



**Sang v Keter & 5 others (Environment and Land Case E010 of 2023)  
[2024] KEELC 14136 (KLR) (1 October 2024) (Ruling)**

Neutral citation: [2024] KEELC 14136 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT ELDORET  
ENVIRONMENT AND LAND CASE E010 OF 2023  
JM ONYANGO, J  
OCTOBER 1, 2024**

**BETWEEN**

**LINAH JERIWO SANG ..... PLAINTIFF**

**AND**

**CORNELIUS KIPLIMO KETER ..... 1<sup>ST</sup> DEFENDANT**

**JANET JEPTOO ..... 2<sup>ND</sup> DEFENDANT**

**HENRY KIPROTICH METTO ..... 3<sup>RD</sup> DEFENDANT**

**JANET CHEPKOSGEI BARGETUNY ..... 4<sup>TH</sup> DEFENDANT**

**JULIUS KERING KIMELI ..... 5<sup>TH</sup> DEFENDANT**

**YUSUF TOO ..... 6<sup>TH</sup> DEFENDANT**

**RULING**

1. In the Notice of Motion Application dated 18<sup>th</sup> March, 2024 placed before me, the Plaintiff/Applicant seeks the following orders:
  - a. Spent
  - b. That the 1<sup>st</sup> and 5<sup>th</sup> Respondents herein be arrested and committed to prison for a term not exceeding six (6) months.
  - c. That this Honourable Court be pleased to summon the 1<sup>st</sup> to 5<sup>th</sup> Defendants/Respondents herein for blatantly disrespecting this Honourable Court by disobeying orders issued by this court 23<sup>rd</sup> October, 2003.
  - d. That the 1<sup>st</sup> to 5<sup>th</sup> Respondents herein be arrested and committed to civil jail for a term not exceeding six (6) months.



- e. That this Honourable Court be pleased to deny the 1<sup>st</sup> to 5<sup>th</sup> Defendants/Respondents and their Advocates audience before this Honourable Court until they purge the contempt.
  - f. That this Honourable Court be pleased to issue any such or further punitive orders in respect of the said contempt as may be necessary for the ends of justice to be met and towards protection of the dignity and authority of the court.
  - g. That the Costs of this Application be provided for.
2. The Application is based on the grounds set out on the face the Motion and on the Supporting Affidavit of Linah Jeriwo Sang, the Plaintiff herein, sworn on the same date. In her Supporting Affidavit to the Motion, the Plaintiff claims that she applied for and obtained temporary injunctive orders from this court pending hearing and determination of the suit. That the order was extracted and served on the Defendants through the firm of Anassi Momanyi & Co. Advocates, their Advocates on record. She deponed that despite there being temporary orders, the Defendants have by themselves and through their agents in complete disregard thereto, started construction on the suit property and keep bringing material and they continually bring 3<sup>rd</sup> Parties to the suit land trying to lease/sell it to the detriment of the Plaintiff.
  3. She deponed that the Defendants continue to dig holes, pit latrines and do other activities that result in wastage and destruction of the suit property, which activities cause depreciation of the land and are introducing other parties to interfere with the Plaintiff's possession, use and enjoyment thereof. That the Defendants are yet to comply and instead employ delaying tactics to enable their usage and wastage of the land. Further, that the Defendants have blatantly contravened the said court order and it is imperative for this court to give effect to its orders. The Defendants herein ought to be committed to civil jail and/or orders of sequestration be made against them. She averred that it is in the interest of justice that the orders herein be granted to protect the dignity of the court as the actions of the 1<sup>st</sup> to 5<sup>th</sup> Defendants are calculated at defeating the substratum of this suit. She added, and that court orders are not in vain.
  4. Each of the 5 Defendants filed a Replying Affidavit, they are all dated 23<sup>rd</sup> May, 2024 all stating the same facts. In their Affidavits, the Defendants deponed that they have not been served with any court order nor were they informed by their advocate of its existence in this matter. They deponed that they were only notified of the order on the date of making the Affidavits, but they have in no way disobeyed it as they have done nothing contrary to or that amounts to disobedience of the court order exhibited in the Application herein. That the photographs annexed to the Application are not related to them and in fact relate to structures which were on the suit property prior to filing of the suit, and do not relate to structures constructed on the suit land post 23<sup>rd</sup> October, 2023.
  5. The Defendants deponed that they had not done any of the acts complained of by the Plaintiff despite not being aware of the order herein, nor have they done anything that would constitute wastage or destruction of the suit property. The Defendants deponed that they are not employing delaying tactics nor has the suit ever been set down for hearing. They pointed out that no specific allegation has been made against any of them and averred that they are law-abiding citizens who have not in any way acted in a manner to defeat the substratum of the suit and justice. Lastly, they opposed the application for being fatally defective and incompetent.
  6. The Plaintiff filed a Supplementary Affidavit dated 13<sup>th</sup> May, 2024 stating that the ruling was delivered on 18<sup>th</sup> October, 2023 in the presence of the Defendants' Counsel so he is aware of the outcome. That once the order was extracted, Plaintiff's Counsel served it on the Defendants advocates on record, the firm of Anassi Momanyi & Company Advocates, and there is no requirement to serve the order on the



parties if they are represented unless it is a notice to show cause. She deponed that in further disregard of the court orders, even after service of the Application for contempt, they proceeded to plant maize on the land when it rained. She averred that the Defendants cannot feign ignorance yet continue to act in disregard of the order.

7. An Affidavit sworn on 14<sup>th</sup> May, 2024 by Elijah Momanyi Mogona, the Advocate handling this matter on behalf of the Defendants was also filed. Counsel deponed that he has never been served with and is unaware of the orders of the court of 18<sup>th</sup> October, 2023 since it was never brought to his attention, consequently his clients were unaware of it too since he did not notify them of the decision of the court. He deponed that it is not tenable to assert that the Defendants were aware of the court order without evidence. That the Plaintiff cannot assert that the order was clear without evidence that the same was served on any of the Defendants, and that seeking punishment against the 1<sup>st</sup> to 5<sup>th</sup> Defendants for the alleged contempt is thus untenable. Counsel stated that the Plaintiff had not pointed out which of the Defendants is in contempt of the court order and what they had done since the order was made. That from the Plaintiff's Further Affidavit and Submissions it appears that 3<sup>rd</sup> Parties with no nexus to the Defendants are the ones undertaking developments. That the photograph is the same as the one in Eldoret E010 of 2023, thus it is not possible to tell which parcel of land the photograph relates.

### **Applicant's Submissions**

8. The Motion was canvassed by way of written submissions. In the Plaintiff's Submissions dated 13<sup>th</sup> May, 2024, Counsel relied on the case of [\*Samuel M.N. Mweru & Others v National Land Commission & 2 Others\*](#) (2020) eKLR on the explanation of contempt and the elements thereof. Counsel submitted that the order given on 18<sup>th</sup> October, 2023 and issued on 23<sup>rd</sup> October, 2023 was clear in its terms and timeline and there is no ambiguity or confusion on what it stated. It was submitted that the Defendants' Advocate on record has been present at every court attendance, including the date when the court delivered the ruling and he was aware of the outcome and ought to have informed his clients. The Defendants cannot thus feign ignorance of the orders of the court and they should be held accountable for their actions. Counsel relied on [\*Econet Wireless Kenya Limited v Minister for Information and Communication of Kenya & Another\*](#) (2005) eKLR on the obligation of all persons to obey court orders.
9. Counsel submitted that the Defendants' action in disregarding the order and using the suit land knowing the issues in contention have not been resolved amounts to illegal trespass. In addition, that after filing and service of the instant Application, the Defendants deliberately proceeded to plant maize. He argued that the Defendants' actions are malicious and aimed at ensuring that they use the suit land as long as they can before they are evicted. They added that these actions are detrimental to the Plaintiff and interfere with the sanctity of the court. He relied on the Indian case of [\*T.N. Gadavarman Thiru Mulpad v Ashok Khot & Another\*](#) (2005) 5 SCC. He asked that the Application be allowed as prayed.

### **1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendant's Submissions**

10. The Defendants' Counsel filed submissions in response dated 20<sup>th</sup> May, 2024 reiterating that the Defendants were not in court when the order was made and were not served with it, therefore they were unaware of it. He argued that it matters not that the order was clear in its terms since there is no evidence of service of the order either on them or their Advocate, or any indication of the date service was effected. That there is no basis to hold that the Defendants had knowledge of the order. Counsel relied on [\*Sheila Cassatt Isenberg & Another v Antony Machatha Kinyanjui\*](#) (2021) eKLR. Counsel urged that in the absence of proof of service or knowledge, the issue of deliberate and wilful disobedience does not arise and cannot be pursued.



11. Counsel also submitted that from the generalization, it is impossible to know who has done what on either parcel of land. That there is no evidence that the third parties are undertaking the developments with the blessings of the Defendants. Counsel argued that the Plaintiff is under duty to prove her allegations above a balance of probability as was held in *Gatharia K. Mutitika v Baharini Farm Ltd* (1985) KLR 227. Counsel submitted that the Plaintiff has failed to establish a case to warrant the Defendants being punished for contempt and submitted that the Application ought to be dismissed with costs to the Defendant.

### **Analysis and Determination**

12. The Court has carefully read and considered the Application herein, affidavits filed in response, submissions, authorities cited and the relevant provisions of law and finds that the issues for determination are; Whether there are clear and unambiguous orders capable of being obeyed Whether personal service of the court order is mandatory in contempt proceedings or knowledge of the order is sufficient Whether the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants are in contempt of the orders Court made on 18<sup>th</sup> October, 2023 and issued on 23<sup>rd</sup> October, 2023
13. A brief background to this case is that on 23<sup>rd</sup> February, 2023 the Plaintiff approached this court by way of a Plaint dated 22<sup>nd</sup> February, 2023 claiming to be the registered owner of the Parcel of land known as Eldoret Municipality Block 15/2429 (hereinafter “the suit property”). She claimed that the Defendants had forcefully and unlawfully entered into the suit land and tilled her land in preparation for the planting season. That they removed her fence and have started erecting illegal structures thereon and have caused malicious damage thereto. She alleged that the said actions amounted to trespass and she sought among other prayers a permanent injunction restraining the Defendants from trespassing onto her land or in any other way dealing with it as well as an eviction order against the Defendants.
14. Together with the Plaint, the Plaintiff also filed a Notice of Motion dated 22<sup>nd</sup> February, 2023 under Certificate of Urgency seeking temporary injunctive orders against the Defendants use of the land pending the hearing and determination of this suit. The court considered the application and the court delivered its ruling on 18<sup>th</sup> October, 2023 granting a temporary injunction restraining the Defendants by themselves or through their Agents from constructing, cultivating, or otherwise utilizing or dealing with the suit property in any way. It is this order that the Plaintiff alleges has been disobeyed by the Defendants and asks the court to punish the Defendants for contempt of its said order.

#### **a. Whether there are clear and unambiguous orders capable of being obeyed**

15. It is imperative that every person against whom or in respect of whom an order is made by a Court of competent jurisdiction has an obligation to obey it unless and until the order is discharged. This obligation is uncompromising and it applies even where one believes the order to be irregular or void. Consequently, courts do not condone deliberate disobedience of orders and will deal firmly with proved contemnors. Courts possess inherent power to enforce compliance with their lawful orders and impose sanctions through contempt of court. The power to punish for contempt is meant to ensure that court processes are not abused and the authority and dignity of the courts is upheld at all times because contempt of court by its very nature demeans the integrity and authority of Courts and disparages the rule of law.



16. The *Black's Law Dictionary* (11<sup>th</sup> Edition) defines contempt of court as:-

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

17. The instructive provision on contempt of court is Section 5 (1) of the *Judicature Act*, which grants the High Court and the Court of Appeal the power to punish for contempt. Additionally, for this court, Section 29 of the *Environment and Land Court Act* provides that:-

“Any person who refuses, fails or neglects to obey an order or direction of the Court given under this Act, commits an offence, and shall, on conviction, be liable to a fine not exceeding twenty million shillings or to imprisonment for a term not exceeding two years, or to both.”

18. This Court, therefore, has inherent powers under the *Judicature Act* as well as Section 29 of the *Environment and Land Court Act*. The jurisdiction of the superior courts to punish litigants for contempt of court when they fail or refuse to obey court orders is aimed at protecting the dignity and legitimacy of the courts. The test applicable in an application for contempt, was well set out in *Samuel M. N. Mweru & Others v National Land Commission & 2 others* [2020] eKLR where the court held that:-

“40. It is an established principle of law that in order to succeed in civil contempt proceedings, the applicant has to prove (i) the terms of the order, (ii) Knowledge of these terms by the Respondent, (iii). Failure by the Respondent to comply with the terms of the order. Upon proof of these requirements the presence of willfulness and bad faith on the part of the Respondent would normally be inferred, but the Respondent could rebut this inference by contrary proof on a balance of probabilities. Perhaps the most comprehensive of the elements of civil contempt was stated by the learned authors of the book *Contempt in Modern New Zealand* who succinctly stated:-

“There are essentially four elements that must be proved to make the case for civil contempt. The applicant must prove to the required standard (in civil contempt cases which is higher than civil cases) that:-

- (a) the terms of the order (or injunction or undertaking) were clear and unambiguous and were binding on the defendant;
- (b) the defendant had knowledge of or proper notice of the terms of the order;
- (c) the defendant has acted in breach of the terms of the order; and
- (d) the defendant's conduct was deliberate’.”

19. The first question to be determined with regards to contempt of court, is whether there is a valid order capable of being obeyed. This limb also requires that the order must be clear and unambiguous. On the 18<sup>th</sup> October, 2023 the court pronounced itself on the Plaintiff's Application dated 22<sup>nd</sup> February, 2023



in the presence of both counsel for the Plaintiff and the Defendants. The words of the court in ruling as well as the injunctive order from which this application emanates as extracted reads as follows:-

“ A temporary injunction be and is hereby granted restraining the Defendants/Respondents either by themselves, their agents, servants and/or anyone claiming under them from constructing structures, cultivating, utilizing, selling, charging, leasing, subdividing, wasting or otherwise interfering with all that parcel of land known as Eldoret Municipality Block 15/2429 pending hearing and determination of the suit herein.”

20. The order is clear and unambiguous and there has been no complaint from the Defendants that it was ambiguous or confusing in any way. For this reason, this court finds that there were in existence clear and unambiguous orders capable of being executed and/or obeyed by the Defendants.

**b. Whether personal service of the court order is mandatory in contempt proceedings or knowledge of the order is sufficient**

21. Secondly, it is a requirement that the party alleged to have breached the order must have had actual knowledge of it. The Plaintiff has stated that the Defendants were duly served with the order but failed to comply. The Plaintiff also argued that the ruling in respect of which the order emanated from was delivered in the presence of Counsel for the Defendants and therefore they ought to have been aware of it. In response, the Defendants and their Counsel have all averred that they were not served and neither were they aware of the existence of the relevant order of the court.
22. I agree with the Defendants assertion that in order to prove that they willfully and/or deliberately disobeyed the court order, it has to be shown that the Defendants were aware of the order to begin with. Previously, courts were of the opinion that this awareness of the order was proved by establishing personal service of the subject order and the attendant penal notice upon the alleged contemnor (see in *Nyamogo & Another v Kenya Posts and Telecommunications Corporation* (1994) KLR 141). This position has however shifted in recent years, and courts have held that it is sufficient for the applicant to demonstrate awareness and/or knowledge by the alleged contemnor of the orders. Had the Defendants made their contention before this shift in jurisprudence, this court would have insisted that personal service of the orders in question was mandatory. However, as the law stands right now, personal service of the order upon the contemnor is not necessary where knowledge of the order is proved.
23. This court is alive to and ascribes to the changes in the jurisprudence in this area of law to the effect that knowledge of an order supersedes personal service. In *Kenya Tea Growers Association v Francis Atwoli & Others* (2012) eKLR, the Respondents claimed that they were unaware of the Court Order until they saw it in a newspaper over a month after it was issued and that they were not served with the Court orders and therefore they could not be said to be in contempt, but the court held that:-

“ On this issue, our Courts seem to have moved steadily towards the position that although Order 52 Rules 3 and 4 of the Supreme Court Practice Rules of England would point towards personal service as a factor in determining contempt, in fact knowledge of an order is higher than service. It is common ground that neither of the alleged contemnors was ever directly served and that leaves the issue whether they had knowledge of the order prior to 18<sup>th</sup> October 2010. On that issue, I have the evidence of Isaac Kiprotich Maswai, Philip Kibii Cheruiyot and Emmanuel Ng’etich before me. They all stated, on oath, that they heard Francis Atwoli uttering words whose import was to confirm that not only was he aware and had knowledge of the Order but he also challenged it as having been given without



jurisdiction. Cheruiyot went further to produce a transcription of words that he recorded as having been uttered by Atwoli and which I have reproduced above.”

24. In the case of *Kenya Tea Growers Association v Francis Atwoli* (*supra*) Lenaola J went on to find that he was satisfied that the alleged contemnors had knowledge of the Court Order. The rationale behind this change appears to be the need to protect the integrity and dignity of Court orders. To excuse a contemnor who has knowledge of a Court order simply because he has not been personally served is to open up Court orders and process to deliberate, wilful, contemptuous and cynical disobedience. This position has been endorsed repeatedly by the Court of Appeal, for instance in *Shimmers Plaza Limited v National Bank of Kenya* [2015] eKLR, the court held that:-

“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 v 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 service of 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 v 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”

25. The Court of Appeal similarly pronounced itself in *Woburn Estate Limited v Margaret Bashforth* [2016] eKLR citing the decision in *Refrigeration and Kitchen Utensils Ltd v Gulabchand Popatlal Shah & Another*, Nairobi Civil Application No.39 of 1990, where it was observed that:-

“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...he should apply to the court that it might be discharged. As long as it exists it must not be disobeyed.”

26. The above provision takes cognizance of the fact that personal service may not be achieved in some circumstances. For these reasons, this court will not hesitate to hold that where a party has knowledge of a court order, personal service is not mandatory. In the instant application, the ruling in respect of which the orders were made was delivered on 18<sup>th</sup> October, 2023 in the presence of both Miss. Adongo, Counsel for the Plaintiff and Mr. Momanyi, Counsel for the Defendants. For this reason, Mr.



Momanyi cannot be heard to say that he was not aware of the existence of the order as the record shows he had full knowledge of it. Furthermore, Order 5, Rule 8(1) of the [Civil Procedure Rules](#) states that;

“Wherever it is practicable, service shall be made on the defendant in person unless he has an agent empowered to accept service, in which case service on the agent shall be sufficient”.

27. Counsel represents the interests of their clients, therefore, where orders are made in the presence of Counsel for a party, it is expected that Counsel will inform their clients of the decision of the court. The Defendants are thus presumed to have knowledge of the existence and terms of the court order in question. In [Shimmers Plaza Limited v National Bank of Kenya](#) (*Supra*), the court held that:-

“The dispensation of service under rule 81.8 (1) is subject to whether the person can be said to have had notice of the terms of the judgment or order. The notice of the order is satisfied if the person or his agent can be said to either have been present when the judgment or order was given or made; or was notified of its terms by telephone, email or otherwise. In our view, 'otherwise' would mean any other action that can be proved to have facilitated the person having come into knowledge of the terms of the judgment and/or order. This would definitely include a situation where a person is represented in court by counsel. Once the applicant has proved notice, the respondent bears an evidential burden in relation to wilfulness and mala fides disobedience. This Court in the Wambora case (*supra*) affirmed the application of these requirements.”

28. From the foregoing, it becomes apparent that the Defendants having been represented in this suit by Counsel, who was present in court when the ruling was delivered, are well aware of the injunctive order issued herein. This court certainly finds so.

**c. Whether the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants are in contempt of the orders Court made on 18<sup>th</sup> October, 2023 and issued on 23<sup>rd</sup> October, 2023**

29. It trite that a court order must be obeyed whether a party agrees with its contents or not, and as long as the order still subsists, then it remains a valid court order that must be adhered to. The adherence to the court order is not optional even if a party has applied for review, variation or appeal of the said order. In the case of [Kenya Tea Growers Association v Francis Atwoli and 5 Others](#) (*supra*) Lenaola J cited with approval the case of *Clarke and Others v Chadburn & Others* [1985] 1All E.R (PC), 211 in which the court observed that:

“I need not cite authority for the proposition that it is of high importance that orders of the courts should be obeyed, willful disobedience to an order of the court is punishable as a contempt of court, and I feel no doubt that such disobedience may properly be described as being illegal...even if the Defendants thought that the injunction was improperly obtained or too wide in its terms, that provides no excuse for disobeying it. The remedy is to vary or discharge it.”

30. This court has already found that the Defendants had knowledge of the orders of this court. There is no doubt that the orders have been in force since they were issued and have neither been discharged, varied or set aside. The court granted the injunction on a temporary basis pending the hearing and determination of the suit herein. The question now is whether the Defendants have contravened the order of court restraining them from any dealings on the suit property as well as whether this contravention was deliberate.



31. Among the prayers sought in the instant Application is committal to civil jail, which will result in denying the Defendants their liberty. It is for this reason that the standard of proof in contempt matters is higher than that of ordinary civil matters. In the case of *Mutitika v Babarini Farm Limited* [1985] KLR 229, 234 the Court of Appeal held that:

“In our view, the standard of proof in contempt proceedings must be higher than proof on the balance of probabilities, almost but not exactly, beyond reasonable doubt...The standard of proof beyond reasonable doubt ought to be left where it belongs, to wit, in criminal cases. It is not safe to extend it to an offence which can be said to be quasi-criminal in nature. The rationale for this standard is that if cited for contempt, and the prayer sought is for committal to jail, the liberty of the contemnor will be affected. As such, the standard of proof is higher than the standard in civil cases. This power, to commit a person to jail, must be exercised with utmost care, and exercised only as a last resort. It is of utmost importance, therefore, for the respondents to establish that the alleged contemnor’s conduct was deliberate, in the sense that he or she willfully acted in a manner that flouted the Court Order.”

32. This then means that the violation that the Defendants are accused of must be proved to a standard which though not as high as proof beyond reasonable doubt, must be higher than proof on a balance of probabilities. The threshold is quite high as it involves possible deprivation of a person’s liberty. It is important therefore that the court satisfies itself that first, the acts complained of actually happened, secondly, that the person alleged to be in contempt committed the acts complained of and lastly, he did so with full knowledge of the existence of the order of the court forbidding it. It needs no mention that the burden of proving that the Defendants did disobey the court order lays squarely on Plaintiff.

33. In the Application herein, no specific date(s) has been given as the date(s) when the Defendants deliberately carried out the acts of disobedience of the court order. The photographs annexed to the Plaintiff’s Supporting Affidavit bear no date stamp, therefore it cannot be said with certainty when the structures shown therein were built. This court cannot dismiss the Defendant’s claim that the structures existed prior to the filing of this case. I have compared those photographs to the photograph annexed to the previous Application dated 22<sup>nd</sup> February, 2023 and note that the Photographs annexed to the application show a fence and a road next to the property, while in the photographs annexed to the earlier application, there is no road. The photographs appear to be of different sections of the land and cannot provide a proper comparison of the status of the land prior to issuance of the order and the current status after the order was made. I am unable to state with certainty that these are new structures that did not exist before the suit. I have seen no building materials deposited on the suit property as alleged from the said from photograph. There is no proof of holes or pit latrines built after issuance of the injunctive orders as alleged.

34. There is an alleged repeat disobedience raised in the Plaintiff’s Supplementary Affidavit, where the Plaintiff claims the Defendants planted maize on the suit property when it rained, which was after filing and service of the instant Motion. Although the court can give a rough estimate of how old the said maize is, the photograph annexed to the Supplementary Affidavit does not bear a date and/or timestamp thus it is impossible to determine approximately, when it was planted. Maize being a seasonal food crop, without a date on the photographs, this court is not able to state with certainty whether the maize was recently planted or whether it is a photo taken from a different planting season. Aside from the alleged planting of maize, there is no evidence to show any difference in the layout of the land before and after the other alleged acts of contempt. The photographs are therefore inconclusive in that regard.



35. Nevertheless, if indeed it is the Defendants who planted the maize on the land, then that conduct was deliberate, in the sense that they willfully acted in a manner that flouted the said Order. No doubt, if the Plaintiff had tendered sufficient evidence of the Defendants' disobedience, this court would have made a finding to that effect. However, the evidence presented in this instant Motion falls short of the required standard. The Defendants are reminded that the injunctive orders are still in place, so for the avoidance of doubt, should the Defendants disregard them by tilling, weeding, or going into the land to cultivate maize or other crops growing thereon (if any), or harvesting the same or in any other way acting contrary to the said orders, those will be separate acts of trespass and disobedience. Parties should thus bear in mind that this application or the outcome herein will not act as a bar to subsequent prosecution for any future acts of trespass/disobedience.
36. However, for purposes of the Application herein, the Plaintiff has failed to prove that the acts of contempt took place on the suit property after the issuance of injunctive orders by this court. That being so, the Plaintiff's application has fallen short of establishing that the Defendants are guilty of disobeying the order of this court dated October 23, 2023. In conclusion, the Plaintiff's application dated March 18, 2024 is dismissed with costs.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT ELDORET THIS 1<sup>ST</sup> DAY OF OCTOBER 2024.**

.....

**J.M ONYANGO**

**JUDGE**

In the presence of;

1. Miss Adongo for the Applicant
2. Mr. Wainaina for Mr. Momanyi for the Respondents

Court Assistant: Brian

