



REPUBLIC OF KENYA



**KENYA LAW**  
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**Maritim & 4 others v Samoei & 4 others (Environment & Land Case E053 of 2022) [2025] KEELC 2905 (KLR) (27 March 2025) (Ruling)**

Neutral citation: [2025] KEELC 2905 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT ELDORET  
ENVIRONMENT & LAND CASE E053 OF 2022**

**CK YANO, J**

**MARCH 27, 2025**

**BETWEEN**

**PHILIP K MARITIM ..... 1<sup>ST</sup> PLAINTIFF  
KIPKURGAT KIBOT KIBIEGO ..... 2<sup>ND</sup> PLAINTIFF  
ROBERT KIPKEMEI KETER ..... 3<sup>RD</sup> PLAINTIFF  
WILLIAM KIPNGETICH BITOK ..... 4<sup>TH</sup> PLAINTIFF  
EDNA JEPLETING ..... 5<sup>TH</sup> PLAINTIFF**

**AND**

**PAUL KIRWA SAMOEI ..... 1<sup>ST</sup> DEFENDANT  
TAMAR CHEPTOO BIRGEN ..... 2<sup>ND</sup> DEFENDANT  
JULIUS KIPKOSGEI ..... 3<sup>RD</sup> DEFENDANT  
THE COUNTY LAND REGISTRAR, UASIN GISHU ..... 4<sup>TH</sup> DEFENDANT  
ATTORNEY GENERAL ..... 5<sup>TH</sup> DEFENDANT**

**RULING**

1. The 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants/Applicants moved the court by way of a Notice of motion application dated 23<sup>rd</sup> January, 2025 seeking the following orders:-
  - a. Spent
  - b. That the Honourable court do order that the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants to continue to utilize land parcel known as PIONEER/NGERIA BLOCK 1 (EATEC) 1980 pursuant to ruling issued on 19<sup>th</sup> January, 2023.



- c. That the 3<sup>rd</sup> Plaintiff, 5<sup>th</sup> Plaintiff, Daniel Kipkemboi Kemei and Abraham Cheruiyot Kemei be summoned to show cause as to why they should not be committed to civil jail for a term not exceeding six months for contempt of court having deliberately, willfully and persistently acted in defiant disobedience of the ruling of Honourable court made on the 19<sup>th</sup> January, 2023 and in the absence of any cause shown to the satisfaction of the court and the law the Respondents be fined Kshs. 200,000/= in addition to the incarceration in jail.
  - d. That the C.C.I.O Uasin Gishu County, D.C.I.O Langas Police Station and O.C.S of Langas Police Station to assist in compliance of these orders.
  - e. Costs of this application be provided for.
2. The application is based on the grounds thereon and supported by the affidavit of Tamar Cheptoo Birgen, the 2<sup>nd</sup> Defendant/Applicant sworn on 23<sup>rd</sup> January, 2025. The Applicants' case is that this court, having conducted a scene visit, issued a ruling on 19.1.2023 against the Respondents confirming that it is the Applicants who were in occupation of the suit land known as PIONEER/NGERIA BLOCK 1 (EATEC) 1980. A copy of the said ruling marked "TCB -1" has been annexed.
3. The Applicants averred that the Respondents herein were aware of the said ruling because on 17.01.2024, they went and forcefully evicted the Applicants herein without any cause. Further, that the Respondents went to the media and misled the public by claiming that the said parcel of land belonged to the plaintiffs without having appealed against the decision made by the court. That thereafter, the Respondents in blatant disobedience of the court ruling proceeded to trespass on the said land and demolished the Applicant's' properties. Photographs marked "TCB -2" have been annexed to the supporting affidavit.
4. The Applicants contend that it is clear that the Respondents were aware of the court ruling but chose to disregard the same. The Applicants therefore contend that the Respondents' actions are an act of contempt and are in contravention of the provisions of Article 40 of *the Constitution* and clearly undermine the authority of the court. The Applicants further contend that it is the unqualified obligation of every person against whom a ruling is served to obey such an order and argued that the Respondents conduct is belittling the court and is calculated to bring disrespect to the court. That the Respondents' conduct undermines the authority and dignity of the court and ought to be punished. The Applicants urged the court to allow the application in the interest of justice.
5. Although the Respondents were duly served with the application, they did not file any response, and therefore the application is not opposed. Pursuant directions given by the court, the application was canvassed by way of written submissions. The Applicants filed submission dated 14<sup>th</sup> February, 2025 through the firm of M/s Kapere & Warigi Advocates LLP.
6. The Applicants' Advocates identified the issue for determination to be whether the 3<sup>rd</sup> Plaintiff, the 5<sup>th</sup> Plaintiff, Daniel Kipkemboi Kemei and Abraham Cheruiyot Kemei are in contempt of court. Learned counsel for the Applicants relied on the case of Stewart Robertson –Vs- Her Majesty's Advocate 2007, HCAC63; Board of Governors Moi High School Kabarak –Vs- Malcolm Bell & Another (Supreme Court Petition No.6 & 7 of 2013); Heelmore vs Smith (2) (1886) L.R 35 C.D 455; Johnson –vs- Grant 1923 SC 789 at 790, and Hardkinson –vs- Hadkinson (1952) ALL ER 576. They also cited the definition of contempt of court in Black's Law Dictionary (Tenth Edition) and submitted that the reason why a court will punish for contempt of court is to safeguard the rule of law which is fundamental in the administration of justice. That a court order requiring compliance is not a mere suggestion or an opinion or a point of view, but is a command that is issued after much thought and with circumspection and therefore must be complied with. It is submitted that if one is dissatisfied



- with an order of the court, the avenues for challenging it are set out in the law, and defiance should never be an option.
7. The Applicants' counsel reiterated the averments in the application and the supporting affidavit and submitted that despite the existence of the said court order, the Respondents refused to, ignored or otherwise failed to obey the same. That the said orders were very clear and unambiguous which were well understood by the Respondents whose actions are contrary to the said court orders and they ought to be punished with the wrath it deserves.
  8. I have considered the application, the affidavit in support, submissions of counsel and the authorities cited. I have also considered the applicable law. The issues I find for determination are:-
    - i. Whether the orders of 19<sup>th</sup> January, 2023 were served upon the Respondents or whether the Respondents were aware of the said orders.
    - ii. Whether the Respondents are guilty of contempt of the court orders of 19<sup>th</sup> January, 2023.
    - iii. Whether the Applicants are entitled to the orders sought in the application and what orders this court should make in the circumstances.
  9. The standard of proof in matters of contempt of court is well settled. The Court of Appeal in civil Application No. Nai. 39 of 1990 stated that it is essential for the maintenance of the rule of law and good order that the authority of and dignity of the court be upheld at all times and that the court will not condone deliberate disobedience of its orders and will not shy away from its responsibility to deal firmly with proved contemnors. The Court of Appeal approved the standard of proof in contempt cases as set out in the case of Gatharia Mutika & others –vs- Baharini Farm Limited (1985) KLR 227 in which it was held that in cases of alleged contempt, the breach for which the contemnor is cited must not only be precisely defined but proven to a Standard which is higher than proof on a balance of probabilities but not as high as proof beyond reasonable doubt. This is because the charge of contempt of court is an offence of criminal character and a party may lose his liberty.
  10. The record shows that vide a Notice of motion dated 11<sup>th</sup> October, 2022, the plaintiffs herein sought for orders of injunction to issue restraining the defendants restraining them from sub-dividing, disposing of, transferring, threatening, trespassing into, fencing, ploughing, putting up any structure/ building, invading into and/or in any way dealing or doing any other acts inconsistent with the proprietary rights of the plaintiffs in the suit land measuring 8.094 Ha pending the hearing and determination of the main suit as well as costs. On 19<sup>th</sup> January, 2023, the court (Obaga, J) found that the plaintiffs (now Respondents) said application dated 11<sup>th</sup> October, 2022 was devoid of merit and dismissed the same with costs to the Respondents (now some of the Applicants in the present application). I have perused the court record and note that the said ruling was delivered virtually in the presence of Mr. Warigi for the 1<sup>st</sup> to 3<sup>rd</sup> Defendants. There is no indication that the Respondents were present in person or through their advocate.
  11. From the material on record, this court is not in a position to tell whether counsel for the Applicants herein notified the respondents of the outcome of the said ruling. More importantly, there were no positive orders that were issued by the court in the said ruling, save for costs. This is because all that the court found was that the application dated 11<sup>th</sup> October, 2022 was devoid of merit and dismissed the same with costs. There is no mention of any orders directed to the Respondents herein asking them to do or refrain from doing any of the acts complained herein. If anything, they were awarded costs of the said application.



12. In the case of Justus Kariuki Mate & Another vs Martin Nyaga Wambora & another (C.A No. 24/14/KECA 376 (KLR) stated that:-

“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 court forbidding it. The threshold is quite high as it involved possible deprivation of a person’s liberty”.

13. In the instant case, there is indeed no order issued on 19<sup>th</sup> January, 2023 forbidding the Respondents from doing any act or directing them to do a certain act.

14. Consequently, I find that notice of motion dated January 23, 2025 is devoid of merit. The same is dismissed. Since the Respondents did not participate in the application, I order that each party to bear their own costs.

15. It is so ordered.

**DATED, SIGNED AND DELIVERED AT ELDORET ON THIS 27<sup>TH</sup> DAY OF MARCH, 2023.**

**HON. C. K. YANO**

**ELC, JUDGE**

**27<sup>TH</sup> MARCH, 2025**

In the presence of;

Court Assistant – Laban

No appearance for Plaintiffs.

No appearance for Defendants/Applicants.

