



REPUBLIC OF KENYA



**Njeru v Olendo (Environment & Land Case 1154 of 2015)
[2025] KEELC 1403 (KLR) (20 March 2025) (Ruling)**

Neutral citation: [2025] KEELC 1403 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 1154 OF 2015
OA ANGOTE, J
MARCH 20, 2025**

BETWEEN

LUCY WANJIRU NJERU PLAINTIFF

AND

JOSEPH OKWARO OLENDO DEFENDANT

RULING

1. Before this Court is a Notice of Motion application filed by the Defendant/Applicant dated 13th March 2024 pursuant to Sections 3 and 3A of the [Civil Procedure Act](#), Order 9 Rule 9(b), Order 40 Rule 1 and Order 51 Rules 1, 3 and 4 of the Civil Procedure Rules 2010. The Defendant has sought for the following orders:
 - i. That this Honourable court be pleased to adopt the consent executed between the firm of Kioko, Munyithya, Ngugi & Company Advocates and Agutu & Company Advocates under Order 9 Rule 9 of the Civil Procedure Rules as an order of the Court.
 - ii. That the Plaintiff be committed to prison for a term not exceeding six months for being in contempt of court orders/decrees emanating from the judgement of this Honourable Court delivered on 26th January 2023.
 - iii. That the cost of this application be borne by the Plaintiff.
2. The application is based on the grounds that on 26th January 2023, this Honourable Court delivered a judgment in which it held that the burden of proving that the property that the Defendant had developed was on plot number 0487 and not 0485 was on the Plaintiff which she failed to do.
3. It was deposed by the Defendant/Applicant that in its judgment, this court ordered the officials of Hurlingham Development Scheme to identify the beacons of Plot Nos 0485 and 0487, which exercise



was to be done within 90 days, which period was later extended vide an order issued on 10th July 2023 following the Plaintiff's application.

4. It is the Defendant's deposition that this court held that he is the lawful owner of Plot Number 0485 LR Number 11531/14 Hurlingham Development Scheme (HDS); that the Plaintiff, in blatant disobedience of the said court orders has issued an eviction notice against the Defendant through her Advocate on record vide a letter dated 19th February 2024 and that the issuance of this eviction notice amounts to contempt of the orders emanating from the judgment of this court and should be sentenced to six months' civil jail.
5. The Plaintiff opposed the application vide a Replying Affidavit dated 16th May 2024. He deposed that there is no order of the court that has been contravened by the Plaintiff and that the Judgment in clause 56(i) declared him the owner of suit property.
6. The Plaintiff asserts that the Judgment by this court declared that he was the lawful owner of Plot No. 0487, L.R No. 11531/14, HDS. She further asserts that the beacon identification exercise which was undertaken by the parties, their advocates, officials of the HDS, the area chief, police officers from Hurlingham East Police and the surveyor indicated that the Defendant/Applicant was in occupation of the Plaintiff/ Respondent's land; that all the parties approved the report dated 10th August 2023 and that the report was filed in court on 8th November 2023.
7. The Plaintiff argues that the Defendant does not deserve the court's stamp of authority because he is refusing to move out of the property that has been identified as not belonging to him and that Section 152E of the Land Act, provides for issuance of an eviction notice to unlawful occupiers of private land without the land owner's consent.
8. The Plaintiff further avers that the suit premises has subsequently been found to be part of the estate of Gerishon Kamau Kirima and following the family's success in the Court of Appeal, they conducted verification of ownership of plots for purposes of giving occupiers offers to pay consideration to enable them stay in occupation or to vacate.
9. According to the Plaintiff, the verification exercise did not consider the Defendant an owner of the Plot and the Plaintiff has already paid the requisite amount to the Kirima estate following an offer letter; that the Kirima Estate has even adopted new reference numbers and that this application is overtaken by events.
10. The Plaintiff argues that this court closed the case and became functus officio after the plots were included in the Kirima case, whose orders are from a higher court.
11. In a Further Affidavit dated 15th May 2024, the Defendant/Applicant reiterated that he has never been in occupation of the Plaintiff's plot No. 0487 and has been on his plot No. 0485. He emphasized that any eviction notice issued to him to vacate his plot is nothing but contempt of this court's judgement.
12. The Defendant agreed that the identification process was done by the surveyor, Mr. Nicholas Omondi, who testified as the Plaintiff's witness. He argues that the surveyor purported to show in his report that the Defendant is resident on the Plaintiff's property. He further denied that the court adopted the said report.
13. It was deposed by the Plaintiff that the issue of plots falling under the estate of Kirima was not an issue before this court and can only be addressed in a different forum altogether. Both parties filed submissions and authorities which I have considered.



Analysis and Determination

14. Having considered the application, the replying affidavit and the submissions by the parties, the issues for this court's consideration are as follows:-
 - a. Whether this court should adopt the consent executed between the firm of Kioko, Muniyithya, Ngugi & Company Advocates and Agutu & Company Advocates under Order 9 Rule 9 of the Civil Procedure Rules as an order of the Court.
 - b. Whether the Plaintiff's eviction notice is in contempt of the judgment of this court
15. The Defendant/Applicant has invited this court to adopt a consent executed by the firm of Kioko, Muniyithya, Ngugi & Co. Advocates and Agutu & Co. Advocates pursuant to Order 9 Rule 9 of the Civil Procedure Rules, which provides that when there is a change of advocate, or when a party decides to act in person having previously engaged an advocate, after judgment has been passed, such change or intention to act in person shall not be effected without an order of the court upon an application with notice to all the parties or upon a consent filed between the outgoing advocate and the proposed incoming advocate or party intending to act in person as the case may be.
16. The rationale behind this provision is to protect advocates from wily clients who replace their advocates at the last minute. This was well articulated in the case of S. K. Tarwadi vs Veronica Muehlmann [2019] eKLR where the court stated as follows:

“...In my view, the essence of the Order 9 Rule 9 of the CPR was to protect advocates from the mischievous clients who will wait until a judgment is delivered and then sack the advocate and either replace him.”
17. In this case, judgment was entered by this Court on 26th January 2023. When the firm of Agutu & Company Advocates sought to come on record, they duly filed before this court a consent on 18th March 2024 with the previous advocates of the Defendant, in compliance with Order 9 Rule 9 of the Civil Procedure Rules.
18. Noting that the consent filed on 18th March 2024 and dated 13th March 2024 has not been opposed, this court adopts the said consent as an order of this court. The firm of Agutu & Company Advocates are therefore properly on the record for the Defendant.
19. It is not disputed that the Plaintiff has issued an eviction notice upon the Defendant vide a letter dated 19th February 2024. The Defendant contends that the eviction notice is in contempt of the judgment of this court which found that he is the was the owner of Plot No. 0485 while the Plaintiff was the owner of Plot No. 0487.
20. The Plaintiff, on her part, asserts that the eviction notice has been issued pursuant to Section 152E of the *Land Act*. According to the Plaintiff, the Defendant is occupying her land.
21. It is trite that the reason courts punish for contempt is to uphold the dignity and authority of the court, to ensure compliance with directions of the court, observance and respect of due process of law, to preserve an effective and impartial system of justice, and maintain public confidence in the administration of justice by courts. This was ably stated in Sheila Cassatt Issenberg & another vs Antony Machatha Kinyanjui [2021] KEHC 5692 (KLR).
22. The elements of the offence of contempt are set out in Cecil Miller vs Jackson Njeru & Another [2017] eKLR as follows:



- a. The terms of the order/or injunction or undertaking, were clear and unambiguous and were binding on the defendants;
 - b. The Defendant had knowledge of or proper notice of the terms of the order;
 - c. The Defendant acted in breach of terms of the order; and
 - d. The Defendant’s conduct was deliberate.
23. The Defendant in this case contends that the Plaintiff’s actions of issuing an eviction notice through its letter dated 19th February 2024 is in contempt of the judgment of this court dated 26th January 2023. In the said letter, the Plaintiff’s advocates issued the Defendant with seven (7) days’ notice to vacate Plot No. 0487.
24. The Plaintiffs contend that the verification exercise confirmed that the Defendant was found to be living on her property. Further still, that from the date that the court confirmed and adopted the verification report, which the Defendant signed, the Defendant is unlawfully on the Plaintiff’s premises.
25. It is apparent that in the letter dated 19th February 2024, the Plaintiff has sought the eviction of the Defendant, not pursuant to Section 152E of the *Land Act* as they have claimed herein, but as a result of the judgment and determination in this case.
26. To begin with, Section 152E of the *Land Act* requires three months’ notice of eviction to be issued to a person unlawfully occupying private land. The Plaintiff, however, purported to issue a 7-day notice, falling far short of the statutory requirement. Section 152E prescribes as follows with respect to eviction of persons in unlawful occupation of private land:
- “(1)If, with respect to private land the owner or the person in charge is of the opinion that a person is in occupation of his or her land without consent, the owner or the person in charge may serve on that person a notice, of not less than three months before the date of the intended eviction.
- (2) The notice under subsection (1) shall -
- (a) be in writing and in a national and official language
 - (b) in the case of a large group of persons, be published in at least two daily newspapers of nationwide circulation and be displayed in not less than five strategic locations within the occupied land;
 - (c) specify any terms and conditions as to the removal of buildings, the reaping of growing crops and any other matters as the case may require; and
 - (d) be served on the deputy county commissioner in charge of the area as well as the officer commanding the police division of the area.”
27. With respect to the judgment delivered by this court on 26th January 2023, this court declared that the Plaintiff’s case partially succeeded to the extent that the Plaintiff established that she is the lawful owner of Plot No. 0487 while the Defendant is the lawful owner of Plot No. 0485.



28. The court however found that the Plaintiff had not proved the claim that the Defendant had encroached on Plot No. 0487 and held that the same failed. The court ordered the officials of Hurlingham Development Scheme to identify the beacons of plot numbers 0485 and 0487 within 90 days of the delivery of judgment.
29. Upon application, the court expanded the time for the officials of Hurlingham Squatter's Development to give effect to the third order of this court for identification of the beacons. The resultant report of the site visit by HDS was uploaded by the Plaintiff's advocates on the portal on 30th October 2023.
30. The report notes that Plot No. 0487/14 belongs to the Plaintiff, Lucy Wanjiru Njeru, while Plot No. 0485/14 belongs to the Defendant, Joseph Okwaro Olendo. It was further concluded that Plot No. 0487/14 owned by the Plaintiff is partially occupied by the Defendant and Plot No. 0485/14. Upon presentation of this report, this court declared this case to be closed.
31. This court has not made any substantive finding as to the location and extent of the Plaintiff's property vis a vis the Defendant's plot. The Plaintiff can therefore not purport to evict the Defendant on the basis or on the strength of the judgment of this court.
32. As to the Defendant's claim that the Plaintiff's eviction notice is in contempt of court, the specific orders at issue in the judgment are negative orders, which found that the Plaintiff had not proved the Defendant's encroachment on its property.
33. The said orders did not require any party to do anything or to refrain from doing anything. They can therefore not be said to have been binding upon the Plaintiff.
34. All that the court found was that the two own plots 0487 and 0485 respectively. In the absence of beacon certificates at the time of the hearing, the court directed the initial owner of the land, Hurlingham Squatter's Development, to identify the beacons, an exercise that has since been undertaken.
35. In these circumstances, this court is not persuaded that the Defendant has established that the Plaintiff's actions were in contempt of court due to the nature of the orders of the court.
36. While the Plaintiff has sought to rely on the cases of Julius L Marten vs Caleb Arap Rotich [2021] KEELC 195 (KLR) and James Mathura Makewa vs Nzari Nguli (2021) eKLR and has indicated its intention to pursue the provision of the Land Act and to file a Miscellaneous application, she however misapprehended the tenor of these authorities.
37. In the case of Julius L Marten vs Caleb Arap Rotich [2021] KEELC 195 (KLR), Justice Mutungi considered a miscellaneous application for eviction brought under Sections 152E of the Land Act. The court held that where there is a dispute as to ownership, the summary procedure set out in Section 152E would not be suitable and a formal suit would be advised. The court stated as follows:

“ Any eviction order has far reaching implications as it entails the removal forcefully of a party from land that he/she has been in occupation/possession of for some time. Before such an order is given the court must be satisfied on its merits which means any person who stands to be affected by any order the court may make is entitled to be heard. Section 152E relating to private land envisages that there is no dispute on ownership and the occupation is unlawful. What is the situation where there is no dispute on ownership and the occupation is unlawful? What is the situation where there is disputed ownership of the property? In my



view where the ownership is disputed the summary procedure that section 152F appears to contemplate would not be suitable and a formal suit would be advisable.”

38. In this case, while there is no dispute as to ownership, there is a dispute as to whether the Defendant has trespassed onto the Plaintiff’s property. This dispute would therefore not be suited to proceed through the summary procedures set out in Section 152E and 152F of the *Land Act*.
39. The circumstances in James Mathuva Makewa vs Nzavi Ngului [2021] KEELC 4678 (KLR) are distinct from those in this suit as in the former suit, there was no dispute that the Respondent was indeed unlawfully in occupation of the Plaintiff’s suit property. On that basis, the court granted the orders of eviction sought.
40. For the record, while this court ordered the officials of the Hurlingham Development Scheme to identify the beacons of Plots 0485 and 0487, the purpose of this exercise was not to prove the Defendant’s encroachment.
41. The adoption of the report was therefore not a mechanism to alter the judgment of this court in any way. This court had at this point already entered final judgment on this issue and the Plaintiff was at liberty to appeal the said decision if they were aggrieved. The Plaintiff has not filed any appeal.
42. For emphasis, the Defendant should comply with the report of Hurlingham Squatter’s Development which identified the beacons for plots 0485 and 0487 as directed by the court. The failure to comply with amount contempt.
43. In conclusion, this court finds that the Defendant’s application is partially merited and adopts the consent between the firm of Kioko, Munyithya, Ngugi & Company Advocates and Agutu & Company Advocates under Order 9 Rule 9 of the Civil Procedure Rules as an order of the Court.
44. The prayer to find the Plaintiff in contempt is disallowed. Each party will bear his/her own costs.

DATED, SIGNED AND DELIVERED IN NAIROBI VIRTUALLY THIS 20TH DAY OF MARCH, 2025.

O. A. Angote

Judge

In the presence of;

Mr. Aguttu for Defendant/Applicant

Ms Kioko for Plaintiff/Respondent

Court Assistant - Tracy

