



Lukio & 2 others (Suing as the Registered Trustees of the Luo Council of Elders) v County Government of Kisumu & another; Nyongo & 3 others (Alleged Contemnors) (Environment and Land Case Civil Suit E029 of 2023) [2024] KEELC 5335 (KLR) (18 July 2024) (Ruling)

Neutral citation: [2024] KEELC 5335 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISUMU
ENVIRONMENT AND LAND CASE CIVIL SUIT E029 OF 2023
SO OKONG'O, J
JULY 18, 2024**

BETWEEN

**CALVIN ARIKO LUKIO 1ST PLAINTIFF
LAWI RABURU JAVAN 2ND PLAINTIFF
JANE AKINYI JACOB MIDIALO 3RD PLAINTIFF
SUING AS THE REGISTERED TRUSTEES OF THE LUO COUNCIL OF
ELDERS**

AND

**COUNTY GOVERNMENT OF KISUMU 1ST DEFENDANT
THE CITY MANAGER COUNTY GOVERNMENT OF
KISUMU 2ND DEFENDANT**

AND

**PROF. PETER ANYANG' NYONGO ALLEGED CONTEMNOR
MATHEW OCHIENG' OWILI ALLEGED CONTEMNOR
JUDITH OLUOCH ALLEGED CONTEMNOR
ABALA WANGA ALLEGED CONTEMNOR**

RULING

1. The Plaintiff brought this suit through a plaint dated 14th December 2023. Together with the plaint, the Plaintiff filed a Notice of Motion application of the same date seeking among others the following orders;



1. Pending the hearing and determination of the application, the court be pleased to issue interim orders restraining the Defendants whether, by themselves, their servants, agents or anyone acting for or through them from repossessing, taking over, handing over, demolishing, evicting tenants, threatening or in any manner interfering with the Plaintiffs' ownership, quiet possession and use of all that parcel of land known as Kisumu Municipality/Block 5/25 or any developments thereon.
 2. The Officer Commanding Station(OCS) of Kondele Police Station or the nearest Police Station provides security and oversees the court order enforcement.
 3. Pending the hearing and determination of the suit, the court be pleased to issue interim orders restraining the Defendants whether, by themselves, their servants, agents or anyone acting for or through them from repossessing, taking over, handing over, demolishing, evicting tenants, threatening or in any manner interfering with the Plaintiffs' ownership, quiet possession and use of all that parcel of land known as Kisumu Municipality/Block 5/25 or any developments thereon.
2. The Plaintiffs averred that they were the registered trustees of the Luo Council of Elders (hereinafter referred to only as "the Council"), a registered society under the *Societies Act*, Chapter 108 Laws of Kenya. The Plaintiffs averred that in that capacity they were the registered proprietors of all that parcel of land known as Kisumu Municipality/Block 5/25 (hereinafter referred to only as "the suit property") on which Ofafa Memorial Hall which was being used by the Council as its headquarters is situated. The Plaintiffs averred that they were holding the suit property in trust for the Council. The Plaintiffs averred that they had enjoyed peaceful and quiet possession of the suit property over the years and had leased part of the suit property to third parties who had also enjoyed quiet possession of the same. The Plaintiffs averred that on 8th December 2023, they learnt that the Defendants had assembled on the suit property and caused mayhem in an attempt to evict the Plaintiffs' tenants on the suit property and take over the same. The Plaintiffs averred that the Defendants had no claim whatsoever over the suit property and as such their actions of demolishing the structures on the suit property and evicting the Plaintiffs' tenants thereon amounted to trespass. The Plaintiffs averred that unless the court intervened urgently and granted the orders sought, the Plaintiffs risked losing the suit property to the Defendants.
3. The Plaintiffs' application which was filed under a certificate of urgency was placed before Asati J. on 15th December 2023 for directions. Asati J. ordered that the application be served upon the Defendants for hearing before this court on 29th January 2024. In the meantime, she granted an interim order of injunction until 29th January 2024 restraining the Defendants whether by themselves, their servants, agents or anyone acting for or through them from repossessing, taking over, handing over, demolishing, evicting tenants, threatening or in any manner interfering with the Plaintiffs' ownership and quiet possession of the suit property, or any developments thereon. The order as extracted was on the following terms:
- “1. That the application dated 14th December 2023 be served upon the Respondents for inter partes hearing on 29/1/2024 before Hon. Justice Okong'o.
 2. That in the meantime an interim order is hereby issued in terms of prayer 2 of the application to last till 29/1/2024.”
4. The 1st Defendant filed an application by way of a Notice of Motion dated 27th January 2024 seeking to set aside the said orders of the court issued on 15th December 2023. The application is pending hearing.



5. What is now before me is another application brought by the plaintiffs under a certificate of urgency by way of a Notice of Motion dated 18th January 2024 seeking the following principal orders;
 1. That the alleged contemnors being the Governor of the County Government of Kisumu, Deputy Governor of the County Government of Kisumu, Ag. County Secretary of the County Government of Kisumu and the City Manager of the County Government of Kisumu respectively be held and found to be in contempt of the court due to their willful disobedience of the court's order issued on 15th December 2023.
 2. That upon finding the alleged contemnors to be in contempt, they be committed to jail for a duration not exceeding six (6) months and/or such other duration as the court may deem fit and expedient and in addition to or in the alternative to this, do impose an appropriate penalty/ fine upon the contemnors.
 3. That the court does order for the immediate reinstatement of the suit property and the costs of such reinstatement be met personally by the contemnors jointly and severally.
 4. That the court does impose such other sanctions it shall deem fit until the said contempt is purged.
6. The application was brought on the grounds set out on the face thereof and on the affidavit of the 1st Plaintiff, Calvin Ariko Lukio sworn on 18th January 2024. The Plaintiffs averred that on 15th December 2023, the court issued an interim order of injunction until 29th January 2024 restraining the Defendants whether by themselves, their servants, agents or anyone acting for or through them from repossessing, taking over, handing over, demolishing, evicting tenants, threatening or in any manner interfering with the Plaintiffs' ownership, quiet possession and use of the suit property or any developments thereon. The Plaintiffs contended that the Plaintiffs' application dated 14th December 2023 together with the said order issued on 15th December 2023 were served upon the Defendants on 15th December 2023. The Plaintiffs averred that despite service of the said order, the Defendants continued to frustrate the Plaintiffs and to interfere with their quiet and peaceful possession and enjoyment of the suit property.
7. The Plaintiffs averred that on 19th December 2023, the Defendants through their servants and/or agents in disobedience of the said orders embarked on a demolition exercise on the suit property in the process of which they destroyed and flattened some structures on the suit property and made a declaration that the suit property was under the control of the County Government of Kisumu. The Plaintiffs averred that the said demolition and eviction of the Plaintiffs' tenants from the suit property amounted to a mockery and disobedience of the said court order. The Plaintiffs averred that in further disobedience of the said court order, the Defendants had planned to host the memorial of Jaramogi Oginga Odinga at Ofafa Memorial Hall on the suit property on 20th January 2024. The Plaintiffs averred that the Defendants' activities complained of constituted disobedience of a valid court order whose terms had not been varied nor set aside.
8. The Plaintiffs annexed to their affidavit in support of the application; a copy of the court order made on 15th December 2023, an affidavit of service sworn by Julius Otieno Raminya on 15th December 2023, photographs said to be evidencing the alleged disobedience of the court order and a Facebook post by one of the alleged contemnors.
9. The Plaintiffs' contempt application was opposed by the alleged contemnors. The 1st, 2nd and 3rd alleged contemnors opposed the application through separate replying affidavits. In his replying affidavit sworn on 27th February 2024, the 1st alleged contemnor averred that he was not a party to the suit



in which the order giving rise to the contempt application was issued. The 1st alleged contemnor averred that he learnt of the said order upon being served with the present application. The 1st alleged contemnor averred that there was no indication in the application that the injunction order that was sought by the Plaintiffs was granted. The 1st alleged contemnor averred that since he was not a party to the suit in which the order was given, he was not served directly or through his secretary with the order of 15th December 2023 and the application dated 14th December 2023 in which it was issued. The 1st alleged contemnor denied that he interfered with the Plaintiffs' quiet possession of the suit property. The 1st alleged contemnor averred that the Plaintiffs were unknown to him and that they were not the owners of the suit property. The 1st alleged contemnor denied that he evicted the Plaintiffs' tenants from the suit property. The alleged contemnor averred that the Plaintiffs' application had no basis and was an abuse of the process of the court.

10. In his replying affidavit sworn on 27th February 2024, the 2nd alleged contemnor averred that he was not a party to the suit in which the order the subject of the application for contempt was issued and that he was neither served with the application in which the order was given or the order. The 2nd alleged contemnor averred that he learnt of the said order upon being served with the present application. The 2nd alleged contemnor denied that he interfered with the Plaintiffs' quiet possession of the suit property or evicted the Plaintiffs' tenants from the property. The 2nd alleged contemnor averred that the application lacked substance and was an abuse of the process of the court.
11. The 3rd alleged contemnor also filed a replying affidavit sworn on 27th February 2024. The 3rd alleged contemnor averred that she was not a party to the suit in which the order the subject of the contempt application was issued. The 3rd alleged contemnor averred that she was not served with the said order directly or otherwise. The 3rd alleged contemnor denied that she interfered with the Plaintiffs' quiet possession of the suit property or evicted the Plaintiffs' tenants from the suit property. The 3rd alleged contemnor averred that the application had no basis and was an abuse of the process of the court.
12. I have not seen any response by the 4th alleged contemnor to the contempt application. The 4th alleged contemnor however filed an application dated 6th February 2024 seeking an order that the entire suit be struck out for various reasons. The 4th alleged contemnor's application is not before me for determination. The 4th alleged contemnor contended however that the Plaintiffs had no *locus standi* to institute this suit. The 4th alleged contemnor averred that the Plaintiffs were not constituted as trustees of Luo Council of Elders under the *Trustees (Perpetual Succession) Act*, Chapter 164 Laws of Kenya. The alleged 4th contemnor contended that the court had no jurisdiction to entertain, hear and determine a defective suit.
13. The Plaintiffs filed a supplementary affidavit sworn by the 1st Plaintiff on 28th March 2024 in which the Plaintiffs responded to the issues raised in the replying affidavits filed by the alleged contemnors but also introduced new matters. The Plaintiffs averred that on 19th December 2023, the 1st, 2nd and 3rd alleged contemnors acting through the 4th alleged contemnor forcibly moved to the suit property and evicted the Plaintiffs and their tenants from the property in the process of which they demolished some of the structures on the suit property. The Plaintiffs averred that during the forceful eviction, the properties of the Plaintiffs and their tenants were damaged, and some of the Plaintiffs' tenants were physically assaulted. The Plaintiffs averred that the 4th alleged contemnor personally supervised the forceful eviction of the Plaintiffs and their tenants and even addressed the media at the scene. The Plaintiffs averred that the 4th alleged contemnor bragged openly that no one could stop his illegal activities. The Plaintiffs averred that following the forceful eviction, the Defendants took over possession and control of the suit property which they subsequently handed over to the intended Interested Parties. The Plaintiffs reiterated that the Defendants and the alleged contemnors were served with the court order



of 15th December 2023 which the Defendants and the alleged contemnors continued to disobey even after the filing of the present contempt application.

14. The Plaintiffs' application was heard by way of written submissions. The Plaintiffs filed submissions dated 28th March 2024. The Plaintiffs submitted that the order made on 15th December 2023, the application in which the order was made together with the plaint were served upon the Defendants and the alleged contemnors "by extension" based on their positions as the elected governor, deputy governor and the appointed acting secretary and city manager of Kisumu County. The Plaintiffs submitted that upon being served with the said order and with the full knowledge of the contents thereof, the alleged contemnors intentionally and contemptuously used their executive powers to frustrate the Plaintiffs and to directly disobey the order. The Plaintiffs submitted that on 19th December 2023, the 1st Defendant acting through the 1st, 2nd, 3rd and 4th alleged contemnors entered the suit property and; demolished part of Ofafa Memorial Hall on the suit property, evicted the Plaintiffs' tenants on the property and declared that the suit property henceforth belonged to the 1st Defendant, the County Government of Kisumu.
15. The Plaintiffs submitted that the order issued on 15th December 2023 was a valid court order. The Plaintiffs submitted that the order was served and that the Defendants and the alleged contemnors had knowledge of the order and disobeyed it which disobedience was continuing. The Plaintiffs submitted that they had met the threshold for an application for contempt of court. The Plaintiffs urged the court to allow their application and proceed to commit the alleged contemnors to jail for a period not exceeding 6 months or the highest possible punishment the court could impose.
16. The 1st, 2nd and 3rd alleged contemnors filed submissions dated 17th April 2024. The 1st, 2nd and 3rd alleged contemnors submitted that the 1st alleged contemnor was allegedly served through a person named only as Martha. The 1st, 2nd and 3rd alleged contemnors submitted that the alleged Martha did not sign the documents in acknowledgement of service. For the 2nd alleged contemnor, the 1st, 2nd and 3rd alleged contemnors submitted that there was no explanation in the affidavit of service on how he was served. With regard to the 3rd alleged contemnor, the 1st, 2nd and 3rd alleged contemnors submitted that service upon her was effected against some unnamed clerk who never signed the documents in acknowledgement of service. The 1st, 2nd and 3rd alleged contemnors submitted that the Plaintiffs did not tender any explanation why the service was not effected upon the alleged contemnors personally which is the best form of service. The 1st, 2nd and 3rd alleged contemnors submitted further that no explanation was given why the alleged contemnors were being served with pleadings and order in a case in which they were not parties. The 1st, 2nd and 3rd alleged contemnors submitted that the affidavit of service filed in support of the application was falsified to suit the contempt application. The 1st, 2nd and 3rd alleged contemnors submitted that all the allegations of contempt in the Plaintiffs' supporting affidavit were directed at the Defendants which were different from the alleged contemnors. The 1st, 2nd and 3rd alleged contemnors submitted further that since they were not parties to the suit, they had no way of knowing what they were expected to do or refrain from doing because the order of the court as extracted had to be read together with the application dated 14th December 2023 in which it was issued for it to be understood.
17. The 1st, 2nd and 3rd alleged contemnors submitted that the application was not served upon them. The 1st, 2nd and 3rd alleged contemnors submitted that an order or a decree of the court must be unequivocal and must be brought to the attention of the parties expected to comply with the same. The 1st, 2nd and 3rd alleged contemnors submitted that in their supplementary affidavit, the Plaintiffs introduced new matters that were not contained in their original affidavit in support of the application. The 1st, 2nd and 3rd alleged contemnors submitted that the affidavit was filed out of the time that was given by the



court without leave and as such the same should be struck out. The 1st, 2nd and 3rd alleged contemnors submitted that contempt of court proceedings are quasi criminal in nature and as such the standard of proof is above a balance of probabilities. The 1st, 2nd and 3rd alleged contemnors submitted that the Plaintiffs' application had failed to meet the threshold of proof of contempt of court. The 1st, 2nd and 3rd alleged contemnors urged the court to dismiss the Plaintiffs' application with costs.

18. As I mentioned earlier, the 4th alleged contemnor did not respond to the contempt application. The 4th alleged contemnor instead filed an application seeking to strike out the Plaintiffs' suit on the ground that the Plaintiffs lacked the *locus standi* to file the suit. It was in respect of this application that the 4th alleged contemnor filed submissions dated 6th February 2024.

19. I have considered the Plaintiffs' application together with the affidavits filed in support thereof. I have also considered the affidavits filed by the alleged contemnors/respondents in opposition to the application. Finally, I have considered the submissions by the advocates for the parties. The issues arising for determination in the application before me are; whether the alleged contemnors breached the order that was made herein on 15th December 2023, and whether the orders sought by the Plaintiffs should be granted.

20. In *Hardkinson v. Hardkinson* [1952] ALL ER 567, the court stated that:

“It was the plain and unqualified obligation of every person against or in respect of whom an order was made by a court of competent jurisdiction to obey it unless and until it was discharged and disobedience of such order would as a general rule result in the person disobeying being in contempt and punishable by committal or attachment and in an application to the court by him not being entertained until he had purged his contempt.”

21. In *Mutitika v. Baharini Farm Ltd.* [1985] KLR 227 it was held that:

- i. “A person who knowing of an injunction, or an order of stay, willfully does something, or causes others to do something, to break the injunction, or interfere with the stay, is liable to be committed for contempt of court as such a person has by his conduct obstructed justice.
- ii. The standard of proof in contempt proceedings must be higher than proof on a balance of probabilities and almost but not exactly beyond reasonable doubt.
- iii. The principle must be borne in mind that the jurisdiction to commit for contempt should be carefully exercised with great reluctance and anxiety on the part of the court to see whether there is no other mode which can be brought to bear on the contemnor.”

22. In *Micheal Sistu Mwaura Kamau v. Director of Public Prosecutions & 4 others* [2018] eKLR the Court of Appeal explained the law on contempt of court 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*).”

23. In *Shimmers Plaza Limited v. National Bank of Kenya Limited* [2015] eKLR, the court stated as follows:

“We now revisit the issue of service. Was there service of the order said to have been disobeyed on the respondent? There is no dispute that no formal order was extracted and personally served on the respondent and an affidavit of service filed to that effect. In that respect, this case can be distinguished from *Justus Kariuki Mate & Another vs Hon. Martin Wambora* (Wambora case) *supra* cited by learned counsel for the applicant. On the other hand however, this Court has slowly and gradually moved from the position that the order along with the penal notice must be personally served on a person before contempt can be proved. This is in line with the dispensations covered under 81.8 (1) (*supra*). Kenya’s growing jurisprudence right from the High court has reiterated that knowledge of a court order suffices to prove service and dispense with personal service for the purposes of contempt proceedings. For instance, Lenaola J in the case of *Basil Criticos vs Attorney General and 8 Others* [2012] eKLR pronounced himself as follows:-

“...the law has changed and as it stands today knowledge supersedes personal service....where a party clearly acts and shows that he had knowledge of a Court Order; the strict requirement that personal service must be proved is rendered unnecessary”

This position has been affirmed by this Court in several other cases including the Wambora case (*supra*). 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.

“...Would the knowledge of the judgment or order by the advocate of the alleged contemnor suffice for contempt proceedings? We hold the view that it does. This is more so in a case such as this one where the advocate was in Court representing the alleged contemnor and the orders were made in his presence. There is an assumption which is not unfounded, and which in our view is irrefutable to the effect that when an advocate appears in court on instructions of a party, then it behooves him/her to report back to the client all that transpired in court that has a bearing on the client’s case.”

24. It is on the foregoing principles that the Plaintiffs’ application falls for consideration. In my understanding of the Plaintiffs’ application, the Plaintiffs case is that: The Plaintiffs filed an application against the Defendants in the main suit seeking a number of orders among them an order that, pending the hearing and determination of the application, the court be pleased to issue an interim order restraining the Defendants whether, by themselves, their servants, agents or anyone acting for or through them from repossessing, taking over, handing over, demolishing, evicting tenants, threatening or in any manner interfering with the Plaintiffs’ ownership, quiet possession and use of all that parcel of land known as Kisumu Municipality/Block 5/25(the suit property) or any developments thereon; the court granted the order; the order was extracted and served upon the Defendants who were parties to the suit and the alleged contemnors who were at the material time serving in various capacities in the 1st Defendant; and that, the Defendants breached the said order by entering the suit property and forcibly evicting the Plaintiffs and their tenants from the suit property by demolishing the structures that the said tenants had occupied on the suit property.



25. The Plaintiffs have not sought the punishment of the 1st, 2nd and 3rd alleged contemnors because the said orders were issued against them and they disobeyed the same. The punishment of the 1st, 2nd and 3rd alleged contemnors has been sought because they were the officers of the 1st Defendant who bore the responsibility for ensuring that the Defendants complied with the said court order. For the 4th alleged contemnor, he was not only one of the officers of the 1st Defendant who had a responsibility of ensuring that the 1st Defendant complied with the said order but was also the occupant of the office of the City Manager of the 1st Defendant which was sued as the 2nd Defendant and against which the said order was issued. The 4th alleged contemnor had a responsibility as an officer of the 1st Defendant and also as the holder of the office of the 2nd Defendant to ensure that the said order was complied with.
26. I am satisfied from the evidence before me that the court issued a temporary order on 15th December 2023 restraining the Defendants whether, by themselves, their servants, agents or anyone acting for or through them from repossessing, taking over, handing over, demolishing, evicting tenants, threatening or in any manner interfering with the Plaintiffs' ownership, quiet possession and use of the suit property or any developments thereon pending the hearing of the application dated 14th December 2023. The court directed that the said order be served upon the Defendants. I am satisfied from the affidavit of service sworn by Julius Otieno Raminya on 15th December 2023 that the said order and the application dated 14th December 2023 were served upon the 1st and 2nd Defendants on 15th December 2023. The 1st and 2nd Defendants have not denied service of the said order and the application. They have not denied that the office stamps that were put on the copy of the said order acknowledging receipt of the same belonged to them. I am also satisfied from the evidence before me that after service of the said order upon the 1st and 2nd Defendants, the 4th alleged contemnor in his capacity as an officer of the 1st Defendant and the holder of the office of the 2nd Defendant led an eviction and demolition team that entered the suit property and demolished the structures that had been put up on the suit property leaving only Ofafa Memorial Hall standing. The said structures had been put up with the permission of the Plaintiffs who were collecting rent from the owners. The demolition of the said structures resulted in the eviction of the owners of the said structures from the suit property. The evidence before the court also shows that after the said eviction of the said tenants from the suit property, the 1st and 2nd Defendants took over the control of the suit property from the Plaintiffs for some time before they handed over the same to the intended Interested Parties.
27. The court order of 15th December 2023 restrained the 1st and 2nd Defendants from repossessing, taking over, handing over, demolishing, evicting tenants, threatening or in any manner interfering with the Plaintiffs' ownership, quiet possession and use of the suit property or any developments thereon. From what I have stated above, it is clear that the 1st and 2nd Defendants disobeyed the order made by the court on 15th December 2023 by taking over the suit property, demolishing some of the structures that were standing thereon and evicting the tenants that the Plaintiffs had on the property, and generally interfering with the Plaintiffs' ownership and possession of the suit property. It is my finding therefore that the 1st and 2nd Defendants acted in contempt of the order issued by this court on 15th December 2023.
28. The next question that I need to answer is, who should be punished for the contempt of court committed by the 1st and 2nd Defendants? I am of the view that, where a County Government engages in disobedience of a court order, its officer or officers who bore the weight of responsibility for ensuring that the order was complied with should similarly bear the punishment. Although the alleged contemnors are all officers of the 1st Defendant and had a responsibility of ensuring that the order of 15th December 2023 was complied with, I am of the view that the degree of that responsibility varied from one alleged contemnor to the other depending on the office or position held, proximity to the



subject matter of the dispute and the role played in the alleged contempt. In this case, I am of the view that the 4th alleged contemnor bore the highest degree of responsibility for ensuring that the order of 15th December 2023 was complied with. The 4th alleged contemnor's office was sued in the main suit as the 2nd Defendant. The said office was served with the application dated 14th December 2023 in which the order of 15th December 2023 was issued together with the said order. The 4th alleged contemnor has not denied that he was aware of the said application and the order of 15th December 2023. It was the 4th alleged contemnor who led a team from his office in the forcible eviction of the tenants of the Plaintiffs from the suit property and the demolition of their structures. It was the same office of the 4th alleged contemnor which took over the control of the suit property and engaged in the renovation of the structures thereon.

29. I am not satisfied having regard to the positions held by the 1st, 2nd and 3rd alleged contemnors in the 1st Defendant and the degree of their involvement in the dispute in the main suit and interaction with the court order in question that they bore a responsibility for ensuring that the order was obeyed that should make them personally liable for the disobedience of the order. For the disobedience of the order made herein on 15th December 2023, I am of the view that the 4th alleged contemnor, Mr. Abala Wanga, the City Manager, County Government of Kisumu should take full responsibility.
30. In *Econet Wireless Kenya Ltd v Minister for Information & Communication of Kenya & Another* [2005] 1 KLR 828 the court cited the case of *Gulabchand and Popatlal Shah & Another*, Civil Application No. 39 of 1990 in which the Court of Appeal stated that:
- “...It is essential for the maintenance of the rule of law and order that the authority and the dignity of our Courts are upheld at all times. The Court will not condone deliberate disobedience of its orders and will not shy away from its responsibility to deal firmly with proved contemnors...”
31. In *Central Bank of Kenya & Another v Ratilal Automobiles Limited & Others* Civil Application No. Nai. 247 of 2006, the court stated that:
- “Judicial power in Kenya vests in the Courts and other tribunals established under *the Constitution* and that it is a fundamental tenet of the rule of law that court orders must be obeyed and it is not open to any person or persons to choose whether or not to comply with or to ignore such orders as directed to him or them by a Court of law.”
32. In *Awadh v. Marumbu* (No 2) No. 53 of 2004 [2004] KLR 458, it was held that:
- “It must be remembered that court orders must be obeyed at all times in order to maintain the rule of law and good order. This of course means that the authority and dignity of our courts must be upheld at all times and this differentiates civilised societies from those applying the law of the jungle at times referred to as banana republics. It is the duty of the Court not to condone deliberate disobedience of its orders nor waiver from its responsibility to deal decisively and firmly with the approved contemnors.”
33. The 4th alleged contemnor had contended that the Plaintiffs had no *locus standi* to file this suit and as such the suit was incompetent. I am of the view that the 4th alleged contemnor had an obligation to obey the order of 15th December 2023 even if the 4th alleged contemnor thought that the order was a



nullity having been issued in an incompetent suit. In *Wildlife Lodges Ltd. v County Council of Narok and Another* [2005] 2 EA 344 (HCK) the court stated as follows:

“...Had there been any misapprehension in the minds of the defendants, then the expectation of them is that they would have made an application to the court for the resolution of any misunderstanding; this would have been the lawful course of action... Against this background, I would take the position that consistent obedience to court orders is required, and parties should not take it upon themselves to decide on their own which court orders are to be obeyed and which ones overlooked, in the supposition that this oversight will not impede the process of justice...”

34. I find the 4th alleged contemnor, Mr. Abala Wanga, the City Manager, County Government of Kisumu in contempt of the court order made on 15th December 2023. The contemnor, Mr. Abala Wanga shall appear before the court on a date to be fixed to address the court in mitigation before the court passes a sentence against him. I also order that possession and control of the suit property shall be as it was on 15th December 2023 when the court order of 15th December 2023 was made pending the hearing of the Plaintiffs’ application dated 14th December 2023. The Plaintiffs shall have the costs of the Notice of Motion application dated 18th January 2024 to be paid by the Defendants.

DATED AND DELIVERED AT KISUMU ON THIS 18TH DAY OF JULY 2024

S. OKONG’O

JUDGE

Ruling delivered virtually through Microsoft Teams Video Conferencing Platform in the presence of:

Mr. Ngetich h/b for Mr. Okatch for the Plaintiffs

Mr. Ouma Njoga for the 1st and 2nd Defendants

Mr. Otieno D. for the 1st, 2nd and 3rd Alleged Contemnor

Mr. Onsongo for the 4th Alleged Contemnor

Mr. Ometo for the proposed Interested Party

Ms. J. Omondi-Court Assistant

