



**Mathenge v Munyao (Civil Appeal 112 of 2007)  
[2025] KEHC 2057 (KLR) (Civ) (28 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 2057 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CIVIL**

**CIVIL APPEAL 112 OF 2007**

**JN MULWA, J**

**FEBRUARY 28, 2025**

**BETWEEN**

**ISAAC MATHENGE ..... APPELLANT**

**AND**

**JOHN MUNYAO ..... RESPONDENT**

**RULING**

1. The respondent herein John Munyao moved this court under Section 5 of the *Judicature Act* and Order 51 Rule 1 of the *Civil Procedure Rules* for an order to cite the Appellant, Isaac Mathenge for contempt of the court orders dated 16/07/2024 and issued on 30/07/2024.
2. By the said court orders, the Appellant was restrained by himself or his agents any interference alienation or transfer of property known as Mavoko Town Block 20/535 which title document was already deposited in court as security pending hearing and determination of the appeal.
3. It was a further order of the court that the appellant was restrained from parting with possession of the said property pending the then intended sale by Public Auction.
4. By this instant application the applicant in his supporting affidavit and grounds of the motion deposes that while the restraining orders were in force, the appellant fraudulently obtained a new title to the property Mavoko Town Block 0/535 by falsely alleging to the Machakos Land Registry that the title to the property was lost and caused a new title to be issued as per Gazette Notice No. 10936, Vol. CXXV – No. 184 at page 3591 annexed to the supporting affidavit.
5. Thereafter upon a new title being issued without knowledge of the Respondent proceeded to sale the said property to a 3<sup>rd</sup> party while the original title still remains held in court as security.



A certificate of official search at the Machakos Land Registry dated 1/08/2024 attached as an exhibit further shows that property number Mavoko Town Block 20/535 belongs to one Caroline Wairimu Mungai as an absolute owner, having acquired such ownership on 6/16/2024 and a Title Deed issued in her favour on 7/06/2024.

All this time, the appellant knew of the existence of the court orders restraining him from transferring the said property being deposited as security in court.

6. The appellant was served with the instant application. He did not file a response.

7. The application therefore stands unopposed.

Clearly, the appellant is in blatant disobedience of court orders issued on 16/07/2024.

8. I have carefully considered the Kenya Gazette dated 18/08/2023. The impugned land title was reported lost and an application made to the Land Registry Machakos for issue of a new title a new title was issued to the appellant vide Gazette Notice No. 10938 dated 18/08/2023 by Land Registrar, Machakos.

9. Additionally, a careful interrogation of the Official Search Certificate in respect of the title dated 1/08/2024 shows that the property and title issued as stated above was transferred to the 3<sup>rd</sup> party Caroline Wairimu Munagai using the fraudulently obtained new title on 6/01/2024 and further title deed issued to her on the same day while the court orders were in force and remain in force to date.

10. The applicant (respondent) sought orders that the appellant be cited for contempt of court orders.

11. The court derives powers to cite and punish a party for contempt from Section 5 of the Judicature Act. The act empowers the court to punish those who blatantly disobey court orders. It is essential for maintenance of the rule of law and order that courts authority and dignity be upheld at all times.

12. As held in the case of *Samuel M. N. Mweru & Others v. The National Land Commission & 2 Others* [2020]eKLR Mativo J, as he then was ) at paragraph 33

“..... the court will not condone deliberate disobedience of its orders and will not shy away from its responsibility to deal 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...”

13. Disobedience of court orders violates the dignity, repute and authority of the court. An application for contempt and committal to civil jail though civil in nature, invokes criminal sanctions. The court will grant enforcement because of the broader public interest in obedience to its orders as it threatens its authority and detracts from the rule of law.

14. The test for contempt of a court order is the deliberate and intentional violation of the courts orders.

15. The orders subject of the contempt were issues on 16/07/2024 in presence of the advocate for the appellant. It can therefore not be said that he was not aware of the said orders.

16. Further a perusal of the appellants supporting affidavit to the motion dated 13/03/2024 from were the orders arose, the appellant offered the property as security to be deposited in court pending hearing and determination of the appeal.



17. The appellants deliberate actions of reporting loss of the title o he offered as security and depositing the same in court could only be said to be intentional and deliberate. Fraud is a serious criminal offence.
18. It is not for this court to investigate the crime involved but the court finds the conduct of the appellant most unbecoming of a party seeking justice from the court.
19. Once contempt has been stablished which this court has so established by finding that:-
  1. The terms of the order were clear and unambiguous; were binding upon the appellant;
  2. The appellant had knowledge of the terms of the order
  3. The appellant acted in breach of the terms, and the appellants conduct was deliberate
20. This punishment would follow, as observed and rendered in the case of *M'mukira & Another v. Magiri & Another* [ELC] [2024] eKLR
21. The Supreme court in the case of *Kenya Human Rights Commission V. AG & Another* [2018] eKLR observed that the power to punish for contempt by the High Court and the Court of Appeal derive its authority from Section 5 (1) of the *Judicature Act*; and involves procedure fairness, fair hearings and the rule against bias.
22. To that end therefore in compliance with the procedural fairness, the appellant shall be granted a chance to defend himself.

He has been cited for contempt. He is therefore required to attend court in person with or without his advocate to show cause why he should not be punished for contempt on 10/03/2025

Orders accordingly.

**DELIVERED DATED AND SIGNED AT NAIROBI THIS 28TH DAY OF FEBRUARY, 2025**

.....  
**JANET MULWA.**  
**JUDGE**

