

THE REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT OF KENYA AT
BUNGOMA

PETITION NO.15 OF 2016

**IN THE MATTER OF ARTICLES 22,23,40 (1) (2), (3), 43 (c), 47
AND 259 OF THE CONSTITUTION OF KENYA 2010**

**IN THE MATTER OF SECTIONS 107 – 115 OF THE LAND ACT
NO.6 OF 2012**

AND

**IN THE MATTER OF CONTRAVENTION OF THE CONSTITUTION
OF KENYA 2010**

BETWEEN

**DAVID MURAMBI AQUINAS WANYONYI AND ANTHONY
WANYONYI (suing on behalf of the Estate of the Late
VINCENT WANYONYI MURAMBI)PETITIONERS**

VERSUS

**THE COUNTY GOVERNMENT OF BUNGOMA1ST RESPONDENT
KIBABII UNIVESITY2ND RESPONDENT**

R U L I N G

1. By their petition filed herein on 30th December 2016, **DAVID MURAMBI, AQUINAS, WANYONYI AND ANTHONY WANYONYI (the petitioners herein and suing on behalf of the Estate of the late VINCENT WANYONYI MURAMBI)** sought the following reliefs against the **COUNTY GOVERNMENT OF BUNGOMA** and

KIBABII UNIVERSITY (the 1st and 2nd Respondents respectively):

1. A declaration that the Respondents' conduct jointly and severally was in breach of the Constitutional rights of the petitioners and beneficiaries of the Estate of the deceased.
2. That a permanent injunction do issue restraining the Respondents either by themselves, servants, agents, employees, assignees, students, proxies and/or representatives from trespassing, walking through, driving through, parking, interfering with crops, up-rooting crops or in any way whatsoever interfering with title number **EAST BUKUSU/WEST KANDUYI/1659**.
3. That the Respondents be condemned to pay general damages.
4. That the Respondents be condemned to pay special damages.
5. That the Respondents be condemned to pay exemplary damages.
6. That the Respondents be condemned to pay costs of this petition.
7. That any other relief that this Honourable Court may deem just and fair to order.

2. The facts upon which the Petition is premised are not necessary for purposes of this ruling. Suffice it to state that the Petitioners claim that they are beneficiaries and Administrators of the Estate of **VINCENT WANYONYI MURAMBI (the deceased) whose Estate comprises among other titles the title number EAST BUKUSU/WEST KANDUYI/1659** (the suit land) which measures about 5 acres or thereabout and which abuts the 2nd Respondent's title number **EAST BUKUSU/WEST KANDUYI/1660** situated off the **BUNGOMA – CHWELE ROAD** in **BUNGOMA COUNTY**. That on or about 21st October 2015, the 1st Respondent at the instance of the 2nd Respondent illegally opened a road measuring about 18 metres through the suit land destroying the Petitioner's crops and have now purported to have compulsorily acquired the suit land in total disregard of the Constitutional and Statutory provisions set out therein.
3. Simultaneously with their Petitioner, the Petitioners filed a Notice of Motion seeking the main order that pending the hearing and determination of the Petition, the Respondents be restrained either by themselves, their servants, agents, employees, assignees, students, proxies and/or representatives from trespassing, walking through, driving through, parking, interfering with crops, up-rooting crops or in any way whatsoever interfering with the title number **EAST BUKUSU/WEST KANDUYI/1659**.

4. The application was supported by the affidavit of **DAVID NYONGESA MURAMBI** and based on the grounds set out therein. Again the facts of the application are not necessary for purposes of this ruling.
5. In opposing the said application, both Respondents filed replying affidavits.
6. On behalf of the 1st Respondent, its Chief Officer in charge of Lands, Urban and Physical Planning **ROBERT JUMA SIMIYU** filed a replying affidavit dated 20th April 2017 in which he averred, *inter alia*, that on 24th November 2016 the 2nd Respondent held its inaugural graduation ceremony which was graced by the then President Uhuru Muigai Kenyatta. And in the course of preparing for the said ceremony, the 2nd Respondent requested the 1st Respondent to smoothen and widen the narrow murram road passing outside its gate. That the said road was about 9 metres in width and has always been in existence even before the filing of this Petition. That prior to the said ceremony, the 2nd Respondent as a responsible public entity had made arrangements with the neighbouring schools as well as other adjacent institutions for provision of parking space and sufficient traffic officers were deployed to direct both human and vehicle traffic. In the unlikely event that some members of the public parked inside the suit land, they did so on their own volition and not on the 1st Respondent's instructions. That there is no evidence showing that crops on

the suit land were destroyed and therefore the Petitioners have not demonstrated what of their fundamental rights were breached or need protection and no *prima facie* case has been established to warrant the grant of the orders sought. Annexed to the replying affidavit is a copy of the map showing the road.

7. On behalf of the 2nd Respondent, it's Administrative Registrar **DAVID BUTALI NAMASAKA** swore a replying affidavit dated 28th March 2017 in which he deponed, *inter alia*, that the 2nd Respondent is the registered proprietor of the land parcel No **EAST BUKUSU/NORTH KANDUYI/2388** measuring 28.3Ha. That on 24th November 2016, the 2nd defendant held it's inaugural graduation ceremony and requested the 1st Respondent to smoothen and widen the road passing behind it's gate. That the said road has always been in existence and during the graduation ceremony, the 2nd Respondent deployed traffic officers to direct both human and vehicle traffic to the correct venue and in the unlikely event that some members of the public parked on the suit land, they did so on their own volition and not on the 2nd Respondent's instructions. He denied that the 2nd Respondent has compulsorily acquired the suit land but added that should the need to do so arise in future, the 2nd Respondent being a law abiding entity will follow the laid down legal procedures. That the suit land is utilized by different people as a grazing field and at the time of the graduation ceremony, there were no crops thereon capable of

being destroyed by the 2nd Respondent. The Petitioners are therefore seeking to benefit from public recourses in the guise of a Petition alleging Constitutional violations. That the Petitioners have not approached this Court with clean hands and their application should be dismissed with costs.

8. Annexed to the application is the charter issued to the 2nd Respondent on 14th November 2015, a copy of the title deed to the land parcel No **EAST BUKUSU/NORTH KANDUYI/2388** in the name of the 2nd Respondent and several letters addressed to various institutions requesting for parking space during the graduation ceremony on 18th November 2016.
9. That application was however withdrawn with the consent of all parties on 20th September 2017 and the Petition was listed for hearing on 23rd May 2018 but was put off by consent.
10. When it next came up on 22nd November 2018, the Court was told that the parties were negotiating with a view to settling the dispute.
11. In the spirit of **Article 159 (2) (c)** of the Constitution the Court continued mentioning the Petition to allow the parties record a settlement.
12. Finally by a consent letter dated 10th February 2022 and filed on 14th February 2022, the parties requested the Deputy Registrar to record the following consent order:

**“1: That the Petitioners and the Respondents
herein do appoint independent ground**

surveyors who will conduct a joint ground survey on the suit pieces of land on behalf of the parties herein.

2: That ground survey reports by each of the parties be filed within forty five (45) days from the date of this consent.”

That consent order was duly endorsed by the Deputy Registrar on 15th February 2022. However, the parties attempts towards on amicable settlement of this dispute appear, at least for now, to have run into turbulence.

13. I have before me for determination the Petitioner’s Notice of Motion dated 14th July 2022 and premised under the provisions of **Article 162 (2) (b)** of the Constitution, Section 5 (1) of the **Judicature Act** and **Section 29** of the **Environment and Land Court Act** as well as the inherent jurisdiction of this Court. They seek the following orders:

1. Spent

2. That this Honourable Court do find that the contemnors **PROF ISAAC IAPRA ODEO** and **MS JACQUELINE WANJALA** being the Vic-Chancellor and legal officer respectively of the 2nd Respondent are in contempt of Court for disobedience of the consent orders of this Honourable Court issued on 17th February 2022

and commit them to civil jail for such period as this Honourable Court may determine.

3. That the Officer Commanding Station, **BUNGOMA POLICE STATION** supervise the granting of access to the 2nd Respondent to Land title No **EAST BUKUSU/WEST KANDUYI/1660** to the Applicants' surveyor for purposes of conducting the survey.
4. That the costs of this application be awarded to the Applicant.
14. That application is based on the grounds set out therein and supported by the affidavit of **DAVID NYONGESA MURAMBI** the 1st Petitioner herein.
15. That gravamen of the application is that there were consent orders issued by this Court on 17th February 2022 that the Petitioners and the Respondents do appoint independent ground surveyors to conduct a joint ground survey on the contiguous suit pieces of land No **EAST BUKUSU/WEST KANDUYI/1659** owned by the 2nd Respondent on behalf of the parties herein. Consequently, ground survey reports by each of the parties herein be filed in Court within 45 days from the date of the consent.
16. That on 9th June 2022, the Petitioners and the 2nd Respondent agreed to meet on the suit premises with their respective surveyors to conduct the joint survey as adopted. On

the 17th June 2022, the Petitioner and their surveyor **MR KAPANGA WERUNGA** availed themselves at the suit land for purposes of conducting the joint survey but the 2nd Respondent in flagrant disregard of the said consent order refused to avail their surveyor and also refused to grant the Petitioner's surveyor access to the land parcel No **EAST BUKUSU/WEST KANDUYI/1660** for purposes of conducting the survey and thereby frustrating the consent order. That the said refusal was actively instigated by **PROF ISAAC IPARA ODEO** and **MS JACQUELINE WANJALA** the Vice-Chancellor and Legal Officer respectively of the 2nd Respondent. That the consent order dated 17th February 2022 has neither been varied nor set aside and if the orders sought are not granted, the authority of this Honourable Court will be severely eroded to the extent of loss of public confidence in Court orders. It is therefore in the interest of justice that the orders sought be granted.

17. Annexed to the application is a copy of the said consent order.
18. The 1st Respondent did not respond to the application as the same is only directed to the 2nd Respondent.
19. On behalf of the 2nd Respondent, replying affidavits have been held by **JACQUELINE WANJALA** and **PROF ISAAC IPARA ODEO** it's Legal Officer and Vice—Chancellor respectively.
20. In her affidavit dated 24th August 2022, **JACQUELINE WANJALA** has deponed, *inter alia*, that following the signing of

the consent order, their Counsel **WEKESA AND SIMIYU ADVOCATES** wrote to the Petitioner's Counsel **MUSYOKA MURAMBI ASSOCIATES** proposing that the joint survey be done on 12th April 2022. The firm of **MUSYOKA MURAMBI ASSOCIATES** wrote back and proposed 21st or 22nd April 2022 as the convenient date.

21. On 22nd April 2022 the 2nd Respondent availed their surveyor **MR EMMANUEL BARASA NASONGO** at the suit land but the Petitioners who were present insisted on an aerial survey map and necessary equipment and so the survey was adjourned.

22. Vide a letter dated 25th May 2022, the Petitioner's Counsel proposed the date of 2nd or 3rd June 2022 as appropriate for the survey. However, by another letter dated 3rd June 2022, the Petitioner's Counsel wrote again proposing that the survey be carried out on 14th June 2022 at 2p.m as they had not been able to obtain the aerial survey map. By another letter also dated 3rd June 2022, the Petitioner's Counsel stated that there was an error in the earlier letter and proposed that the survey be done on 7th June 2022 at 3 p.m. That survey did not take place at the instance of the Petitioners.

23. By another letter, dated 8th June 2022, the Petitioner's Counsel proposed 16th or 17th June 2022 as appropriate for the joint survey. The 2nd Respondent's Counsel vide a letter dated 9th June 2022 confirmed that 17th June 2022 would be

appropriate. On that day, the 2nd Respondent availed their surveyor **MR EMMANUEL BARASA NASONGO** while the 1st Petitioner **DAVID NYONGESA MURAMBI** was also present with their surveyor. The 2nd Respondent's surveyor did the survey of the suit land but the Petitioner's surveyor blatantly refused to do the survey insisting that they wanted to survey the 2nd Respondent's parcel of land being No **EAST BUKUSU/NORTH KANDUYI/2388** yet there has been no dispute as regards that parcel of land. When the 2nd Respondent's surveyor enquired as to why the Petitioners and their surveyor wanted to conduct a survey of the land parcel No **EAST BUKUSU/NORTH KANDUYI/2388** yet it was not part of the issues pleaded in the Petition, the Petitioners turned hostile and threatened to file contempt proceedings against the 2nd Respondent. The deponent being an Advocate conversant with the terms of the consent order knew that at no time in their pleadings did the Petitioners raise any issues with regard to the land parcel No **EAST BUKUSU/NORTH KANDUYI/2388** in their pleadings and the Petitioners were engaging in a frolic of their own.

24. That the Petitioners are not being candid with the Court as they did not even avail the aerial map despite the various cancellation of the site visits. The Petitioners have also orchestrated the delay in setting down this suit for hearing yet the 2nd Respondent which is a public institution maintained out of public funds has continued to facilitate the survey process in

perpetuity This is an unconscionable attempt at unjust enrichment and an enterprise in violation of the Constitution by the Petitioners. The Petitioners have not demonstrated what part of the consent order has been ignored and their application does not meet the threshold for granting the orders sought and further, that they are also guilty of material non-disclosure and have not approached this Court with clean hands. The application should therefore be dismissed with costs.

25. The following documents are annexed to the replying affidavit:

1. The Petition
2. The consent order
3. The following letters:
 - a) Letter dated 29th September 2022 by the 2nd Respondent's Counsel.
 - b) Letter dated 31st March 2022 by the 2nd Respondent's Counsel.
 - c) Letter dated 9th April 2022 by the Petitioner's Counsel.
 - d) Email dated 11th April 2022 by Petitioners' Counsel
 - e) Email dated 13th April 2022 by the 2nd Respondent's Counsel.
 - f) Letter dated 25th May 2022 by the Petitioners' Counsel

- g) Two (2) letters both dated 3rd June 2022 by the Petitioners' Counsel.
- h) Letter dated 8th June 2022 by the Petitioners' Counsel.
- i) Letter dated 9th June 2022 by the 2nd Respondent's Counsel

26. The replying affidavit by **PROF ISAAC IPARA ODEO** the 2nd Respondent's Vice Chancellor also dated 24th August 2022 is basically rehash of what is averred in the replying affidavit of **JACQUELINE WANJALA** and which I have already referred to above. I need not refer to the contents thereof.

27. I notice from the record that on 22nd September 2022, and without the leave of this Court, **JACQUELINE WANJALA** filed a supplementary affidavit to which was annexed a survey report dated 20th June 2022 prepared by **EMMANUEL BARASA NASONGO** the County Surveyor **BUNGOMA**. This Court's directions issued on 21st July 2022 were that all the parties file their submissions by 25th August. For the purposes of this ruling, this Court will not consider the supplementary affidavit and the report by **EMMANUEL BARASA NASONGO**. In any event, the survey reports ought to have been filed within 45 days from 15th February 2022 when the consent order was endorsed by the Deputy Registrar of this Court. There is

nothing on the record to show that the 45 days period was extended either with the consent of the parties or by an order of this Court.

28. When the application was placed before me on 21st July 2022, I directed that it be canvassed by way of written submissions. Those were subsequently filed both by **MR MURAMBI** instructed by the firm of **MUSYOKA MURAMBI & ASSOCIATES ADVOCATES** for the Petitioners and by **MR SIMIYU** instructed by the firm of **WEKESA & SIMIUYU ADVOCATES** for the 2nd Respondent.

29. I have considered the application, the rival affidavits and annexures thereto as well as the submissions by Counsel.

30. It is common ground that in an attempt to resolve the dispute herein, the parties filed a consent order dated 10th February 2022 and which was endorsed as an order of this Court by the Deputy Registrar on 15th February 2022. I have already set out, earlier in this ruling, and in extenso, the terms of the said consent. It is important to note that the consent order was drafted by the parties themselves and filed in this Court. All that the Deputy Registrar did on 15th February 2022 was to endorse the said consent order as mandated by **Order 49 Rule 3** of the Civil Procedure Rules. Therefore the parties in this case took ownership of the consent Order because it was their document.

31. And for purposes of clarity, I shall reproduce the consent again:

1. **“That the Petitioners and the Respondents herein do appoint independent ground surveyors who will conduct a joint ground survey on the suit pieces of land on behalf of the parties herein.”**
2. **“That ground survey reports by each of the parties be filed within forty five 45 days from the date of this consent.”**

It is clear from paragraph **E** of the Petition that the subject matter herein is the land parcel No **EAST BUKUSU/WEST KANDUYI/1659**. Indeed in paragraph **B (5)** of their own Petition, the Petitioners refer to the land parcel No **EAST BUKUSU/WEST KANDUYI/1659** as the “**suit land**” and this Court has similarly described it as such in this ruling. The land parcel No **EAST BUKUSU/WEST KANDUYI/1660** is not part of the land subject of this suit and it was never referred to in the consent order. That notwithstanding, the main ground upon which the Petitioners seek to have **MS JACQUELINE WANJALA** and **PROF ISAAC IPARA ODEO** cited for contempt is set out as follows in paragraph 1:

1. **“That consent orders were issued by this Honourable Court on 17th February 2022 to the effect that Petitioners and Respondents do appoint independent ground surveyors to conduct a joint ground survey on the contiguous suit pieces of land EAST BUKUSU/WEST KANDUYI/1659 owned by the Applicants and EAST BUKUSU/WEST KANDUYI/1660 OWNED BY THE 2ND Respondent on behalf of the parties and that consequently, ground survey reports by each of the parties be filed in Court within forty five (45) days from the date of consent.”**

32. In paragraphs 7 and 8 of his supporting affidavit **DAVID NYONGESA MURAMBI** sets out the following as the basis upon which these contempt proceedings have been filed against the above named officers of the 2nd Respondent:

7: “That the 2nd Respondent in flagrant disregard of the said consent order failed, neglected and or refused to obey the consent order by:-

- 1. refusing to avail their surveyor to undertake a joint survey of the suit pieces E. BUKUSU/W KANDUYI/ 1659 and E.**

BUKUSU/W KANDUYI/1660 in contravention of the consent order.

2. **Refusal to grant our surveyor access to Land Title No E. BUKUSU/W. KANDUYI/1660 to conduct the survey thereby frustrating the current order.”**

8: “That the 2nd Respondent’s refusal to grant my surveyor access to the premises for the joint survey was actively instigated by PROF ISAAC IPARA ODEO and MS JACQUELINE WANJALA being the Vice-Chancellor and Legal Officer respectively of the 2nd Respondent.”

Those averments have been rebutted in paragraph **15** of the replying affidavit of **MS JACQUELINE WANJALA** and paragraph **21** of the replying affidavit of **PROF ISAAC IPARA ODEO** where it is deposed, inter alia, that on 22nd April 2022 the 2nd Respondent availed their surveyor namely **MR EMMANUEL BARASA NASONGO** on the sit land for purposes of the survey exercise but the Petitioners insisted that they needed an aeral survey map and necessary equipment for the joint survey. There was no supplementary affidavit filed by the Petitioners to rebut the 2nd Respondents averments. Further, it is clear from the

various correspondences annexed to the replying affidavits that there is nothing to suggest that the Petitioners at any one time complained about any refusal by the 2nd Respondents to avail their surveyor. If anything, those correspondences demonstrate that it was the Petitioners who cancelled and/or postponed the joint survey exercise. For instance, on 31st March 2022, the 2nd Respondent's Counsel wrote to the Petitioners' Counsel proposing 12th April 2022 at 10 a.m. as the date and time for the joint survey which was confirmed by the Petitioners' Counsel vide their letter dated 9th April 2022. However, vide an email dated 11th April 2022, the Petitioners' Counsel postponed the exercise and proposed 21st or 22nd April 2022 as the convenient date. The 2nd Respondent's Counsel wrote back confirming 22nd April 2022 as the convenient date. However on that date, the Petitioners and their surveyor insisted that they reached an aerial surveyor map and necessary equipment and so no survey took place. Again the Petitioners' Counsel proposed a new date of 2nd or 3rd June 2022 as appropriate and later changed to 7th June 2022. The exercise did not take place again at the instance of the Petitioners. When the parties eventually met at the suit land on 17th June 2022 with both surveyors, no survey took place because, as deponed

in paragraph 22 of the replying affidavit by **JACQUELINE WANJAL:**

22 **“The 2nd Respondent’s surveyor did the survey of the suit property, however, the Petitioner/Applicant MR DAVID MURAMBI together with their surveyor blatantly referred to survey the suit property or point out the alleged illegal road as per their pleadings for the appropriate measurements to be taken. Instead, they insisted that they want to survey the 2nd Respondent’s parcel of land title No E. BUKUSU/W. KANDUYI/2388 what in their Notice of Motion Application are allegedly and/or erroneously referring to as E. BUKUSU/W. KANDUYI/1660.”**

Again, that averment was not rebutted through any supplementary affidavit. Indeed, it is confirmed in paragraph 7 of the supporting affidavit by **DAVID NYONGESA MURAMBI** already referred to above and where he specifically avers that the 2nd Respondent refused:

“.....to avail their surveyor to undertake a joint survey of the suit pieces E.

**BUKUSU/W. KANDUYI/1659 and E.
BUKUSU/W. KANDUYI/1660 in
contravention of the consent order.”**

To begin with, and as is now clear from the exchange of letters between the parties Counsel, the 2nd Respondent and their Counsel have always been available for the joint survey exercise. However, for one reason or another, the Petitioners have had the exercise postponed. It cannot therefore be correct to allege, as the Petitioners have done, that the 2nd Respondent have refused to avail their surveyor as per the Court order. That is not factually correct.

33. Secondly, the consent order which I have also cited above was clear and un-ambiguous. At no time did it direct that there be **“a joint survey of the suit pieces E. BUKUSU/W. KANDUYI/1659 and E. BUKUSU/W. KANDUYI/1660”**. The said order restricted the joint survey to **“the suit pieces of land”**. And although the consent order did not specifically identify those **“suit pieces of land,”** it is abundantly clear from the Petition that the suit land is parcel No. **EAST BUKUSU/WEST KANDUYI/1659** and nothing else. Indeed in paragraph **B (5)** of the Petition, it is pleaded as follows:

B(5) **“That the deceased’s estate comprises among other assets title number E. BUKUSU/W.**

KANDUYI/1659 (suit land) measuring about 5 acres of land or thereabouts.”

And in paragraph **E (ii)** of the Petition under the reliefs sought, it is pleaded thus:

E (ii): “That a permanent injunction to issue restraining the Respondents either by themselves, servants, agents, employees, assignees, students, proxies and or representatives from trespassing, walking through, driving through, parking, interfering with crops, up-rooting crops or in any way whatsoever interfering with title number E. BUKUSU/W. KANDUYI/1659.”

When this Petition, unless amended, is heard and finally determined, the only order which this Court will issue will be confined to the suit land which is land parcel No **EAST BUKUSU/W. KANDUYI/1659** because parties are bound by their pleadings. The Court will not make any disposal orders touching on the land parcels **EAST BUKUSU/WEST KANDUYI/1660, 2388** or indeed any other land which is not the subject of this Petition. If the Court goes beyond those pleadings, it will be engaging in a frolic of it's own and that will be scandalous and in excess of the Court's jurisdiction. In that regard, I fully endorse the contents of paragraph **26** of the

replying affidavit by **JACQUELINE WANJALA** wherein she has deponed:

26: **“That as an advocate I know for sure that a matter before a Court of Law must be determined on the basis of the issue raised by the pleadings before Court without parties wondering beyond the scope of their pleadings or engaged in a frolic of their own as the Petitioners/Applicants tried to do and that evidence that is at variance with the averments in pleadings and hence goes to no issue must be ignored.”**

34. It must also be noted that the consent order herein was the product of the parties themselves. If for any reasons they later felt the need to vary it to include other parcels of land, they were at liberty to do so. However, having crafted the consent order in the manner in which they did and following their request to have it endorsed as an order of this Court, they have no choice but to live with it unless it is varied or set aside.

35. The law is that contempt proceedings, being quasi criminal, are serious because the contemnors can go to jail if the Court finds them culpable. Indeed the Petitioners have beseeched this Court to find the two named officers of the 2nd

Respondent to be in contempt **“and commit them to civil jail.”**
The standard of proof in such proceedings is as was set out by the Court of Appeal in the case of **MUTITIKA V. BAHARINI FARM LTD 1985 KLR 229** where it was 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 Court of Appeal clearly did not subscribe to the views of **LORD DENNING** in the case of **RE-BREAMLEVALE LTD 1969 3 ALL E.R 1062** where he said:

“Contempt of Court is an offence of a criminal character. A man may be sent to prison for it To use the time – honoured phrase, it must be proved beyond reasonable doubt.”

In this country, the standard of proof in contempt proceedings is higher than proof on the balance of probabilities almost but not exactly beyond reasonable doubt. That said, a party facing contempt of Court proceedings must, in all respects, be treated

fairly so that any punishment meted out to the contemnor is justified and in the interest of justice and not merely designed to placate the party making the allegations complained of. It is therefore the responsibility of the party seeking an order of committal for contempt to prove, to the required standard, the willful disobedience of the Court order. On the other hand, contemnors undermine the authority of the Court and must therefore be dealt with firmly so that the rule of law is not undermined. That is why, as was held in **HADKINSON V. HADKINSON 1952 ALL E.R 567** (per **ROMER L.J**):

“It is the plain and unqualified obligation of every person against or in respect of whom an order is made against 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 even void.”

Contempt of Court is defined in **BLACK’S LAW DICTIONARY 10TH EDITION** as:

**“conduct that defies the authority or dignity of the Court
.....”**

36. Guided by all the above precedents and in the circumstances of this case, it can hardly but said that there is sufficient evidence to find that **PROF ISAAC IPARA ODEO** and **MS JACQUELINE WANJALA** being the Vice-Chancellor and Legal Officer of the 2nd Respondent respectively are in contempt of the consent order dated 10th February 2022 and filed herein on 14th February 2022 and which was duly endorsed as an order of this Court on 15th February 2022. I am not persuaded that the Petitioners have met the threshold of proving that the above named officers committed any acts of contempt in respect of the said order. To the contrary, the 2nd Respondent has demonstrated that they have all along been ready and willing to have the joint survey conducted as per the said consent order and have indeed made their surveyor available for the exercise at all limits. On the other hand, it is the Petitioners who have not only continuously postponed the survey exercise but also attempted to improperly import into the said consent order issues that are alien to it thereby frustrating the survey exercise. They cannot now turn around and allege, as they have done, that **PROF ISAAC IPARA ODEO** and **MS JACQUELINE WANJALA** are in contempt of the consent order.

That prayer is declined.

37. The second prayer seeks an order that the Officer Commanding Station **BUNGOMA POLICE STATION** do

supervise the granting of access to the 2nd Respondent to Land title No **EAST BUKUSU/WEST KANDUYI/1660**. Not much has been canvassed on this limb of the application but that is not surprising. That limb is however also for dismissal for the following reasons.

38. Firstly, the land parcel No **EAST BUKUSU/WEST KANDUYI/1660** for which access is being sought is not the subject of this suit and was not part of the consent order herein. It will be an un-warranted intrusion into that parcel of land for this Court to make such an order. That would also amount to an infringement of the 2nd right to property.

39. Secondly, and even assuming that the land parcel No **EAST BUKUSU/WEST KANDUYI/1660** has to be accessed, nothing has been placed before this Court to warrant involving the Police in a purely civil dispute. It would be a completely different scenario if there was evidence to suggest that there is imminent fear of a likely breach of the peace should he survey exercise proceed without Police security. That prayer is also declined.

40. The up-shot of all the above is that the Petitioners' Notice of Motion dated 14th July 2022 is devoid of merit. It is dismissed with costs to the 2nd Respondent.

B.N. OLAO
JUDGE
17TH NOVEMBER 2022

Ruling dated and signed at BUSIA on this 17th day of November 2022.

It is delivered on this 17th day of November 2022 by way of electronic mail in keeping with the COVID 19 pandemic protocols.

B.N. OLAO
JUDGE
17TH NOVEMBER 2022