



**Mkali & 253 others v Suleiman & 30 others; Kurgat (DCIO Mtwapa)  
 (Alleged Contemnor) (Environmental and Land Originating Summons  
 231 of 2017) [2024] KEELC 14163 (KLR) (10 December 2024) (Ruling)**

Neutral citation: [2024] KEELC 14163 (KLR)

**REPUBLIC OF KENYA  
 IN THE ENVIRONMENT AND LAND COURT AT MALINDI  
 ENVIROMENTAL AND LAND ORIGINATING SUMMONS 231 OF 2017  
 FM NJOROGE, J  
 DECEMBER 10, 2024**

**BETWEEN**

**NICHOLAS MKOMA MKALI & 253 OTHERS & 253 OTHERS & 253 OTHERS  
 & 253 OTHERS ..... PLAINTIFF**

**AND**

**YAHYA MOHAMED SULEIMAN & 30 OTHERS & 30 OTHERS & 30 OTHERS  
 & 30 OTHERS ..... DEFENDANT**

**AND**

**LEONARD KURGAT (DCIO MTWAPA) ..... ALLEGED CONTEMNOR**

**RULING**

1. Two applications dated 6/12/2023 has been placed before this court for determination. The motion seeks punishment for contempt of Mr Kassim Abdalla Mohamed, the 29<sup>th</sup> defendant and Mr Leonard Kurgat the intended interested party. Leonard Kurgat was sought to be joined as a party vide an application dated 22/11/2023. Which was dismissed on 15/5/24. It is clear that the motion seeking punitive orders against him was filed before the application seeking his joinder was dismissed. For that reason, I find that the seeking of orders of committal or fine against him is irregular, he not being a party to this suit.
2. However, in the event that is an incorrect position; I will seek out the grounds in the application dated 6/12/2023 against him.
3. It is stated in the supporting affidavit that the order issued on 7/11/2023 were served upon him; he is said to have proceeded to Mwatundo Farm where the suit property is situated and arrested seven members of the Mwatundo Farmers CBS. Very little other information is in the supporting affidavit as to why the members were arrested.



4. There is an application filed in opposition to the application by the office of the Attorney General representing the intended 2<sup>nd</sup> contemnor. It is stated in that affidavit that arrests on the suit property were not in contravention of the order of this court dated 7/11/2023; that the arrest of Nicholas Mkoma Mkali was on the basis of suspected involvement in robbery with violence. Only one other person, Arnest Mbura, was arrested on the basis of alleged assault. The arrests were made by another police officer and not the alleged 2<sup>nd</sup> contemnor herein and it was pursuant to complaints by two persons.
5. I have scrutinized the order attached to the supporting affidavit. It has no orders against Leonard Kurgat. In fact, the order struck him out of the proceedings even before a formal application was filed seeking his joinder. I have no reason to connect the arrest of the members of the Mwatundo FCBS with the orders of this court dated 7<sup>th</sup> November 2024. It has not been proved that he has been charged with any offence in relation to the suit land. Nevertheless, it is curious that no charge sheets have been exhibited in the application that show that the charges the arrested persons face are in connection with the suit land; on the other hand, the DCIO has attached a charge sheet showing that at least one of them has been charged with robbery with violence.
6. From the foregoing I am unable to find that the DCIO has been in contempt of this court's orders as alleged.
7. The next person is Kassim Abdalla Mohamed, the 29<sup>th</sup> defendant. He is said to have accompanied the DCIO on the arrest mission. NO other details save those alleged against the DCIO have been levelled against Kassim Abdalla Mohamed, and the fate of the orders sought against him is therefore the same as that of those sought against the DCIO. That application dated 6/12/23 lacks merit and the same is for dismissal and I hereby dismiss it with costs.

**RULING DATED, SIGNED AND DELIVERED AT MALINDI VIA ELECTRONIC MAIL ON THIS 10<sup>TH</sup> DAY OF DECEMBER, 2024.**

**MWANGI NJOROGE**

**JUDGE, ELC, MALINDI**

