure. In regard to the dates indicated in the affidavit as December, 2023 yet the report and Certificate to the Clip indicated December, 2022 as the dates when the actions took place, he submitted that these raised issues as to how the video was taken, and that a lot of details were missing from the clip.
20. In his written submissions, the Respondent relied on the case of [Gathara K. Mutikika v Baharani Farm Ltd](#) (1985) KLR 227 and [Samuel Mwero and others v NLC and 2 Others](#), 2020 eKLR. He submitted that the applicable law was Section 5 of the [Judicator Act](#). Chapter 8 of the Laws of Kenya which became applicable after the High Court nullified the [Contempt of Court Act](#) of 2016 in the judgment of [Kenya Human Rights Commission v the Attorney General](#) (2018) eKLR.
21. He submitted that for a party to succeed in such an application, he had to prove four requirements:-
 - i) That terms of the order were clear and binding.
 - ii) That the defendant had knowledge of the proper notice of the order.
 - iii). That he acted in breach of their orders.



- iv) His conduct was deliberate.
22. He relied on the case of *Katsuri limited v Kapuchand Shab* [2016] eKLR and the one of *Jack & Jill Supermarket v Viklai Maina Ngunjiuri* [2016] eKLR.

Issue, Analysis and Determination

23. I have carefully considered the application, the opposition thereto, the law, the submissions of the rival parties and I am of the view that three issues commend themselves for determination. They are, whether the failure to cite the proper provisions of the law fatally affects the Application; whether the application is merited, and who to bear the costs of the Application.
24. Starting with the first issue, besides Sections 1A, 1B and 3A of the *Civil Procedure Act* the Applicant cited Sections 5, 27 (b) and 28 of the *Contempt of Court Act* 2016. This Court wishes to point out that each of the provisions of law which a party seeks to rely on has its place and application for a specific aspect of practice or issue. Provisions of law are not necessarily relevant to a situation since they appeal to the mind of a party as being blanket. Actually, there are no blanket or omnibus provisions of law, and if they do then they too were designed to serve a specific purpose and should be limited to that. Therefore, Sections 1A, 1B and 3A of the *Civil Procedure Act* are irrelevant in the instant application in so far as there are specific provisions of law that apply to Contempt of Court applications.
25. That said, it is worth of note that learned counsel ought to exercise due diligence of being learned and therefore keep abreast of the developments of the law. This is because learned counsel cited some Sections of the *Contempt of Court Act*, 2016 which statute was declared unconstitutional vide the decision of the High Court in the *Kenya Human Rights Commission v A.G. & Another* [2018] eKLR. It is misleading to rely on laws that do not exist or have ceased to have a force of law by virtue of repeal or declarations that they are unconstitutional.
26. Having said so, does the act of citing the wrong provisions make the application incurably defective? Order 51 Rule 10 of the *Civil Procedure Rules*, 2010 provides that:-
- “ 10. Provision under which application is made to be stated [Order 51, rule 10]
- (1) Every order, rule or other statutory provision under or by virtue of which any application is made must ordinarily be stated, but no objection shall be made and no application shall be refused merely by reason of a failure to comply with this rule.
- (2) No application shall be defeated on a technicality or for want of form that does not affect the substance of the application.”
27. In addition, Article 159(2)(d) of the *Constitution* of Kenya, 2010 provides that:
- “In exercising judicial authority, the courts and tribunals shall be guided by the following principles- justice shall be administered without undue regard to procedural technicalities”.
28. In my view failure to cite the proper provisions of the law, in this instant application did not render the it incurably defective. The applicant brought out with sufficiency particularity what he wished the Court to grant: a finding on whether or not the Respondent was in contempt of court. The Court cannot shy away from making a finding on the merits of the issue.



29. The punishment for contempt of Court is provided for under Section 29 of the *Environment and Land Court Act*, which reads as follows:

“...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. But what constitutes Contempt of Court? The learned author, Bryan Garner answers the question by providing a definition in *Black’s Law Dictionary, 11th Edition, Thompson Reuters, 2019, p. 397*. He defines it as “...disregard of, or disobedience to, the rules or orders of a legislative or judicial body, or an interruption of its proceedings by disorderly behavior or insolent language, in its presence or so near thereto as to disturb the proceedings or impair the respect due to such a body”.

31. Therefore, a party, whether or not served with a court order, as long as it is directed to him or her and he becomes of it howsoever, is bound to obey. This is because, court orders are not issued in vain. They ought to be obeyed. And for this, there is no dearth of decisions about disobedience of court orders. Thus, in *Kenya Human Rights Commission v Attorney General & Another* [2018] eKLR the Court emphasized as follows:

“ Article 159 of the *Constitution* recognizes the judicial authority of courts and tribunals established under the *Constitution*. Courts and Tribunals exercise this authority on behalf of the people. The decisions courts make are for and on behalf of the people and for that reason, they must not only be respected and obeyed but must also be complied with in order to enhance public confidence in the judiciary which is vital for the preservation of our constitutional democracy. The judiciary acts only in accordance with the *Constitution* and the law (Article 160) and exercises its judicial authority through its judgments decrees orders and or directions to check government power, keep it within its constitutional stretch hold the legislature and executive to account thereby secure the rule of law, administration of justice and protection of human rights. For that reason, the authority of the courts and dignity of their processes are maintained when their court orders are obeyed and respected thus courts become effective in the discharge of their constitutional mandate”.

32. In the neighbouring jurisdiction, in *Nthabiseng Phoko v Ekurhuleni Metropolitan Municipality & Another* CCT 19/11(75/2015) Nkabinde, J observed that:-

“The rule of law, a foundational value of the constitution, requires that the dignity and authority of the courts be upheld.

This is crucial, as the capacity of courts to carry out their functions depends upon it. As the constitution commands, orders and decisions issued by a court bind all persons to whom and organs of state to which they apply, and no person or organ of state may interfere in any matter, with the functioning of the courts. It follows from this that disobedience towards courts orders or decisions risks rendering our courts impotent and judicial authority a mere mockery. The effectiveness of court orders or decisions is substantially determined by the assurance that they will be enforced.”



33. Further away, in Canada, the Court emphasized on obedience of Court orders than, in my view, in many other jurisdictions. That was in the case of *Canadian Metal Co. Ltd v Canadian Broadcasting Corp*(N0.2) [1975] 48 D.L.R.(30), where it stated that;

“To allow court orders to be disobeyed would be to tread the road toward anarchy. If orders of the court can be treated with disrespect, the whole administration of justice is brought into scorn... if the remedies that the courts grant to correct... wrong can be ignored, then there will be nothing left for each person but to take the law into his own hands. Loss of respect for the courts will quickly result into the destruction of our society.”

Courts therefore punish for contempt to insulate its processes for purposes of compliance so that the rule of law and administration of justice are not undermined. Without this power or where it is limited or diminished, the court is left helpless and its decisions would mean nothing. This ultimately erodes public confidence in the courts; endangers the rule of law, administration of justice and more importantly, development of society. That is why the court stated in *Carey v Laiken* [2015] SCC17 that;

“Contempt of court rests on the power of the court to uphold its dignity and process. The rule of law is directly dependent on the ability of the courts to enforce their process and maintain their dignity and respect”

It is therefore a fundamental rule of law that court orders be obeyed and where an individual is enjoined by an order of the court to do or to refrain from doing a particular act; he has a duty to carry out that order. The court has a duty to commit that individual for contempt of its orders where he deliberately fails to carry out such orders. (*Louis Ezekiel Hart v Chief George 1 Ezekiel Hart* (-SC 52/2983 2nd February 1990). And in *Hon. Martin Nyaga Wambora and Another v Justus Kariuki Mate & Another* [2014] eKLR, the Court stated the duty to obey the law by all individuals and institutions is cardinal in the maintenance of rule law and administration of justice.

It is therefore clear that the importance of the judiciary in the maintenance of constitutional democracy cannot be overemphasized. In order to achieve this constitutional mandate, the judiciary requires the power to enforce its decisions and punish those who disobey, disrespect or violate its processes otherwise courts will have no other means of ensuring that the public benefit from the judgments they hand down and the orders and or directions made on their behalf. When stripped of this power courts will be unable to guarantee compliance with their processes and will certainly become ineffective in the discharge of their duties and performance of their functions with the ultimate result that the public, as trustees of the rule of law, will be the major victim.”

34. In the case *Wamalwa v Ekirapa* (Environment and Land Miscellaneous Application 2 of 2022) [2022] KEELC 13267 (KLR) (5 October 2022) (Ruling) Court expressed itself thus:-

“In order for one to be found guilty of the Contempt of Court, four (4) elements must be proved. There must have been:

- (a) a valid order of the Court.
- (b) the order must have been served or been constructively in the knowledge of the alleged contemnor.
- (c) there must be an action or actions of a contemnor contrary to the order.



(d) the actions of the contemnor in violation must be deliberate.”

35. Also, in *Michael Sistu Mwaura Kamau v DPP & 4 Others* [2018] eKLR, the Court of Appeal stated as follows:

“It is trite that to commit a person for contempt of court, the court must be satisfied that he has willfully and deliberately disobeyed a court order that he was aware of. That is made absolutely clear by section 4 of the *Contempt of Court Act* and the ruling of the Supreme Court in *Republic v Ahmad Abolfathi Mohammed & Another (supra)*. Secondly, as this Court emphasized in *Jiban Freighters Ltd v Hardware & General Stores Ltd* and in *A.B. & Another v R. B.* [2016] eKLR, to sustain committal for contempt of court, the order of the court that is alleged to have been deliberately disobeyed must be clear and precise so as to leave no doubt as to what a party was supposed to do or to refrain from doing. Lastly, the standard of proof in committal proceedings is higher than proof on a balance of probabilities, though not as high as proof beyond reasonable doubt. (See *Mutitika v Baharini Farm supra* and *Republic v Ahmad Abolfathi Mohammed & Another (supra)*”.

36. Further, the same Court stated in *Shimmers Plaza Ltd -v- National Bank of Kenya Ltd* [2015] eKLR, as follows:

“It is important, however, that the Court satisfies itself beyond any shadow of a doubt that the person alleged to be in contempt committed the act complained of with full knowledge or notice of the existence of the order of the Court forbidding it... The threshold is quite high as it involves possible deprivation of a person’s liberty”.

37. That said, with the guidance of the authorities above, it is clear that if there is a valid order of the court which is served or constructively in the knowledge of the alleged contemnor whose action or actions contravene it and the said actions of violation are deliberate, the Court should not hesitate to punish such a person.

38. In this matter, the Court delivered a judgment in the Counterclaim by the Defendant, which was to be implemented by way of execution of the decree. The decree was extracted on 04/02/2020. It was marked as RKL-2 in the instant application. At paragraph one of the decree the Court ordered that the County Surveyor’s Report produced as D.Exhibit 2 be implemented.

39. It is not in dispute that the Plaintiff challenged the judgment in the Court of Appeal but the appeal was lost. Thereafter, he has moved this Court twice vide an application dated 18/02/2021 and 20/01/2023 to set aside the judgment but the two applications have not been successful.

40. On 20/12/2022 at 2:00 PM the County Surveyor in company of the OCS Kiminini Police Station and two officers, together with the Area Chief visited the suit land for purposes of implementing the judgment of the Court. The Defendant’s son, one Chrisple Amudoli Sungu too was present, among others.

41. At first the Plaintiff was absent but he was called by the Area Chief. It is admitted by him that he came to the ground at 3:00 PM and found that the work of establishing the boundary was substantially done by the County Surveyor. Then he caused a commotion and chased away the officers while uprooting the beacons, by way of posts, which had been erected to mark the boundary. These actions were captured in a video Clip which was produced as RKL-4. It was accompanied by a Certificate under Section 106B of the *Evidence Act*.



42. The acts of causing a commotion and chasing away the persons present then on the suit land is not disputed by the Respondent. His complaint was that he was not notified of the visit by the surveyor on the material date, an earlier one having aborted. He argued that he did not know how to complain about the non-notification of the visit and that he, being a stammerer and of hearing impairment did not know what to do. Further, he argued that the name of the person who recorded the video was in issue since he was known as Chrisple Amudoli Sungu while he was also referred to as Chrispol by the County Surveyor in his Report dated 01/03/2023, annexure RKL-3. Also, he argued that in the Affidavit the Applicant swore that the survey was undertaken on 20/12/2023 while elsewhere, and even in the sworn oral testimonies of Chrisple and the Plaintiff it was indicated it took place on 20/12/2022.
43. In regard to the two arguments, this Court points out that they were minor disparities between the reality and the typing of documents hence treats them as minor errors which the principle of *de minimis non curat lex*, to the effect that the law is not concerned with trivialities or minor things (that do not affect the real substance). This is because both the Respondent and the person who took the video agree in their testimonies that the incident took place on 20/12/2022. Moreover, the Affidavit in which it was deponed in paragraph 1(d) that the incident happened on 20/12/2023 was sworn on 12/06/2023 some six months prior to the date said to have been in issue in the same affidavit. This is not humanly possible and could not be referring to a past event. The paragraph is supposed to be read in context.
44. Lastly, regarding the name of the individual who took the video, this Court regards the difference as a typing error made by the Surveyor since the individual himself has indicated the proper spelling thereof, including when he signed the Certificate dated 15/08/2023 under Section 106B of the [Evidence Act](#).
45. The question that the Court asks itself is whether the requirements of the application for contempt of Court had been fulfilled as per requirements of the authorities cited above? It is clear to me that the Plaintiff was aware of the decree which was sought to be implemented earlier when the County Surveyor issued a notice to visit the site to implement it but it did not materialize hence the second visit of 20/12/2022. As to whether the Plaintiff was notified or not, it is clear that he was at the site at 3:00 PM on the material date and caused commotion, chased away the officers and uprooted the posts put in place to mark the boundary. He does not deny that.
46. I will not go far in this analysis. From the video clip and the admissions of the Respondent, it is clear that he acted contemptuously of the orders of the Court. I find his argument that he did not know how to complain extremely unconvincing. This is a person who admits to have worked in the armed forces before being retired. Furthermore, *ignorantia juris non excusat* meaning that ignorance of the law is no defence. Further, being a person with disability as a stammerer is not an excuse and leeway to disobey the law. I find that the Plaintiff deliberately acted in contravention of the implementation of the decree which he has challenged on appeal in vain and tried to set it aside in vain. I find him guilty of contempt of Court and convict him accordingly.
47. This Court orders and directs that the contemnor purges the contempt within four (4) days of this order by returning and/or putting in place posts of same size as the ones he uprooted in the same position or holes he removed them from and erecting a fence along the marked boundary while he opens or clears or removes the fence he erected on or within the road encroached onto the to the extent the surveyor found in the established boundary. Thereafter, he will report to the Area Chief or Sub-chief of the area, on the seventh-day, for him to inspect the fence and report to this Court on 04/04/2024 when the contemnor will attend this Court, in person, for mitigation and sentencing.



48. The Area Chief of Kiminini Location or the Sub-Chief of Nabiswa Sub-location is hereby required by summons to attend Court on 04/04/2024 to confirm the position on the ground after four (4) days of this order. The Applicant to serve him or her with these directions and summons.

49. Orders accordingly.

Ruling dated, signed and delivered at Kitale in Open Court this 19th day of March, 2024.

HON. DR. IUR FRED NYAGAKA

JUDGE, ELC. KITALE

In the presence of:

Wanyonyi Advocate-----for the Plaintiff/Contemnor

Barongo Advocate-----for the Defendant/Applicant

J. W. Matafali-----Plaintiff/Contemnor

