



**Onyango v Ojwang (The legal representative of the Estate of William Ojwang Koyo) (Environmental and Land Originating Summons E002 of 2023) [2025] KEELC 1267 (KLR) (13 March 2025) (Ruling)**

Neutral citation: [2025] KEELC 1267 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KISUMU  
ENVIRONMENTAL AND LAND ORIGINATING SUMMONS E002 OF 2023  
E ASATI, J  
MARCH 13, 2025**

**BETWEEN**

**AUGUSTINE OGUTU ONYANGO ..... PLAINTIFF**

**AND**

**MOSES OJWANG (THE LEGAL REPRESENTATIVE OF THE ESTATE OF WILLIAM OJWANG KOYO) ..... DEFENDANT**

**RULING**

1. This ruling is in respect of the Notice of Motion application dated 19<sup>th</sup> December, 2024. The application expressed to be brought pursuant to the provisions of Order 40 Rules 3 and 9 and Order 1 Rule 2 of the Civil Procedure Rules seeks for orders that;
  - a. The court be pleased to cite Augustine Ogutu Onyango, the Plaintiff/Respondent herein for disobedience of the court order of the 21<sup>st</sup> February, 2024 and order that they be detailed in prison for six (6) months.
  - b. The Respondent do meet the costs of this application.
2. The application was supported by the contents of the Supporting Affidavit sworn by Moses Otieno Ojwang on 19<sup>th</sup> December, 2024.
3. The application was opposed vide the grounds contained in the Replying Affidavit sworn by Augustine Ogutu Onyango on 13<sup>th</sup> January, 2025. The case of the Respondent is that he has been in occupation of the suit land since the year 2000 and has not disobeyed any court orders. That he has not made any development on the land. That the Applicant only filed the application for the purpose of delaying hearing of the matter.



4. Contempt of court in Civil proceedings is the willful disobedience or breach of a court order, decree or judgment or directions or other process of a court or willful breach of an undertaking given to the court. The element of contempt of court are;
- i. the existence of a valid court order whose terms are clear, unambiguous and binding on the Respondent,
  - ii. proof that the Respondent had knowledge or proper notice of the terms of the order,
  - iii. proof that the Respondent acted in breach of the terms of the order
  - iv. that the conduct of the Respondent was deliberate or willful.

See case of *In the case of Johari School Limited vs Rosemary Wambugu t/a Johari School* [2021]eKLR.

5. In the case of *Philomena Wariga Waweru vs Duncan- Wanyoike & 3 others* [2018]eKLR it was held that
- “Contempt of court is an offence which is quasi-criminal in nature. It ought to be proved satisfactorily.”

6. Similarly, in *Michael Sistu Mwaura Kamau vs Director of Public Prosecutions & 4 others* [2018]eKLR the Court of Appeal stated that

“It is trite law that to commit a person for contempt of court, the court must be satisfied that he has wilfully and deliberately disobeyed a court order that he was aware of.”

7. The Applicant’s case herein is that the court issued an order on 21<sup>st</sup> February, 2024 that the status quo on the suit property be maintained to preserve the suit property. That none of the parties were allowed to develop, construct, lay materials or do any dealings on the property pending the hearing and determination of the suit. That a copy of the order and penal notice were served on the Respondent on 21<sup>st</sup> February, 2024 and that Counsel for both parties were in court.
8. That the Respondent has refused and/or neglected to obey the court order and continued with such disobedience. That the claimant is seriously prejudiced and continues to suffer as such. That the Respondent should not be allowed to defy orders with impunity.
9. However, no evidence of any these allegations was placed before court. There is no evidence of service of the orders upon the Respondent. There is also no evidence of wilful disobedience or breach of the court order by the Respondent. The Supporting Affidavit simply repeats the grounds of the application listed on the face of the Notice of Motion and has no evidence within or attached to it.
10. I find that the application has no merit. It is hereby dismissed. Costs to the Respondent.

Orders accordingly.

**RULING, DATED AND SIGNED AT KISUMU, READ VIRTUALLY THIS 13<sup>TH</sup> DAY OF MARCH 2025 THROUGH MICROSOFT TEAMS ONLINE APPLICATION.**

**E. ASATI**

**JUDGE.**

In the presence of:

Maureen: Court Assistant.

Ng’ang’a for the Plaintiff/ Respondent.



Manungi for Defendant/Applicant.

