



**Maloba v Laundra & another; PS Ministry of Foreign Affairs
(Alleged Contemnor) (Environmental and Land Originating Summons
E001 of 2022) [2025] KEELC 7573 (KLR) (5 November 2025) (Ruling)**

Neutral citation: [2025] KEELC 7573 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
ENVIRONMENTAL AND LAND ORIGINATING SUMMONS E001 OF 2022
SM KIBUNJA, J
NOVEMBER 5, 2025**

BETWEEN

QUINCY MURUNDI MALOBA APPLICANT

AND

ADRIANO PIETRO LAUNDRA 1ST RESPONDENT

MARIE TRESERA LAUNDRA 2ND RESPONDENT

AND

PS MINISTRY OF FOREIGN AFFAIRS ALLEGED CONTEMNOR

RULING

(Notice of Motion Dated 24th October 2024)

1. The applicant filed the notice of motion dated 24th October 2024 seeking for the following orders:
 - a. “That the Principal Secretary Ministry of Foreign Affairs be committed to Civil Jail for a term of six months or such period of time that this Honourable Court may deem fit for contempt of court having deliberately disobeyed orders of the court issued on 4th January, 2024 served on 17th January, 2024 and another order issued 29th April, 2024 served 15th May, 2024
 - b. That this Honourable court be pleased to grant further orders and/or directions as it deems fit and expedient in circumstances.
 - c. That costs of this application be provided for.”

The application is based on the eleven (11) grounds on its face marked (a) to (k) and supported by the affidavit of Charles Ohuru Nyamboye, advocate, sworn on 24th October 2024, in which he deposed inter alia that the respondents are Italian citizens who moved out of the country about 20 years ago;



that the applicant has been staying on Plot L.R 1529 within Nyali Greenwood drive (KADSATAN), suit property, for over 20 years, without interruption, and has moved the court for adverse possession orders; that because the defendants are presumably in Italy, service of summons had to be done through the Ministry of Foreign Affairs where the Principal Secretary was to serve the same upon the Italian Embassy; that having served the above summons/orders to the Principal Secretary Ministry of Foreign affairs several times, the same has failed to respond which resulted in him making an application for notice to show cause and the court gave order; that the Principal Secretary Ministry of Foreign Affairs is in contempt of the said orders and the actions of the Principal Secretary are calculated to challenge the authority of this court and the rule of law; that the application should be granted and the Principal Secretary be cited for contempt.

2. The alleged contemnor opposed the application through the replying affidavit of Dr. A. Korir Singoei; Principal Secretary Ministry of Foreign affairs, sworn on 29th November 2024, in which he among others confirmed having received a letter dated 16th January 2024 from applicant's advocates; that enclosed to the said letter was the originating summons dated 13th May 2022 and the court order dated 31st October 2023; that the said letter sought transmission of the orders to the defendants who are alleged to be in Italy; that the Ministry replied to applicant's advocate letter vide a letter dated 26th January 2024 advising on the process to be followed on service outside the court's jurisdiction, including seeking leave from the court, translation of the pleadings in the required Form 7 appendix A to accompany the pleadings; that Advocate wrote another letter dated 8th May 2024 forwarding a court order dated 22nd April 2024 which sought confirmation of whether or not the summons had been forwarded, and the Ministry replied vide a letter dated 23rd May 2024 reiterating the requirements for service abroad as provided under Order 5 Rule 29 Civil Procedure Rules; that there is no proof that the respondents are actually Italian or domiciled in Italy; that prior to filing the contempt application, one Janet Langat, state counsel wrote a letter dated 2nd October 2024 seeking compliance with the above mentioned letter; that the instant application suffers from material non-disclosure of the above correspondence; that the applicant has resorted to filing contempt proceedings where he could have just complied with the law; that contempt of court orders is a serious matter and can only be alleged against a party where there are deliberate attempts to ignore court orders; that this application is an attempt to circumvent Order 5 Rule 29 of the Civil Procedure Rules, and should be dismissed with costs.
3. The record confirms that when the application came up for hearing on 17th February 2025, the counsel for the applicant confirmed having been served with the replying affidavit and submissions by counsel for the alleged contemnor. The learned counsel for the applicant sought for leave to file a further affidavit and was granted 14 days to do so, and to file submissions. During the subsequent court appearance of 1st July 2025, the applicant's counsel sought for more time, which was granted. The applicant and his counsel did not attend court during the next mention of 30th September 2025, when counsel for the alleged contemnor sought for a date for ruling. Though the learned counsel for the alleged contemnor filed and served their submissions dated the 4th February 2025, the applicant did not file any, despite being given the opportunities to do so.
4. The application raises the following issues for the court's determinations:
 - a. Whether the alleged contemnor is in contempt of the court orders dated 4th January 2024 and 29th April 2024.
 - b. Who bears the costs of the suit?



5. The court has carefully considered the grounds on the application, the affidavit evidence, submissions by the learned counsel for the alleged contemnor, superior court decisions cited and come to the following determinations:

a. Contempt of court was discussed in the case of Republic versus Kajiado County & 2 Others ex parte Kilimanjaro Safari Club Limited J.R. No. 390 of 2014 where the court held as follows:

“Section 39 (2) (g) of the Act enjoins the Chief Justice to make Rules to provide for, among other things, the procedure relating to contempt of court. However, the rules to regulate the commencing and prosecuting of contempt of court applications under the Act are yet to be made. The law that previously applied in this regard was the Contempt of Court Act of 2016, until the decision of the High Court (J. Chacha Mwita) made on 9th November 2018 in Kenya Human Rights Commission v Attorney General & Another, [2018] e KLR. The said decision declared the Contempt of Court Act of 2016 invalid for lack of public participation as required by Articles 10 and 118(b) of the Constitution, and for encroaching on the independence of the Judiciary. I am in the circumstances obliged to revert to the provisions of the law that operated before the enactment of the Contempt of Court of Act, to avoid a lacuna in the enforcement of Court’s orders. It was in this respect observed in Republic vs. Returning Officer of Kamkunji Constituency & The Electoral Commission of Kenya, HCMCA No. 13 of 2008, that the High Court has the responsibility for the maintenance of the rule of law, hence there cannot be a gap in the application of the rule of law. In addition, where there is a lacuna with respect to enforcement of remedies provided under the Constitution or an Act of Parliament, or if, through the procedure provided under an Act of Parliament, an aggrieved party is left with no alternative but to invoke the jurisdiction of the Court, the Court is perfectly within its rights to adopt such a procedure as would effectually give meaningful relief to the party aggrieved, in exercise of the inherent jurisdiction granted to the Court by section 3A of the Civil Procedure Act to grant such orders that meet the ends of justice and avoid abuse of the process of Court. The applicable law as regards contempt of court existing before the enactment of the Contempt of Court Act was restated by the Court of Appeal in Christine Wangari Gachege vs. Elizabeth Wanjiru Evans & 11 Others, [2014] eKLR. In that case the Court found that the English law on committal for contempt of court under Rule 81.4 of the English Civil Procedure Rules, which deals with breach of judgment, order or undertakings, was applied by virtue of section 5(1) of the Judicature Act which provided that:

“The High Court and the Court of Appeal shall have the same power to punish for contempt of court as is for the time being possessed by the High Court of Justice in England, and that power shall extend to upholding the authority and dignity of subordinate courts.

”This section was repealed by section 38 of the Contempt of Act of 2016, and as the said Act has since been declared invalid, the consequential effect in law is that it had no legal effect on, and therefore did not repeal section 5 of the Judicature Act, which therefore continues to apply. In addition, the substance of the common law is still applicable under section 3 of the Judicature Act. This Court is in this regard guided by the applicable English Law which is Part 81 of the English Civil Procedure Rules of 1998 as variously amended, and the requirement for personal service of



court orders in contempt of Court proceedings is found in Rule 81.8 of the English Civil Procedure Rules.”

Simply put, the contempt application must be served upon the alleged contemnor. There are two affidavits of service sworn by Samson E. Kutwa on 16th May 2024 and 2nd September 2024, which clearly confirms that processes were served upon the Ministry of Foreign Affairs through their official record/mail office. The court has noted however that the alleged contemnor has indeed not disputed service through their replying affidavit.

- b. The next aspect to consider is whether the applicant has established that the alleged contemnor has been in wilful disregard or disobedience of the said court orders. In the case of *Econet Wireless Kenya Ltd versus. Minister for Information & Communication of Kenya & Another* [2005] 1 KLR 828 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”.

- c. Also, in the case of *Samuel M. N. Mweru & Others versus National Land Commission & 2 Others* [2020] eKLR the court held that:

“38. The test for when disobedience of a civil order constitutes contempt has come to be stated as whether the breach was committed ‘deliberately and mala fide.’[40] A deliberate disregard is not enough, since the non-complier may genuinely, albeit mistakenly, believe he/she is entitled to act in the way claimed to constitute the contempt. In such a case good faith avoids the infraction.[41] Even a refusal to comply that is objectively unreasonable may be bona fide (though unreasonableness could evidence lack of good faith).[42]

39. These requirements – that is the refusal to obey should be both wilful and mala fides, and that unreasonable non-compliance, provided it is bona fide, does not constitute contempt – accord with the broader definition of the crime, of which non-compliance with civil orders is a manifestation. They show that the offence is committed not by mere disregard of a court order, but by the deliberate and intentional violation of the court’s dignity, repute or authority that this evinces.[43] Honest belief that non-compliance is justified or proper is incompatible with that intent. The Constitutional Court of South Africa,[44] underlined the importance to the Rule of Law, of compliance with court orders in the following terms: -

“Compliance with court orders is an issue of fundamental concern for a society that seeks to base itself on the rule of law. *The Constitution* states that the rule of law and supremacy of *the Constitution* are foundational values of



our society. It vests the judicial authority of the state in the courts and requires other organs of state to assist and protect the courts. It gives everyone the right to have legal disputes resolved in the courts or other independent and impartial tribunals. Failure to enforce court orders effectively has the potential to undermine confidence in recourse to law as an instrument to resolve civil disputes and may thus impact negatively on the rule of law.”

As can be observed from the renditions in the above superior court decisions cited above, the threshold of proof of disobedience is quite strict, and a refusal to obey must not only be wilful, but also replete with mala fides.

- d. In the case of Peter K. Iyego & 2 Others versus Pauline Wekesa Kode (Acc No. 194 of 2014), the Court held that;

“it must be proved that one had actually disobeyed the court order before being cited for contempt.”

The alleged contemnor has through the replying affidavit sworn by Dr Singoei, very perceptibly explained the actions he took after he was served, including responding to the applicant’s counsel letters and advising him on the requirements to be complied with under the provisions of Order 5 Rule 29 Civil Procedure Rules, to enable him effect service outside the jurisdiction of the court. The applicant has not filed any further affidavit in rebuttal or challenge to the depositions in the replying affidavit. The steps taken by the alleged contemnor towards guiding the applicant’s counsel on what his office required to comply with the court orders to serve the summons out of the court’s jurisdiction, cannot be construed to be those of a person hell bent to disobey the orders. The alleged contemnor’s failure or delay in the service was not mala fides, but was caused by the applicant’s own failure or delay in complying with the requirements of Order 5 Rule 29 of the Civil Procedure Rules, despite being guided through the correspondences exchanged. The applicant has therefore failed to prove that the alleged contemnor had wilfully and deliberately disobeyed any of the court orders issued herein, and the prayer that the Principal Secretary, Ministry of Foreign Affairs be cite for contempt fails.

- e. Under section 27 of the [Civil Procedure Act](#) chapter 21 of Laws of Kenya, costs follow the event unless where there is good reasons to order otherwise. That as the alleged contemnor is a public officer and despite the provisions of section 17 of the [Government Proceedings Act](#) chapter 40 of Laws of Kenya, the court finds it just that each party bears its own costs.

6. In view of the foregoing conclusions, the court finds and orders as follows:

- a. That the contempt application dated 24th October 2024 is without merit.
- b. That the said application is hereby dismissed.
- c. Each party to bear their own costs.

It is so ordered.

DATED, SIGNED AND VIRTUALLY DELIVERED ON THIS 5TH DAY OF NOVEMBER 2025.

S. M. KIBUNJA, J.

ELC MOMBASA.



In the Presence of:

Applicant : No Appearance

Respondents : No Appearance

Alleged Contemnor : Mr. Penda

Kalekye-Court Assistant.

S. M. KIBUNJA, J.

ELC MOMBASA.

