



REPUBLIC OF KENYA



**Krop & 3 others v County Commander West Pokot County &
34 others (Environment & Land Case 118 of 2013 & 93 of 2018
(Consolidated)) [2025] KEELC 844 (KLR) (26 February 2025) (Ruling)**

Neutral citation: [2025] KEELC 844 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

ENVIRONMENT & LAND CASE 118 OF 2013 & 93 OF 2018 (CONSOLIDATED)

CK NZILI, J

FEBRUARY 26, 2025

BETWEEN

VINCENT NARISA KROP 1ST APPLICANT
COX PATRICK NARISA 2ND APPLICANT
CHEMUTUKEN PALEE LOUKOTUM 3RD APPLICANT
JANE NARISA CHEPOTUM EDHIO 4TH APPLICANT

AND

COUNTY COMMANDER WEST POKOT COUNTY 1ST RESPONDENT
MARTIN SEMERO 2ND RESPONDENT
KAMZEE LIMAKOU 3RD RESPONDENT
PETER LIMASIA 4TH RESPONDENT
SAMSON KAPCHONGE 5TH RESPONDENT
SAMUEL ALUKURENG 6TH RESPONDENT
WILSON ALUKURENG 7TH RESPONDENT
ALIAS ALUKURENG 8TH RESPONDENT
ANDREW POGHISHO 9TH RESPONDENT
REUBEN SHARTI 10TH RESPONDENT
JACKSON KANAWAI SHARTI 11TH RESPONDENT
PHILIP SHARTI 12TH RESPONDENT
STEPHEN KAKUKO CHELOPEI 13TH RESPONDENT



CHRISTOPHER SHARTI	14 TH RESPONDENT
JEREMIAH SHARTI	15 TH RESPONDENT
DANIEL TIMOTHY KENYENYA SHARTI	16 TH RESPONDENT
RICHARD SOPRIN	17 TH RESPONDENT
KARITOR PSIREN LOSIANGOLE	18 TH RESPONDENT
RICHARD LOSIANGOLE	19 TH RESPONDENT
MICHAEL LOPEITODO	20 TH RESPONDENT
SOLOMON TIRIR SIRI	21 ST RESPONDENT
JOHN LIMANGOLE LOPEITODO	22 ND RESPONDENT
CHEPTANGAT LOKERIS	23 RD RESPONDENT
TERESA PETER LOKICHU	24 TH RESPONDENT
ELIZABETH LIMUNAN	25 TH RESPONDENT
DAKTA WAKANU	26 TH RESPONDENT
GEOFFREY YEKO LOPOTIO	27 TH RESPONDENT
POWON LONYANG	28 TH RESPONDENT
DANIEL MERIKENEI	29 TH RESPONDENT
JACOB LIMAN	30 TH RESPONDENT
JACKSON LIMANI	31 ST RESPONDENT
ISAAC KOTIT	32 ND RESPONDENT
JOAKIM ALEMUSIA	33 RD RESPONDENT
ELIUD JOAKIM	34 TH RESPONDENT
CHEPARKONG DOMONYANG	35 TH RESPONDENT

RULING

1. This ruling relates to an application and a preliminary objection dated 5/12/2024 and 13/1/2025, respectively. In the said application, the court is asked to issue summons against the respondents to appear and show cause why they should not be cited for contempt of court and committed to civil jail for disobeying court orders issued on 20/6/2023. The last prayer is that the respondents be restrained from cultivating on the applicants' parcel No. West Pokot/Chepareria/716. The reasons are contained on the face of the application and in a supporting affidavit of Vincent Narisa Krop, sworn on 5/12/2024 on his own behalf and of his co-applicants.
2. The 1st applicant deposes that a judgment was issued in his favor on 29/5/2020 decreeing the 2nd - 35th respondents to vacate his land and stopping them from interfering with the same. It is deponed that by an order dated 20/6/2023, the 1st respondent was to offer assistance to him and ensure vacant possession was granted during the eviction. Despite service with the eviction order, it is deponed that



- the 1st respondent has not acted, and the 2nd - 35th respondents have remained in occupation of the suit land.
3. The 1st applicant deposes that an eviction order dated 20/6/2023 was extracted and served upon the 1st respondent on 26/6/2023 and the rest of the respondents or their representatives on 29/6/2023. He annexed copies of the same and an affidavit of service as annexures 'VNK' 1, '2' and '3'. The 1st applicant deposes that whereas some of the judgment debtors have obeyed the court orders and vacated the suit property, the 2nd to 35th respondents have defied the orders and still forcefully continue to occupy the suit land. The 1st applicant deposes that they have severally visited and made follow-ups with the 1st respondent to have the orders implemented, but the 1st respondent, despite making several promises has failed to and or refused to act.
 4. The 1st applicant avers that as a result of acts of disobedience and contempt of court orders, they have suffered and continue to suffer immensely, for they are unable to obtain possession of and or cultivate on their land, which has affected their livelihood, rendering them destitute. The 1st applicant urges the court to intervene; otherwise, there will be a miscarriage of justice, which the respondents are also perpetuating. Further, the 1st applicant deposes that the dignity of the court should be upheld, for court orders are not made in vain, but are made to be obeyed instead of the impunity being shown by the respondents, which amounts to belittling the dignity of the court.
 5. The 1st respondent opposed the application through a replying affidavit of Joseph Yakan, a Senior Superintendent of Police and the Deputy County Commander of West Pokot. It was averred that his office is tasked with the maintenance of peace and protection of life and property in West Pokot County as per Article 238 of the Constitution, by deploying security personnel in every corner of the region and responding to calls for distress.
 6. The 1st respondent avers that on several occasions, his office has visited the premises in question to assess the situation on the ground but has often been met with fierce resistance and hostility, which warrants the mobilization of security officers that is out of its reach.
 7. Further, 1st respondent avers that the county security intelligence committee was notified, and its recommendation is being awaited to give directions on the best way to enforce the court order; hence, the office has not defied the said order, only that it has limited enforcement capacity due to understaffing, resulting to the office prioritizing the security of the general public in this hostile region.
 8. The 1st respondent also avers that unless its office is assigned more personnel and resources, it will be challenging to execute the court orders, save that the Inspector General of the police, as is the procedure, was notified through his deputy and was yet to respond. The 1st respondent urges the court to find it has acted in good faith and within the law; otherwise, the application should be dismissed.
 9. When the matter came up for inter-partes on 23/1/2025, Mr. Lowasikou, for the 2nd - 35th respondents, in the absence of the applicants and the 1st respondent, argued the preliminary objection dated 13/1/2025. Learned counsel submitted that some of the parties enjoined in the application were not initially in the suit. Learned counsel told the court that the applicants had chosen to add parties in this application who were not parties to the main suit. Therefore, learned counsel was of the view that to issue orders against non-parties to the main suit would be unfair, for they would be condemned unheard. In this instance, learned counsel submitted that the orders sought would affect non-parties who were not given a chance to state their case at the main hearing or in the application contrary to rules on fair hearing.
 10. Learned counsel submitted that the applicants never sought leave of court to join the parties, and names were being sneaked in at this late stage, which is an afterthought, an abuse of the court process, and



urged the court to find no merits in the application. Additionally, learned counsel submitted that the applicants were not before the court and that the application should be dismissed by upholding the preliminary objection. Learned counsel conceded that an eviction order was issued against the 2nd -13th respondents, but the rest were not parties. Learned counsel also conceded that there were no stay orders in place.

11. As a starting point, the Firm of Lowasikou & Co. Advocates filed a Notice of Appointment of Advocates dated 16/12/2024 to act for the 2nd - 35th respondents. They thereafter filed a Notice of Preliminary Objection dated 13/1/2025.
12. The applicants, though absent, relied on written submissions dated 1/2/2025. It was submitted that it was only the 1st respondent who filed a response to the application but on irrelevant matters, which the court should ignore and proceed to summon him.
13. The applicants submit that the application is premised on Section 5 of the Judicature Act, Order 40 Rule (1) and (2) of the Civil Procedure Rules and Sections 13(7)(a) and 29 of the Environment & Land Court Act. The applicants submit that the 2nd - 35th respondents, being the combined original respondents, their children, servants, and agents, are still trespassing on the land despite a court decree and have denied them the land. The applicants submit that the excuse by the 1st respondent that the Inspector General of Police has to approve before he provides security holds no water, and therefore, the respondents should be summoned to show cause or purge the contempt or be punished for contempt of court.
14. The court has looked at the preliminary objection. The grounds are that the applicants have enjoined parties to the application without leave of court and that the application has no merits, is frivolous, vexatious, incompetent, bad in law, and an abuse of the court process. It is not disputed that the decree of the court was issued on 8/6/2020, followed by an eviction notice dated 20/12/2021. The respondents were initially represented by M/S Kiarie & Co. Advocates. It is the same law firm that filed a notice of appeal dated 9/6/2020 for the 1st - 13th respondents herein. Therefore, the notice of appointment of advocates herein is filed in contravention of Order 9 Rule 5 of the Civil Procedure Rules. Leave of court was not sought and obtained, as submitted by the applicants, for the said law firm to act for the 2nd - 35th respondents.
15. The nature, purpose, standard of proof, principles, procedure, and enabling legislation to deal with contempt application were determined in *Githiga & 5 Others -vs- Kiru Tea Factory Co. Ltd* (Petition 13 of 2019) [2023] KESC 41 [KLR] (16th June 2023) (Judgment). The issue was whether the contemnors had been declared as such without considering their pleadings which they termed as a violation of the right to fair hearing. The apex court observed that due to the quasi-criminal nature of contempt proceedings and the gravity of the consequences that flow therefrom, the court must adhere to the principles of natural justice, procedural fairness, and the right to fair hearing, since the liberty of the subject is usually at stake. Further, the apex court emphasized that courts have inherent powers to enforce compliance with their lawful orders through sanctions imposed through contempt of court.
16. Similarly, the apex court held that in imposing compliance with lawful court orders, the procedure adopted by the court must be fair, reasonable, and such that the alleged contemnor is given full opportunity to defend himself, the standard of proof is higher than in typical civil cases and that a contemnor could only be committed to civil jail or penalized on the basis of evidence that left no doubt as to the contemnor's culpability.
17. The court said that Article 50 (1) & (2) of the Constitution, on the right to a fair hearing imposes a duty on the court to guarantee the parties to contempt of court proceedings procedural justice by



evaluating the evidence brought forth by all parties since the right to a fair trial is a non-derogable right and that under Article 159 of the Constitution, courts are obligated to ensure that the procedures in the administration of justice do not lead to miscarriage of justice, which entails just and fair handling of cases to ensure procedural and substantive justice.

18. The applicants herein seek this court to issue summons for the named parties to show cause why they should not be cited for contempt of court in default of which they are held in contempt of court. The application was duly served upon the named persons, who instructed counsel to answer on their behalf, through irregularly done without leave. The 1st respondent has also filed a replying affidavit through a Deputy County Commander of police. Fair hearing incorporates the rule of natural justice. See E.O. Kidero & Others -vs- F.N. Waititu & Others eKLR. Procedural fairness in the administration of justice and fair hearing rules require the decision maker to, inter alia, afford a person an opportunity to be heard before making any decision affecting his interest. Notice to the affected person is the cornerstone of a fair hearing.
19. The named parties were notified and given an opportunity to respond to the notice of motion, present themselves before the court, and respond to the allegations. The 2nd - 35th respondents have been accorded that opportunity and only chose to file a notice of preliminary objection, which does not answer why they have not voluntarily vacated the suit land despite a decree and an eviction order to that effect.
20. The 2nd - 35th respondents have not complained that the opportunity accorded to them to respond is unreasonable. See Mbogholi Msagha -vs- Chief Justice & Others NRB HCMA No. 1062 of 2004. They have not denied the existence of the decree and the eviction order as binding on them. They have not said that contempt proceedings cannot lie against them. Incidentally, the decree was binding against the primary parties, their agents, servants, or employees. Learned counsel for the 2nd - 35th respondents admits that the decree or order of the court is binding on the 2nd - 13th respondents; the 14th - 35th respondents have not denied that they are on the land. Equally, the 2nd - 35th respondents have not sworn an affidavit to state that they have complied with the court decree or orders of eviction, and therefore, the application is without substance or merits.
21. In Republic -vs- Ahmed Abolfathi Mohamed & Another [2018] eKLR, the court emphasized that contemnors demean the integrity and authority of the court and deride the rule of law. The standard of proof in cases of contempt proceedings was set out in Mutitika -vs- Baharini Farm Ltd [1985] KLR 229. It must be on a balance of proof higher than in typical civil suits. Any benefit of the doubt would inure to the benefit of the defendant as held in Alfred Mutua -vs- Boniface Mwangi [2022] eKLR.
22. Coming to the ingredients of contempt of court, in Cecil Miller -vs.- Jackson Njeru & Another [2017] eKLR, the same were outlined as:
 - (1) The terms of the order must be clear, unambiguous, and binding on the defendants.
 - (2) The defendant has knowledge of or proper notice.
 - (3) The defendant acted in breach.
 - (4) The conduct was deliberate.
23. In Woburn Estate Ltd -vs- Margaret Bashforth [2016] eKLR, the court emphasized that each stage and step of the procedure to punish for contempt must be scrupulously followed. The first step is that the initial 13 respondents do not deny knowledge or existence of the decree and the eviction order made by the court.



24. In *M'Mukira & Another -vs- Magiro & Another* ELC E018 of 2024 [2024] KEELC 5731 [KLR] (31st July 2024) (Ruling), the court cited *Ochino & Another -vs- Okhombo & Others* [1989] eKLR and *BOG Moi High School Kabarak -vs- Malcolm Bell & Another* Supreme Court of Kenya Petition No. 6 & 7 of 2013, that contempt of court is a power to safeguard a court against contemptuous, or disruptive intrusion from elsewhere, which reduces courts of law to a futile institution spewing forth orders in vain. The court further cited *Sammy Nyamweya & Others -vs- Kenya Premier League Ltd & Others* [2015] eKLR, that to punish for contempt of court is not about protecting a judge's feelings, ego, or dignity. However, it is aimed at dealing with the undue interference with the administration of justice, the supremacy of the rule of law, not to placate the applicant, but to ensure a party who walks through the door of justice with a court order or decree in his hands, that the order or decree shall be obeyed by those to whom it is directed or made against.
25. In *TSC -vs- KNUST* *Petition No. 23 of 2013*, it was observed that an order or decree of the court is, therefore, not a mere suggestion, an opinion, or a point of view. It is a command that is issued after much thought and circumspection. It must be complied with. It is in the interest of every person that it remains the case; otherwise, anarchy, chaos, and disorder will creep in.
26. Therefore, anyone dissatisfied with a court decree or order has a right to challenge it through review or appeal. Deviance of the order or decree is not an option. See *Sammy Nyamweya & Others -vs- Kenya Premier League Ltd* (Supra). To this end, an applicant must also prove that there was willful disobedience of the orders or decree. See *KGGA -vs- Francis Atwoli & Others* [2012] eKLR. In *Shimmers Plaza Ltd -v- National Bank of Kenya* [2015] eKLR, the court held that knowledge of the decree or order supersedes personal service, and where a party acts as if he knew the order, it becomes unnecessary to prove personal service.
27. In this application, the applicants have alleged that the respondents have kept the land, cultivated it, and are forcefully on the land despite the decree and the eviction notice that the 1st respondent has failed or neglected to enforce. In *Justin Kariuki Mate & Another -vs- Martin Nyaga Wambora & Another* C.A. No. 24 of 2014, the court held that a court must satisfy itself beyond any shadow of a doubt that the person alleged to be in contempt of court committed the acts complained of with full knowledge or notice of the court orders forbidding it, since the threshold involves possible deprivation of a person's liberty. The applicant have attached copies of affidavits of service as an annexure VNK'3'.
28. The decree of the court had a penal notice. The eviction order issued on 20/12/2021 is binding on the initial 13 respondents, their agents, and or servants. The 1st respondent received an order dated 20/6/2023 on 26/6/2023 confirming that a stay order that the court had granted to the initial 13 respondents had lapsed and that the 1st respondent should obtain possession of the land from the initial 13 respondents. The order had a penal notice. The affidavit of service of George Mumali shows that the 1st respondent was served with the decree and an order on 26/6/2023, the Chief Kipkono Location summoned the 2nd - 13th respondents to his office on 29/6/2023, and the 1st, 3rd, 5th, 7th, 8th, 9th, 11th and 13th respondents attended and were served with the decree and the order in the presence of the area Chief. The 1st, 3rd, 5th, 7th, 8th, 9th, 11th, and 13th respondents have not denied service of the decrees and order or knowledge of the same.
29. In *Samuel M.N. Mweru & Others -vs- National Land Commission & Others* [2020] eKLR, it was observed that if courts are to perform their duties and act effectively and remain faithful to the spirit which they are sacredly entrusted with, the dignity and authority of the court, has to be respected and upheld at all times; otherwise, the only cornerstone of the constitutional scheme will give way and with it, will disappear the rule of law and civilized life in the society.



30. The acts of the initial 13 respondents in indulging in acts contrary and in contrast with the decree and the eviction orders undermine the authority and dignity of this court. It amounts to total disrespect and obstruction of justice. It makes the public in general and, in particular, the applicants doubt the majesty of the law and the administration of justice for doubting whether the decree and eviction order issued to them is worthy of the paper it is written in.
31. This court should not condone the deliberate and willful disobedience of its decrees and orders. It cannot be seen to act in vain or sit back and fold its hands in the circumstances that obtain in this matter, where the decree and eviction order which is binding on the initial 13 respondents has been ignored, neglected, and wished away, left, right, and center. The court has to flex its muscles and hold that the initial 13 respondents have not explained why they have not vacated the land decreed to the applicants. Staying on the land is criminal. It amounts to a forcible detainer.
32. The 1st respondent, in its explanation, has not told the court why they have not apprehended the initial 13 respondents for the offense of forcible detainer, let alone summoned them to their offices or held a village baraza to notify them that they are on the land contrary to a court decree and an eviction notice. The 1st applicant cannot throw their hands in the air and purport to blame inadequate security personnel or resources in enforcing a court order. The 1st respondent has not attached any correspondence and particulars of the efforts, venues, dates, and the manner in which it has tried to enforce the court order or the decree. It is unfortunate for the 1st respondent to allege that it has been met with hostility and violence in the subject property and yet no action was taken against the culprits. The 1st respondent has not told the court what action it has taken in line with the elaborate procedures on eviction set out in Section 152A - I of the *Land Act*. The 1st respondent herein as well as the initial 12 respondents cannot choose not to obey the court decree and orders or when and how to obey it. The 1st respondent has not told the court if it has engaged other relevant government agencies to, at the very least, notify the illegal occupants of the land to vacate it and obey the court order.
33. In *Hadkinson -vs- Hadkinson* (1952) 2 ALL ER 51, the court observed that it is a plain and unqualified obligation of every person against or in respect of whom an order is made by a competent court to obey it; otherwise, he may be punished for contempt of court. In *Republic -vs- County Chief Officer, Finance & Economic Planning Nairobi City County Ex-parte Stanley Muturi* [2018] eKLR, the court observed that court orders are not for cosmetic purposes.
34. Given an opportunity to respond to the application, the initial 13 respondents have not even attended court to explain the difficulties they face in complying with the decree or order. It is not open to the initial 13 respondents to choose whether or not to comply with or ignore the decree and the eviction notice that is directed to them by this court. See *CBK & Another -vs- Ratilal Automobiles Ltd & Others Civil Appl. NRB 247 of 2006*.
35. Consequently, I find the initial 13 respondents as in the decree and eviction order guilty of contempt of the court of the said decree and eviction notice dated 20/12/2021. For purposes of clarity, the initial 13 respondents are:
 - (1) Martin Semero Limakou
 - (2) Kapchengo Sharti
 - (3) Samuel Alukulen
 - (4) Riongisia Samakituk
 - (5) Jackson Kanawai



- (6) Stephen Kakuko Cheplopei
 - (7) Karitor Psiken Losiangole
 - (8) Cheparkon Domonyang
 - (9) Cheptangat Lekern
 - (10) Joseph P. Lopotio
 - (11) Powon Lonyang
 - (12) Chepochendo Liman
 - (13) Joachim Alemusia
36. I order that summons be issued to the initial 13 respondents as named above, to attend court and be effected by the 1st respondent, to appear personally on 12/3/2025 and show cause why they should not be committed to civil jail. In default of appearance, warrants of arrest shall be issued.
37. As to the rest of the respondents who were enjoined in the application, there is no evidence that they were parties to the decree, whether they were served with the court decree and the eviction notice, and lastly, if they are agents, servants, or employees of the initial 13 respondents. Equally, the applicants have not shown particulars of how they were aware of the court order or decree and have deliberately and willfully breached their terms and conditions. I find no basis to issue summons against them or hold them guilty of contempt of court. Costs of the application to the applicants.

RULING DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT KITALE ON THIS 26TH DAY OF FEBRUARY 2025.

In the presence of:

Court Assistant - Chemutai

Kariuki for the Plaintiff present

Chebet for Lowasikou for the 2nd - 35th Respondents

1st Respondent absent

HON. C.K. NZILI

JUDGE, ELC KITALE.

