



**Mwenda v Mukiyama (Environment & Land Case E008 of 2023)
[2025] KEELC 3276 (KLR) (28 March 2025) (Ruling)**

Neutral citation: [2025] KEELC 3276 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIRONMENT & LAND CASE E008 OF 2023**

**JO MBOYA, J
MARCH 28, 2025**

BETWEEN

LILIAN GACERI MWENDA APPLICANT

AND

JOSHUA KIRIMI MUKIAMA RESPONDENT

RULING

1. Vide Notice of Motion Application dated 25th February 2025; the Plaintiff/ Applicant has sought the following reliefs;
 - i. That this Application be certified as urgent and the same be heard expeditiously.
 - ii. That appropriate sentence and/or sanctions be meted out against Joshua Kirimi Mukiyama, the Respondent herein for sustained and persistent disobedience of the decree issued on 8th May 2024 and order issued on 4th December 2024.
 - iii. That this Honourable court makes any further or other orders to protect its reputation and dignity.
 - iv. That the costs of this Application be provided for.
2. The instant application is premised on various/diverse grounds which have been highlighted in the body thereof. In addition, the application is supported by the supporting affidavit sworn on even date and wherein the applicant has annexed a total of six [6] documents including the ruling of the Judge rendered on the 4th of December 2024; wherein the Respondent was granted a conditional discharge with the directive that same shall not interfere with the applicant's possession, occupation and use of the portion measuring 12.76 Acres of the Plaintiff's parcel No. 2591 Karama Adjudication Section[otherwise referred to as the suit property].



3. The Respondent herein filed a Replying affidavit sworn on the 24th March 2025; and wherein the Respondent has contended inter alia that upon the delivery of the Judgment and the consequential ruling rendered on the 4th December 2024; what ought to have followed is a visitation by the surveyor and an officer from the adjudication to go to the site [Locus in quo] for purposes of survey, marking of boundaries and establishment of the beacons.
4. Additionally, the Respondent has contended that the instant application is being orchestrated by the applicant with a view to bar and or prohibit him [Respondent] from using his own land, namely; parcel No. 9821 Karama adjudication section.
5. The instant application came up for hearing on 27th of March 2025, whereupon the advocates for the parties covenanted to canvass and dispose of the application by way of oral submission. To this end, the court adopted and ratified the agreement by the parties and thereafter allowed the application to proceed. Furthermore, the submissions by the parties are on record.
6. The applicant herein adopted the grounds at the foot of the application and reiterated the averments in the body of the supporting affidavit. In addition, the applicant also relied on the contents of the various annexures attached to the supporting affidavit.
7. Learned counsel for the applicant thereafter raised and highlighted four [4] salient issues for consideration. The issue raised by the applicant are, namely; that the Respondent is aware of and privy to the orders of permanent injunction issued by the court but same has disregarded the order[s]; the respondent's conduct constitutes willful disobedience of lawful court orders; the respondent had previously been found guilty of contempt but was given conditional judgment and that the respondent deserves to be punished in an endeavor to protect the integrity and dignity of the court.
8. It was the submission by learned counsel for the applicant that the court rendered and delivered a Judgment in respect to this matter. Furthermore, it was contended that following the delivery of the judgment under reference, an application was filed culminating into the delivery of the ruling rendered on the 6th November 2024 and wherein the Honourable Judge found and held that the respondent was knowledgeable of the terms of the decree issued by the court. In particular, learned counsel for the applicant referenced paragraphs 41 & 42 of the said ruling.
9. Secondly, it was argued that despite being knowledgeable of and privy to the orders of the court, the respondent herein proceeded to and conducted himself in a manner that was contemptuous of the orders of the court. In this regard, it was therefore submitted that the applicant was constrained to file an application for the purposes of sentencing of the respondent.
10. Moreover, it was submitted that the Respondent herein has continued to breach, violate and or disregard the orders of the court. In particular, it has since been submitted that the respondent has reverted to and continued to disturb the applicant from the occupation, possession and use of the suit property and thus same [respondent] is guilty of willful disobedience and or contempt of the court.
11. Thirdly, the learned counsel for the applicant has submitted that the respondent has been variously found and held to be in contempt. Nevertheless, it has been posited that despite the conditional discharge by the court issued vide the orders rendered on 4th December 2024, the respondent herein has remained adamant and thus it is appropriate to cite and punish the respondent.
12. Finally, it was submitted that the respondent herein deserves to be suitably punished so as to protect and vindicate the integrity and dignity of the court. To this end, the court has been implored to mete out suitable and deterrent punishment to the respondent.



13. In the circumstances, the applicant has implored the court to find and hold that the application is meritorious and thus ought to be allowed.
14. The respondent filed a Replying affidavit sworn on the 24th of March 2025; and wherein the respondent has averred that following the delivery of the judgment and the consequential issuance of the order dated 4th December 2024; what ought to have followed was a visitation to the suit property by a surveyor and an officer from the land adjudication department with a view to surveying, marking boundaries and establishment of the beacons.
15. Furthermore, the respondent has contended that the instant application has been filed with a view to misleading the court, so as to enable the respondent to be arrested and detained on the basis of contempt. Moreover, it has been submitted that the intended arrest and detention of the respondent is intended to ensure that the respondent is deprived of the opportunity of being present when the surveyors visit the locus in quo.
16. Finally, it was submitted that the applicant herein has not established and or proven the requisite ingredient[s] to warrant a finding of contempt and/ or willful disobedience of the Court. In short, the respondent has invited the court to find and hold that the application is devoid of merit.
17. Having reviewed the application and the response thereto and upon taking into account the oral submissions by the respective advocate[s], I come to the conclusion that the determination of the instant application turns on three [3] critical issues, namely; whether the respondent is knowledgeable of or privy to the terms of the orders of the court or otherwise; whether the respondent has acted in contravention of the court orders; and whether the applicant has proven the requisite ingredients to warrant citation and punishment for contempt of Court.
18. Regarding the first issue, namely, whether the respondent is aware and or knowledgeable of the terms of the judgment and the orders of the court, it is imperative to state and outline that this court delivered a judgment on 8th March 2024 and wherein the court issued orders of permanent injunction. However, the Judgment of the court does not clearly define the nature of the orders that had been given. In this regard, the court was called upon to interpret its own orders. For good measure, the Court proceeded to and interpreted the orde[s].
19. Furthermore, on the 6th of November 2024, the court rendered a ruling wherein it was found that the respondent was guilty of disobedience and willful disregard of lawful court orders. To this end, the court proceeded to and cited the respondent for Contempt of Court.
20. Be that as it may, when the matter came up for notice to show cause/mitigation, the respondent herein sought to mislead the court in terms of the encroachment and an alleged confusion arising from the decree of the court. Nevertheless, the court proceeded to and granted a conditional discharge, albeit with a warning to the respondent. [see paragraph 24 of the ruling rendered on 4th December 2024].
21. Arising from the foregoing, what comes to the fore is that the respondent herein has been aware and in fact, remains aware of the terms of the orders of the court. In particular, the respondent remains aware of the orders of permanent injunction barring him [respondent] from interfering with the 12.76 acres of the Plaintiff's land, namely; parcel No. 2591 Karama Adjudication section.
22. It suffices to state that where a party/litigant is knowledgeable of the court order, such a party is obliged to respect, comply with and or adhere to the terms of the court order. Suffice it to state that knowledge of a court order has been found to be sufficient in lieu of service.



23. In the case of *Executive Committee Kisii County, Governor, Kisii County & County Government of Kisii v Masosa Construction Company Limited & Transition Authority* (Civil Appeal 39 of 2016) [2020] KECA 801 (KLR) (3 April 2020) (Judgment) the Court of Appeal addressed the question of knowledge and stated thus;

In *Justus Kariuki Mate v Martin Nyaga Wambora*, [2014] eKLR, this Court acknowledged the move from the position that an order endorsed with a penal notice must be personally served on a person before contempt can be proved. Lenaola, J (as he then was) in the case of *Basil Criticos v Attorney General* [2012] eKLR perceived an additional ground for dispensation with the requirement for 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". Similarly, the requirement of notice of the prohibitory judgement or order would also be satisfied where a party is represented counsel who was present in court when the orders were made. Therefore, knowledge of the judgment or order by an alleged contemnor's advocate suffices for contempt proceedings. There is a presumption that when an advocate appears in court on instructions of a party, it behoves him to report back to the client all that transpired in court that has a bearing on the client's case. This presumption is in line with the dicta of the Canadian Supreme Court in the case of *Bhatnager v Canada*, (Minister of Employment and Immigration 1990] 2 SCR 217 where it was held that a finding of knowledge on the part of the client may be inferred from the fact that the solicitor was informed. Similarly, in the United States case of *United States v Review* 834 F.2d 1198, 1203 (5th Cir. 1987) it was held that a defendant had adequate notice of a show cause order because his attorney was on notice. (See also Kenya Supreme Court dicta in *Justus Kariuki Mate & another v Martin Nyaga Wambora & another* [2017] eKLR).

24. Pertinently, where party is privy to and knowledgeable of the terms of the court order, such a party cannot be allowed to circumvent compliance with the orders of the court merely because same has not been served with the orders in question.
25. Further and in any event, where the orders are rendered and delivered in the presence of the party or his/her learned counsel, such presence suffices to found a basis for citation and committal for contempt.
26. Next is the issue as to whether the respondent herein has acted in violation and or contravention of the orders of permanent injunction and more particularly, the directions that same ought to desist from interfering with the applicant's occupation, possession and use of the portion measuring 12.76 acres of parcel number 2591 Karama Adjudication section.
27. The applicant herein has filed an elaborate and comprehensive supporting affidavit containing several annexures including the OB reports which were lodged with Muthara Police Station and wherein the applicant reported the incidence of trespass and interference with her occupation, possession and use of the suit portion of land. Furthermore, the applicant also lodged the complaint touching on assault by the respondent. Other than the assault which is stated to have been inflicted on the applicant, it was also contended that the respondent has frequently threatened the applicant to an extent that the applicant has been forced to vacate and or move out of her homestead.
28. Additionally, the applicant has also contended that the respondent herein continues to graze his animals on the portion of land, namely; the 12.76 acres of land belonging to the applicant and which is situated on plot No. 2591 Karama Adjudication section.



29. Suffice it to state that the elaborate affidavit by the applicant and which has highlighted various incidences of threats, intimidation, assault and interferences with the applicants use of the suit property, has not been controverted by the respondent herein.
30. Notably the respondent filed a replying affidavit and wherein same [respondent] has merely stated that upon the delivery of the judgment of the court and the consequential ruling rendered on the 4th December 2024 what ought to have followed was a visitation onto the suit property by the surveyor and an officer from the adjudication department so as to undertake survey, marking of boundaries and establishment of beacons.
31. On the other hand, the respondent has averred that instead of the applicant herein following up with the question of survey and the land adjudication visiting the suit property, the applicant has chosen to file the subject application with a view to ensuring that the respondent is taken to jail.
32. Moreover, the respondent has also contended that the court did not issue any order barring him [respondent] from entering and utilizing his [respondent's] land. In any event, the respondent has averred that same is the registered owner of all that parcel of land known as plot No. 9821 Karama adjudication section and thus same is mandated to use the said land.
33. Suffice to state that the respondent herein has chosen to skirt around the issues raised by the applicant. For good measure, the respondent has neither denied nor controverted the averments. In this regard, what becomes apparent and evident is that the respondent is indeed perpetuating the very acts that same was cited for and found guilty of contempt by this court on 6th of November 2024.
34. In the absence of a proper rebuttal and or denial of the averments contained at the foot of the supporting affidavit and the various annexures, the respondent is deemed to have conceded and admitted the tenor of the averments. [see *Mohamed v Haidara* [1972] EA 166].
35. To my mind, the respondent is indeed guilty of contempt and willful disobedience of lawful court orders. In any event, there is no gainsaying that every person, the respondent not excepted, has an unqualified obligation to respect, comply with and abide by the terms of the court order.
36. In the case of *Hadkinson v. Hadkinson* [1952] ALL E.R. 567, Romer, L.J. captured the scope and extent of the obligation in the following terms:

“It is the plain and unqualified obligation of every person against, or in respect of whom, an order is made against 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.

Lord Cottenham, L.C., said in *Chuck v. Cremer* (1846) 1 Coop. temp. Cott. 342:- ‘A party, who knows of an order, whether null or valid, regular or irregular, cannot be permitted to disobey it... It would be most dangerous to hold that the suitors, or their solicitors, could themselves judge whether an order was null or valid – whether it was regular or irregular. That they should come to the court and not take upon themselves to determine such a question. That the course of a party knowing of an order, which was null or irregular, and who might be affected by it, was plain. He should apply to the court that it might be discharged. As long as it existed it must be obeyed.’”



37. The unqualified nature of the obligation to respect, comply with and or adhere to court orders was amplified in the case of *Econet Wireless Kenya Ltd vs. Minister for Information & Communication of Kenya & Another* [2005] 1 KLR 828; where Ibrahim, J [as he then was] stated:
- “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. 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 void”.
38. Moreover, it has been held that where a party is aggrieved and or dissatisfied with a court order, such a party has several alternatives to impugn and or challenge the decisions under reference. Nevertheless, it has been underscored that whereas there are several alternatives, disobedience of a court order is not one of them.
39. To this end, I beg to cite and reference the holding in the case of *Teachers Service Commission vs Kenya National Union of Teachers* [KNUT] (2013) eKLR, where Lady Justice Ndolo stated thus;
39. A court order is not a mere suggestion or an opinion or a point of view. It is a directive that is issued after much thought and with circumspection. It must therefore be complied with and it is in the interest of every person that this remains the case. To see it any other way is to open the door to chaos and anarchy and this Court will not be the one to open that door. If one is dissatisfied with an order of the court, the avenues for challenging it are also set out in the law. Defiance is not an option.
40. Flowing from the foregoing analysis, I come to the conclusion that the applicant has aptly established and demonstrated that the respondent has engaged in activities and or conduct that are calculated to ridicule and or bring the integrity of the court to disrepute. In this regard, I hold that the applicant has established willful disobedience and contempt of the orders of the court that were issued on the 4th of December 2024.
41. Before departing from this issue, it is imperative to underscore that I am alive to the fact that contempt is a serious issue and thus whenever an applicant seeks to cite a person for contempt, it behooves the applicant to demonstrate and or prove the allegations of contempt to the requisite standard. For coherence, the standard of proof as pertains to matters of contempt is the intermediate standard. [See *Mutitika vs Babarini Farm Ltd* (1985) eKLR, where the Court of Appeal highlighted the standard of proof applicable in contempt proceedings.
42. Regarding the third issue, namely; whether the court ought to punish and or mete out punishment against the respondent, it is worth stating that punishment for contempt is not intended to reward the applicant or, better still, to demonstrate that judges are bestowed with the power to punish.
43. On the contrary, punishment for contempt or willful disobedience of lawful court orders is intended to protect the integrity and dignity of the court and on the other hand, to vindicate the efficacy of the rule of law and by extension the administration of justice. Simply put, punishment for contempt and or disobedience of lawful court orders is a fundamental tenet of the rule of law.



44. The purpose for meting out punishment on account of contempt was succinctly espoused by the court in the case of *Teachers Service Commission v Kenya National Union of Teachers & 2 others* [2013] eKLR, where the court stated as hereunder;

36. *Black's Law Dictionary (Ninth Edition)* defines contempt of court as:

Conduct that defies the authority or dignity of a court. Because such conduct interferes with the administration of justice, it is usually punishable by fine or imprisonment.”

37. In the case of *Johnson Vs Grant*, 1923 SC 789 at 790 Lord President Clyde sated that:

...The law does not exist to protect the personal dignity of the judiciary nor the private rights of parties or litigants. It is not the dignity of the court which is offended. It is the fundamental supremacy of the law which is challenged.”

38 The reason why courts will punish for contempt of court then is to safeguard the rule of law which is fundamental in the administration of justice. It has nothing to do with the integrity of the judiciary or the court or even the personal ego of the presiding judge. Neither is it about placating the applicant who moves the court by taking out contempt proceedings. It is about preserving and safeguarding the rule of law. A party who walks through the justice door with a court order in his hands must be assured that the order will be obeyed by those to whom it is directed.

45. Similarly, the Court of Appeal in the case of *Shimmers Plaza Ltd vs National Bank of Kenya Ltd* [2015] eKLR had occasion to reiterate the purpose why courts of law would punish for contempt or willful disobedience of court orders.

46. The court stated thus;

We reiterate here 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 Roosevelt, 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 centre. This would amount to abdication of our 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. We think we have said enough to send this important message across.

47. Arising from the foregoing, it is my finding and holding that the conduct that has been exhibited by the respondent and which founds the basis of the application for contempt, merit[s] suitable punishment in accordance with the provisions of section 5 of the *Judicature Act*, Cap 8 Laws of Kenya, as read together with the provisions of Section 29 of the *Environment and Land Court Act* 2011[2016].



48. Further and at any rate, it is not lost on this court that the respondent herein had previously been found guilty of contempt and thereafter same was given a conditional discharge. [See paragraph 24 of the ruling of the learned judge rendered on the 4th of December 2024].
49. In a nutshell, the unfolding situation merits and deserves due attention by the court. For good measure, a failure on the part of the court to take decisive action shall be tantamount to inviting the rule of the jungle to take precedence and pre-eminence.
50. Such an endeavor must not be countenanced.

Final Disposition:

51. Having reviewed the three [3] thematic issues that were highlighted elsewhere in the body of the ruling, I come to the conclusion that the applicant herein has established and proved the plea of contempt and willful disobedience of lawful court orders. For good measure, the applicant has met and satisfied the threshold enunciated in the case of *Mutitika vs Babarini Farm Ltd* [1985] eKLR.
52. In the premises, the final orders that commend themselves to the court are as hereunder;
 - i. The Application dated 25th February 2025; be and is hereby allowed.
 - ii. The Respondent be and is hereby found guilty of contempt and willful disobedience of the lawful court orders that were issued by the court on the 6th of November 2024 and 4th of December 2024.
 - iii. The Respondent shall therefore avail himself for purposes of showing cause why same ought not to be punished in accordance with the provisions of section 29 of the *Environment and Land Court Act* 2011.
 - iv. To this end, the Respondent shall have due opportunity to offer mitigation, if any.
 - v. In the event of default by the Respondent to appear by himself, the Respondent shall be arrested and be brought before the court for purposes of punishment and or sentencing.
 - vi. Costs of the Application be and are hereby awarded to the Applicant.
 - vii. The costs under reference are hereby assessed and certified in the sum of Kshs.15,000/= only.
53. It is so ordered.

DATED, SIGNED AND DELIVERED AT MERU THIS 28TH DAY OF MARCH 2025.

OGUTTU MBOYA

JUDGE.

In the presence of

Mutuma- Court Assistant

Mr. Maheli for the Applicant.

Mr. Thiruaine for the Respondent.

