

KENYA / JUDGMENT

Ruto & another v Keitany & 10 others [2026] KEELC 5470 (KLR)

[2026] KEELC 5470 (KLR)**COURT**

Environment and Land Court

BEFORE

CK Yano

CASE / FILE NUMBER

Environment and Land Case 378 of 2012

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Ruto & another v Keitany & 10 others (Environment and Land Case 378 of 2012) [2026] KEELC 5470 (KLR) (17 September 2026) (Ruling) Neutral citation:

[2026] KEELC 5470 (KLR) Republic of Kenya In the Environment and Land Court at Eldoret Environment and Land Case 378 of 2012 CK Yano, J September 17, 2026 (FORMERLY ELDORET HCCC 147 OF 2007) Between Kimoi Ruto 1 st Plaintiff Esther Ruto 2 nd Plaintiff and Samwel Kipkosgei Keitany 1 st Defendant Agricultural Finance Corporation 2 nd Defendant and Hillary Kanda 1 st Respondent Boniface Yego 2 nd Respondent Dennis Kipkemboi Yego 3 rd Respondent Mark Kipchumba 4 th Respondent Collins Koech 5 th Respondent Ednah Jelagat 6 th Respondent Milkah Kimosop 7 th Respondent Vivian Cherop 8 th Respondent Evans Kemboi 9 th Respondent

Ruling

1. The 1 st Defendant/ Applicant herein filed an application vide the Notice of Motion dated 13 th April, 2026, against the Respondents/Contemnors seeking the following orders: - 1. Spent.
 2. Notice to Show Cause to issue to the Respondents/Contemnors to state why they should not be committed to civil jail for disobedience of the Decree/Orders of the Honourable Court (Hon. Justice Munyao Sila) issued on 23 rd of April 2014.
 3. The Respondents/Contemnors be committed to civil jail and detained in prison for six (6) months or such period as the Honourable Court will deem fit or both fine and imprisonment for contempt of the honourable court's decree/orders issued on 23 rd April, 2014.
 4. Pending the hearing and determination of prayers (2) and (3) above and for committal herein, the Respondents/Contemnors be ordered to purge the contempt and in so doing, to stop further dealing in the suit property, and allow the applicant uninterrupted possession and peaceful occupation of the property.
 5. Such other further or consequential orders as the court may deem just.
 6. Costs of the application be borne by the contemnors.
2. The present application is premised on the 14 grounds on the face thereof and on the 1 st defendant/Applicant's Supporting

Affidavit sworn on even date. 3. The 1 st defendant/applicant explained that the 2 nd , 3 rd and 4 th respondents/contemnors are the grandchildren of the 1 st plaintiff whereas the 6 th , 9 th and 10 th respondents/contemnors are the grandchildren of the 2 nd plaintiff. That the 7 th respondent/contemnor is the daughter of the 2 nd plaintiff while the 8 th respondent/contemnor is the daughter in-law. The 5 th respondent/contemnor on the other hand is a distant relative of the 2 nd plaintiff. He stated that all the respondents reside with the 2 nd plaintiff/contemnor on the property known as L.R. No. Cherangany/Korongo/5, about 200 meters from the suit property. 4. It is the applicant's claim that he is the registered owner of the suit property herein, L.R. No. Cherangany/ Korongo/1. That the dispute between the parties herein was heard and determined on merit vide the judgment dated 23.04.2014 by Hon. Munyao Sila J. (as he then was) and whose effect was to dismiss the plaintiff's suit and allow the applicant's counter-claim by issuing orders of eviction and permanent injunction to restrain the plaintiffs from trespassing into the suit property. 5. The applicant contends that the said judgment of 23.04.2014 was never appealed against and consequently, sometimes in 2015, the plaintiffs and their family members were forcefully evicted from the suit property pursuant to an order of the court issued on 28.11.2014. 6. The applicant however avers that sometimes between the year 2023 to 2025, the 1 st – 10 respondents/contemnors, blatantly disregarded, disobeyed and/or ignored the decree of the court and forcefully trespassed into the suit property while armed with bows, arrows and destroyed fences, gates, houses, caused the suit land to be ploughed and even planted. 7. He further deponed that in the process of the said forceful invasion by the respondents, his wife and himself sustained injuries inflicted by the 1 st , 8 th 6 th and 10 th respondents. He attached copies of photographs, a certificate and a duly filled P3 Form in support of the said averments. 8. He deponed that sometime in 2025, the Plaintiffs filed a fresh suit, namely, Eldoret E & L No. 149 of 2015, Kimoi Ruto & Esther Ruto –Vs- Samuel Kipkosgei Keitany & 5 others, which was struck out with costs on 18 th November, 2015 by Honourable Justice Ombwayo and a subsequent appeal by the plaintiffs against that decision was also struck out on 15 th December, 2023 by the Court of Appeal. 9. In addition, it is the applicant's claim that on or about 08.04.2026, the respondents/contemnors forcefully locked the gates leading to his homestead and threatened violence on his family members. That the matter was reported to Kapcherop Police Station and further led to the filing of the present application. 10. The applicant now contends that the acts by the respondents/contemnors are in contempt of the valid orders issued by this court and are aimed at undermining the dignity and authority of the court and its processes, defeating the decree and orders issued in the fair and just determination of the case herein as well as compromise the dispensation of justice. 11. He maintained that the respondents have acted in bad faith with the intention of defeating the orders of this court and unless the orders sought are granted, the respondents may proceed to evict him from the suit land and thus render the decree an academic exercise. 12. In conclusion, he stated that the it is in the interest of justice that the application be allowed as prayed. 13. The application was not opposed. The Respondents/contemnors despite being served with the present Application and an affidavit of service dated 17.04.2026 duly filed to that effect, they failed to respond to the averments made

against them and/or give an explanation thereto. 14. This court issued directions on the disposal of the present application by way of written submissions on 13.05.2026. However, on a perusal of both the court record as well as the CTS online filing platform, I have not seen any submissions filed on behalf of either party. Be that as it may, I will proceed and render my decision as hereunder.

Analysis And Determination:

15. I have carefully looked at the facts and grounds contained in the application, the supporting affidavit as well as the annexures thereto in totality. Consequently, it is my considered opinion that the issues arising for determination are as follows:- a. Whether the applicant has proved the essential elements of contempt to the required standard. b. Whether the respondents' actions amount to contempt of court c. Whether the present application is merited d. Who shall bear the costs of the present application. 16. Having identified the above issues for determination, I will now proceed to discuss the same as hereunder.
- a. Whether the applicant has proved the essential elements of contempt to the required standard; 17. The first issue seeks to determine whether the applicant has sufficiently demonstrated and proved the essential elements of contempt to the required standard. 18. Contempt is defined in the Black's Law Dictionary (Ninth Edition) as follows; "Conduct that defies the authority or dignity of a court. Because such conduct interferes with the administration of justice, it is punishable usually by fine or imprisonment." 19. The suit herein was heard and determined on merit vide the judgment dated 23.04.2014 by Hon. Justice Munyao Sila (as he then was). The effect of the judgment was to dismiss the plaintiffs' claim and allowing the 1st defendant/applicant's counter-claim. Consequently, the court issued an order of eviction against the plaintiffs and an order of permanent injunction restraining the plaintiffs from trespassing into the suit property. 20. Pursuant to the said judgment, vide an order of the court issued on 28.11.2014, the plaintiffs were forcefully evicted from the suit property sometimes in 2015. 21. It is common ground that the judgment dated 23.04.2014 and the resultant Decree was neither appealed against nor set aside, discharged, varied and/or reviewed by any court of competent jurisdiction. The terms thereof thus remain valid and effective court orders which must be strictly complied with and obeyed by all parties to the suit. 22. It is settled law that the standard of proof in contempt matters is higher than that of ordinary civil matters. The Court of Appeal in the case of *Mutitika v Baharini Farm Limited* [1985] KLR 229, 234 while discussing the standard of proof in contempt proceedings 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 utmost importance, therefore, for the respondents to establish that the alleged contemnor's conduct was deliberate in the sense that he or she wilfully acted in a manner that flouted the court order." 23. Having established that the standard of proof required in contempt matter is higher than the threshold required in ordinary civil matter, the question that therefore follows is whether the applicant has sufficiently proved the essential elements of contempt to the required standard. 24. The elements to be proved in contempt proceedings were discussed in the case of Samuel M. N. Mweru & Others vs National Land Commission & 2 Others [2020] eKLR where the court held as follows:- " 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 wilfulness 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." 25. I will now proceed to discuss each of the elements outlined above in determining whether the same have been sufficiently proved by the applicant. The Terms of the Judgment dated 23.04.2014k and Decree thereto. 26. The applicant annexed a copy of the judgment delivered on 23.04.2014 by Hon. Justice Munyao Sila (as he then was) and marked "SKK1" and I wish to reproduce the final orders issued thereto and contained at paragraph 43: - " 43. From the foregoing, it is discernible that I am unable to hold for the applicants and I am unable to enter judgment in their favor. Their suit stands dismissed with costs. The 1 st respondent had counter-claimed for eviction. I have no reason to deny him this prayer and his counter-claim must succeed with costs. I hold that he is entitled to the land to the exclusion of the applicants and I order the applicants to vacate the said land within 30 days of this judgment. If they do not so vacate, the 1 st respondent can formally move the court to execute their eviction and any costs of the exercise shall be borne by the applicants herein." 27. Pursuant to the said judgment, an Eviction Order dated 28.11.2014 was formally issued. The same was annexed and marked "SKK2" and I have taken the liberty to peruse it. From the said Eviction Order, the plaintiffs, their agents, servants and/or anybody else claiming under them, were to be forcefully removed from the suit property. The applicant confirmed that the plaintiffs were indeed evicted from the suit property sometimes in 2015. 28. As earlier stated, the judgment and the terms thereto as well as the Eviction Order dated 28.11.2014 as outlined above have never been set aside, varied, reviewed and/or discharged and the same therefore remain valid court orders. 29. From the terms of the judgement, it is clear that the plaintiffs/applicants in the main suit, were ordered to vacate the suit land within 30 days from the date of the judgment 23.04.2014, that is, to vacate on or before 23.05.2014. In addition, the 1 st respondent and the applicant in the present application was declared to be entitled to the suit land to the exclusion of the applicants. 30. Further, the Eviction Order dated 28.11.2014 was directed to the applicants in the main suit, their agents, servants and anybody claiming under them, and they were all forcefully removed from the suit land. 31. In essence therefore, the 1 st – 10 th respondents and/or contemnors were all barred from occupying and/or using the suit property in any manner, which was declared to be the lawful property

of the applicant herein. The terms therefore were clear and tacit to the effect that they were supposed to vacate the suit land within 30 days and in default to be forcefully evicted. Knowledge of these terms by the Respondents; 32. The second element is whether the respondents were aware and had knowledge of the terms of the Judgment delivered on 23.04.2014 and Eviction Order issued on 28.11.2014. 33. The applicant contends that the respondents were fully aware of the terms of the judgment and the subsequent eviction order issued against them. It is his claim that this knowledge can be inferred from the fact that after the judgment and eviction, the plaintiffs went ahead and filed a different suit vide the proceedings known as Eldoret ELC No. 149 of 2015, Kimoi Ruto & Esther Ruto vs Samuel Kipkosgei Keitany & 5 Others. This suit was however struck out on 18.11.2015 and the subsequent appeal to the Court of Appeal was also struck out on 15.12.2023. 34. The Respondents despite being served with the present application and an affidavit of service filed to that effect, they neither responded nor controverted the averments made therein. The applicant maintained that the 2nd – 10th respondents, despite not being parties in the main suit, are directly related to either the 1st or 2nd applicants in the main suit and outlined the nature of their relationship. 35. From the facts and circumstances herein, it is my considered opinion that the respondents had full knowledge of the judgment herein and the terms thereto as well as the eviction order issued on 28.11.2014, directed to the plaintiffs and anyone claiming under them. Failure by the Respondents to comply with the terms of the order; 36. The third element is whether the respondents, willfully and deliberately failed, ignored and refused to comply with the terms of the judgment and decree. 37. The applicant has annexed various bundle of photographs in his supporting affidavit marked “SKK5 (a – g)” and “SKK 8 (a – g)” showing the defiant acts of violence, breach of peace and destruction of properties by the respondents herein and/or by their agents. 38. The respondent despite being served with the present application did not file any response thereto and give an explanation and/or basis for their re-entry into the suit land and their acts of violence, breach of peace and destruction of properties in blatant disobedience of the orders of this court. 39. As correctly pointed out by the applicant, I do note that the 2nd – 10th Respondents were not parties in the main suit. However, the applicant has explained their close relationships with the 1st Respondent. 40. In that regard, it is my considered view that the applicant has satisfactorily discharged the burden of proof and has proved all the essential elements of contempt against respondents to the required threshold.

- b. Whether the respondents’ actions amount to contempt of court; 41. The second issue for determination is whether the respondents’ actions amount to contempt of court. 42. In *Oilfield Movers Ltd – vs – Zahara Oil & Gas Limited* [2020] eKLR the court stated – “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 motive of the existence of the order of the court forbidding it. The threshold is quite high as it involves possible deprivation of a person’s liberty.....” 43. In view of the findings in issue no. (i) above, it is my considered opinion that the acts by respondents amount to contempt.

- c. Whether the Application is merited; 44. In view of the findings above, it is my considered view that the present application is merited and the applicant is entitled to the grant of reliefs sought.
- d. Who shall bear the costs of the present application; 45. The general rule is that costs shall follow the event in accordance with the proviso to section 27 of the Civil Procedure Act , unless the court is satisfied otherwise. 46. In the present case, having held that the present application is merited, this court finds that the 1 st defendant/applicant is entitled to the costs of the present application to be borne respondents.

Conclusion:

47. The upshot of the above is that the Notice of Motion Application dated 13 th April, 2026 is merited and I accordingly allow the same on the following terms: - a. The application dated 13.04.2026 be and is hereby allowed. b. Notice to Show Cause be and is hereby issued to the Respondents/Contemnors to state why they should not be held in contempt and committed to civil jail for disobedience of the Decree/Orders of the Honourable Court (Hon. Justice Munyao Sila) issued on 23 rd of April 2014. c. Costs of the present application to be borne by the Respondents. 48. It is so ordered. DATED, SIGNED and DELIVERED at ELDORET this 17 th day of SEPTEMBER, 2026. HON. C. K. YANO JUDGE Ruling delivered in the presence of: - Mr. Tororei for the Applicant. No appearance for the Respondents. Court Assistant – Laban.

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