



Kamiri v Nairobi City County & another (Environment & Land Case E404 of 2024) [2025] KEELC 1399 (KLR) (13 March 2025) (Ruling)

Neutral citation: [2025] KEELC 1399 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE E404 OF 2024**

**TW MURIGI, J
MARCH 13, 2025**

BETWEEN

GODFREY GITHINJI KAMIRI PLAINTIFF

AND

NAIROBI CITY COUNTY 1ST DEFENDANT

AFRICA REIT LIMITED 2ND DEFENDANT

RULING

1. By a Notice of Motion dated 29th November 2024 brought under Sections 1A, 1B and 3A of the Civil Procedure Act and Section 13 of the Environment and Land Court Act, the Plaintiff/Applicant seeks the following orders: -
 - i. Spent.
 - ii. Spent.
 - iii. That this Honourable Court do find that Lydia Mathia, the County Chief Officer Housing and Urban Renewal Nairobi County is in contempt of the Court Order issued on 9th October 2024 and extended on 14th November 2024 by Hon. Lady Justice J.A Mogeni and do proceed to commit her to civil jail for a maximum of six months or impose any other penalty it deems fit.
 - iv. That this Honourable Court do find that Kenyanjui Wainaina and Wanjiru Ndungu; directors of Africa Reit Limited; the 2nd contemnor herein are in contempt of the Court Order issued on 9th October 2024 and extended on 14th November 2024 by Hon. Lady Justice J.A Mogeni and do proceed to commit them to civil jail for a maximum of six months or impose any other penalty it deems fit.
 - v. That the costs of this application be paid by the contemnors.



2. The application is premised on the grounds appearing on its face together with the supporting affidavit of Godfrey Githinji Kamiri sworn on even date.

The Applicant's Case

3. The Applicant averred that on 9th October 2024, this court issued status quo orders restraining the contemnors from implementing the Notice to Vacate dated 19th November 2024. That the orders were extracted and served upon the contemnors on 23rd October 2024. That thereafter, the matter was mentioned on 7th November 2024 and the interim orders were extended to 14th November 2024. He averred that both contemnors were represented in court on 14th November 2024 when the matter was mentioned for directions. He further averred that the Advocates for the contemnors objected to the extension of the interim orders but the same were extended to the ruling date which was scheduled for 16th December 2024.
4. He averred that the contemnors had knowledge of the court order as they were served with the same and even attended court sessions.
5. He averred that in the wee hours of 19th November 2024, the agents, employees and servants of the contemnors in the company of hooligans, goons and police officers in blatant contempt of the status quo orders brought in bulldozers and began demolishing his house of 22 years situated within the suit property thereby rendering him homeless and a beggar.
6. He asserted that the contemnors actions have portrayed this court as a toothless body without any mechanisms to implement and oversee the rule of law.
7. He further asserted that the actions by the contemnors are in blatant disregard of the court's order and ought to be dealt with the full force of the law

The 2Nd Respondents' Case

8. The 2nd Respondent opposed the application through the grounds of opposition dated 13th December 2024 and a replying affidavit sworn by Joyce Wanjiru the operations manager on 16th January 2025 The 2nd Respondent raised the following grounds:
 - a. That the Ruling set down for delivery on 16th December 2024 on the 2nd Defendant's motion dated 5th November 2024 ought to have been settled first before proceeding with the application dated 29th November 2024 as the issue of this court's jurisdiction to handle this matter is highly contested and ought to have been a preliminary matter;
 - b. The Ruling set for delivery on 16th December 2024 ought not to have been arrested or held in abeyance as it is capable of determining the present suit in limine thereby rendering all other proceedings moot.
 - c. the 2nd Defendant's application would have determined the suit in limine rendering all other proceedings moot;
 - d. Through the Applicant's application dated 29th November 2024, he had made a direct admission that the substratum of the Plaintiff's application dated 1st of October 2024 had been lost and served no purpose to stay the Ruling;
 - e. Based on the admission that the substratum of the current application does not meet the principles of arrest of a Ruling, seeking to stay the suit indefinitely only clogs the judiciary system unnecessarily; and



- f. The application is misconceived, bad in law and an abuse to the court process designed to delay the conclusion of the matter.
9. In her replying affidavit, the deponent denied the allegations that the 2nd Respondent was in contempt of the court orders. She further denied the allegations that the 2nd Defendant brought in bulldozers and demolished the Applicant's house and added that no evidence was adduced in support of the allegations.
10. She maintained that the Applicant did not produce any evidence to show that he had a valid title, use or occupation of the suit property as at 9th October 2024. The deponent contended that in ELC Petition No. 18 of 2018 the court upheld that the title to the suit property belonged to the 1st Defendant. She further contended that the Applicant is not listed as an occupant of the suit property in the 1st Respondent's records. That according to the 1st Defendant records, Kitoto Adel was at all times prior to 9th October 2024 in occupation of the suit property and that he had since complied with the Notice by vacating the suit property which thereafter reverted back to the 1st Defendant.
11. The deponent contended that the 2nd Respondent and its directors are law abiding citizens and would never disobey the court orders. In conclusion she urged the court to dismiss the application with costs.

The Applicant's Response

12. The Applicant filed a supplementary affidavit dated 27th January 2025 in response to the 2nd Defendant's replying affidavit and grounds of opposition. He argued that the 2nd Respondent cannot qualify the court order dated 9th October 2024 as it was clear that the status quo was to be maintained pending the next mention date.
13. He contended that the question of ownership and validity of the title for the suit property was settled in High Court Case No. 173 of 2023 hence the Defendants cannot purport to violate a court order on account of validity of title.
14. He averred that the 2nd Defendant's assertion that the suit property was occupied by Kitoto Adel who had since complied with the notice to vacate is misleading and outright perjury as the said tenant is deceased.
15. He insisted that the Respondents were aware that he was the actual occupant because all their dealings had been with him and not with Kitoto Adel.
16. The application was canvassed by way of written submissions.

The Applicant's Submissions

17. The Applicant filed his submissions dated 27th January 2025.
18. On his behalf, Counsel submitted that the only issue for determination is whether the Respondents are in contempt of the court orders issued on 9th October 2024.
19. Counsel submitted that the Respondents had full knowledge of the court orders and had even sought to oppose the extension of the same. Counsel argued that none of the Defendants denied knowledge of the court orders. Counsel argued that the Defendants wilfully disobeyed the court order and should be punished for the same.



The 2ND Defendant's Submissions

20. The 2nd Defendant filed its submissions dated 17th February 2024.
21. On its behalf Counsel outlined the following issues for the court's determination:-
 - a. Whether the 2nd Defendant herein is guilty of contempt of court orders issued on 9th October 2024; and
 - b. Whether the Applicant is entitled to the orders sought in the application dated 29th November 2024.
22. On the first issue, Counsel relied on the case of Republic v Attorney General & another Exparte Mike Maina Kamau (2020) KEHC 10013 (KLR) to submit on the conditions that an Applicant has to meet in contempt of court proceedings.
23. Counsel submitted that the terms of the order that are alleged to have been breached by the 2nd Defendant is vehemently disputed. Counsel further submitted that the burden of proof lies on the Applicant to demonstrate that there was wilful disobedience of the court order by the 2nd Defendant. To buttress this point, Counsel relied on the case of Nile track Kenya Ltd v Civicon Group Limited and on the case of Mutitika v Baharini Frm Ltd (1985) KECA 60 (KLR). Counsel submitted that the Applicant has failed to discharge the burden of proof to the required standard.
24. Counsel further submitted that no evidence was adduced to show that the 2nd Defendant directors were served with the court orders.
25. Counsel further submitted that the status quo prevailing as at 9th October 2024 pertaining to the title, use and occupation of the suit property was in favour of the 1st Defendant. It was submitted that in Nairobi Civil Appeal No 375 of 2020, the court of Appeal upheld the decision in Nairobi ELC No 2054 of 2007 where the court held that the entire 100 acres at L.R No. 209/13539 (Woodley/Joseph Kangethe Estate) belongs to the Nairobi City County Government and that the alleged titles held by the Plaintiff and other persons purported to hold titles for the estate were fraudulent and illegal.
26. That according to Gazette Notice No. 6862 annexed to the 2nd Defendant's supporting affidavit sworn on 5th November 2024, the title for the suit property in the name of John Njenga Mungai was revoked. Counsel argued that the Plaintiff has no claim whatsoever over the suit property as he is neither a tenant of the 1st Defendant nor the title holder of the suit property.
27. Counsel contended that the instant application is an attempt to re-litigate on issues of title to the suit property which have been heard and determined in favour of the 1st Defendant in Nairobi ELC Suit No. 2054 of 2007 and reaffirmed by the Court of Appeal in Nairobi Civil Appeal No 375 of 2020 and in ELC Petition No. 18 of 2020.
28. It was further submitted that this court differently constituted struck out ELC Petition 1 of 2024 and ELCL Petition No. E093 of 2024 for being res judicata. Counsel submitted that the 2nd Respondent had filed an application dated 5th November 2024 seeking to strike out the Plaintiff's suit for being res judicata. It was argued that the instant application is meant to delay the dismissal of the entire suit since the matter has been settled by this court and the court of appeal.
29. Counsel submitted that according to the records held by the 1st Defendant, the suit property was occupied by one Kitoto Adel who was the tenant of the 1st Respondent and had since vacated in compliance with the notice to vacate. It was further submitted that the allegations that the tenant is deceased are baseless as no evidence was adduced to show that the grant of letters of administration of



- the estate of Walter Kitoto Adell has any nexus between the recognized agent and the person who is alleged to have died or that they are one and the same person.
30. Counsel further submitted that the Applicant has not produced a tenancy agreement or rent receipts to demonstrate that he was a tenant or occupant of the disputed property as at 9th October 2024.
 31. Counsel further submitted that the Applicant provided random photographs as proof that the 2nd Defendant brought in bulldozers and demolished his house erected on the suit property. Counsel contended that the photographs do not show demolition of the house or even the bulldozers despite the Applicant claiming that he was evicted on the morning of 19th November 2024. Counsel argued that the court cannot ascertain from the photographs whether they relate to the suit property or when they were taken.
 32. Counsel further submitted that the undated certificate to produce electronic evidence accompanying the photographs only makes reference to the photograph of a demolished house leaving out the photograph christened “before demolition” thereby rendering that photograph inadmissible. To buttress this point Counsel relied on the case of Peter Wahiga Kabiru & 2 others v Republic (2019) KECA 8 (KLR).
 33. Counsel further submitted that the Applicant did not adduce any evidence to show that the 2nd Defendant or its Directors/Officers were present on the suit property on or before 19th October 2024.
 34. It was submitted that the Joint Venture Agreement between the Defendants herein expressly provided that the 2nd Defendant would be handed vacant possession of the suit property without any houses or structures after 19th November 2024. Counsel argued that the 2nd Defendant was contractually barred from accessing the suit property on or before 19th November 2024 hence it was impossible that the 2nd Defendant could access the suit property or even conduct any demolitions at the site.
 35. With regards to the second issue, Counsel submitted that the Applicant is not entitled to the orders sought as the aspersions raised by the Applicant remain unfounded.
 36. Counsel contended that in the unlikely event that the court determines that the 2nd Defendant disobeyed the court order, the same was inadvertent and devoid of mala fides and the directors ought not to be sanctioned. To buttress this point, Counsel relied on the case of Katsuri Limited v Kapurchand Depar Shah (2016) KEHC 6447 (KLR).
 37. Counsel relied on the case of Katsuri Limited v Kapurchand Depar Shar(supra) to submit that the Applicant was first required to apply to lift the corporate veil before citing the directors for contempt. Counsel argued that it would go against the doctrine of separate legal personality to hold the directors personally liable for the alleged actions or omissions of a distinct legal entity.
 38. Counsel contended that if the application is granted it will occasion great prejudice to the Defendants since the court will be seen to have made a determination on the Applicant’s substantive claim over title to the suit property despite the same being res judicata.
 39. Concluding his submissions, Counsel urged the court to dismiss the application with costs.

Analysis And Determination

40. Having considered the application, the respective affidavits and the rival submissions, the only issue that arises for determination is whether the Respondents are in contempt of the order issued on 9th October 2024.



41. The Black Law Dictionary 9th Edition defines contempt of court as follows:-

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

Section 5 of the Judicature Act provides that:

1. 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 such power shall extend to upholding the authority and dignity of subordinate courts.
2. An order of the High Court made by way of punishment for contempt of court shall be appealable as if it were a conviction and sentence made in the exercise of the ordinary original criminal jurisdiction of the High Court.

42. In *Econet Wireless Kenya Ltd vs Minister for Information & Communication of Kenya & Another* (2005) eKLR the court observed as follows:-

“It is essential for the maintenance of the Rule of Law and order that the authority and 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 to whom an order is made by the 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.”

43. The law guiding the present application is Order 40 Rule 3(1) of the Civil Procedure Rules which provides that:-

In cases of disobedience, or of breach of any such terms, the Court granting an injunction may order the property of the person guilty of such disobedience or breach to be attached and may also order such person to be detained in prison for a term not exceeding six months unless in the meantime the court directs his release.

44. The High court of South Africa in the case of *Carla Burchell v Barry Grant Burchell Eastern Cape Division Case No 364 of 2005* held that in order to succeed in civil contempt proceedings, an Applicant has to prove:-

- i. The terms of the order
- ii. Knowledge of these terms by the respondent
- iii. Failure by the respondents to comply with the terms of the order.

45. In the case of *Samuel M.N. Mweru & Others v National Land Commission & 2 Others* (2020) e KLR the court set out the elements to be proved in an application for contempt of court as follows:-

“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 knowledge’
 - c. The defendant has acted in breach of the terms of the order and
 - d. The defendant’s conduct was deliberate”.
46. The first issue for determination is whether the terms of the order were clear. The Plaintiff filed a Notice of Motion application dated 1st October 2024 seeking the following orders:-
- a. That this Honourable Court be pleased to issue a temporary injunction restraining the Defendants/Respondents , their agents, kin, servants and/or employees from evicting the Plaintiff/Applicant, demolishing houses, structures, trespassing, executing any Joint Venture Agreement or in any other manner interfering with the Plaintiff/Applicant’s quiet possession and utilisation of property Land Reference Number 209/13539/79 (Bungalow 15) situated in Woodley/Joseph Kangethe Estate within Nairobi County hereinafter referred to as the “suit property” pending the inter partes hearing of this application.
 - b. That this Honourable court be pleased to issue a temporary injunction restraining the Defendants/Respondents , their agents, kin, servants and/or employees from evicting the Plaintiff/Applicant, demolishing houses, structures, trespassing, executing any Joint Venture Agreement or in any other manner interfering with the Plaintiff/Applicant’s quiet possession and utilisation of property Land Reference Number 209/13539/79 (Bungalow 15) situated in Woodley/Joseph Kangethe Estate within Nairobi County hereinafter referred to as the suit property pending the hearing and determination of this suit.
 - c. That costs of this application be provided for.
47. When this matter came up for directions on 9th October 2024, the court issued the following orders:-
- i. status quo prevailing as of the date herein pertaining to the title, use and occupation of the suit property and subdivisions of the shall be maintained until the next mention;
 - ii. Applicant to serve application to Respondents within 14 days;
 - iii. Respondents to respond to the application within 14 days thereafter; and
 - iv. directions would be given on 7th November 2024 .
48. A Penal Notice followed the order notifying the parties that any disobedience or non-observance of the court order served herewith would result in penal consequences to any person(s) disobeying and not observing the same.
49. The order was unambiguous as it ordered for status quo prevailing as at the date pertaining to the title, use and occupation of the suit property and subdivision be maintained until the next mention date. The matter was fixed for mention for directions on 7/11/2024.
50. To this end, I find that the terms of the order were clear and unambiguous and were binding on the Respondents.



51. The next issue for determination is whether the Respondents were served or had proper notice of the order. The Applicant contended that the Respondents were aware of the terms of the order. The 2nd Respondent contended that its directors were not personally served with the order.
52. The record shows that on 7th November 2024, Counsel for the 2nd Respondent was present in court when Counsel for the Applicant applied for extension of the interim orders which this court granted.
53. On 14th November 2024, the Applicant applied to have the interim orders extended which application was opposed by Counsel for the 1st Defendant on the grounds that the same was issued without disclosure. Counsel for the 2nd Defendant equally opposed extension of the interim orders on the grounds that the suit property was in occupation of a tenant who was not before this court and was not opposed to vacating the premises. This court extended the orders to 16/12/2024.
54. From the foregoing, I am satisfied that the Respondents were aware of the terms of the order.
55. On whether the Respondents deliberately breached the court order, the Applicant has a duty to prove his case beyond a balance of probabilities. This is because contempt of court is in the nature of criminal proceedings and the liberty of the subject is usually at stake. The Applicant must prove wilful and deliberate disobedience of the court order if he is to succeed as was held in the case of *Gatharia K. Mutikika v Baharini Farm Ltd (1985) KLR* where the court held that:-
- “A contempt of court is an offence of a criminal nature. A man may be sent to prison. It must be proved satisfactorily.....It must be higher than proof on a 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 criminal cases. It is not safe to extend it to offences which can be said to be quasi-criminal nature.”
56. In the case of *Peter K. Yego & Others vs 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”
57. The Applicant has a duty to prove beyond a balance of probabilities that the Respondents brought in bulldozers and demolished his house situated within the suit property.
58. It is not in dispute that the status quo order was subsequently extended to 16/12/2024 when the ruling was set to be delivered. A keen perusal and understanding of the order dated 9/10/2024 shows that status quo pertaining to the title, use and occupation of the suit property was to be maintained.
59. The Applicant alleged that on 19/11/2024, the Respondents in blatant breach of the order brought in bulldozers and demolished his house of 22 years thereby rendering him homeless and a beggar.
60. As proof of demolition, the Applicant annexed photographs of his house before and after demolition. The Applicant did not annex the photographs of the bulldozers allegedly used to demolish his house.
61. The 2nd Respondent denied the allegations that they demolished that Applicant's house and insisted that the Applicant had not adduced any evidence to show their presence on the suit property. In addition, the 2nd Respondent contended that the Applicant had not applied to lift the corporate veil before citing the 2nd Respondent for contempt. In her replying affidavit, Joyce confirmed that she is the 2nd Defendant's operational manager. I therefore find that the directors of the 2nd Respondent were properly cited for contempt of court.



62. The Applicant did not establish when the photographs were taken and their relation to the suit property. The Applicant did not adduce any evidence to show that his house was demolished by the Respondents or by their servants and/or agents.
63. From the foregoing, it is crystal clear that the Applicant has not demonstrated that the Respondents deliberately disobeyed the Court order dated 9/10/2024 in order to cite the Respondents for contempt of court.
64. The upshot of the foregoing is that the application dated 29th November 2024 is devoid of merit and the same is hereby dismissed with costs.

RULING DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS THIS 13TH DAY OF MARCH, 2025.

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T. MURIGI

JUDGE

In The Presence Of:-

Karwanda for the Plaintiff/applicant

Ms. Jep Leiting for the 1st Defendant

Ahmed – Court Assistant

