



**Mwangome & others v Njuga & others (Environment & Land Petition
9 of 2014) [2025] KEELC 3101 (KLR) (3 April 2025) (Ruling)**

Neutral citation: [2025] KEELC 3101 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ENVIRONMENT & LAND PETITION 9 OF 2014**

FM NJOROGE, J

APRIL 3, 2025

BETWEEN

SEBASTIAN MUYE MWANGOME & OTHERS PETITIONER

AND

NYAMAWI CHIMEGA NJUGA & OTHERS RESPONDENT

RULING

1. The Notice of Motion dated 18th of March 2024 is the subject of this ruling. In that application the following orders are sought:
 - a. Spent;
 - b. That the contemnor herein to wit, Francis Chilengeli Njuga be committed to civil jail for a period of six months for being in contempt of the orders of this honorable Court made on 2nd October 2015;
 - c. That all the properties of the contemnor here in to wit Francis Chilengeli Njuga be attached for attached for disobeying the order of this Honourable Court made on 2nd October 2015;
 - d. That an order of mandatory injunction be granted compelling the contemnor to forthwith with pull down all the structures erected in the suit property by themselves, agent assigns and or employees or anyone claiming in or through him and to remove all the materials brought by him on to the suit land and that he do restore the property into the condition it was in prior to their illegal actions in default of which the petitioners be allowed to do so at the contemnor's expense.
 - e. That the OCS Chasimba Police Station or OCPD Kilifi Division together with office sons under him or her do provide services security and help in and forcing the order herein;
 - f. That the costs of the application be awarded to the applicant in any event.



2. The application is premised on the grounds set out at the foot thereof and also contained in the supporting affidavit of the 3rd petitioner Barawa Joseph Sanga. The grounds are that this court issued a conservatory order restraining the 1st to the 10th respondents from interfering with the suit Land Parcel Number 438 Pingilikani.
3. A further conservatory order was made restraining the 1st to 12th respondents from subdividing, establishing boundaries and like actions, or in any other manner interfering with the petitioner's ownership quiet possession and enjoyment of the suit land.
4. The respondent was served with the order on 14th May 2016. However, he deliberately committed actions that are in breach of the orders herein and was at the time of the filing of the application in the process of constructing a permanent structure thereon. The petitioners have attempted to stop this activity in vain. They alleged contemnor has threatened their lives. The alleged contemnor has cut down trees and vegetation and plowed a part of the suit land. Tensions in the suit land have risen and even third parties have threatened to invade the suit land en masse.
5. The application is supported by the affidavit of Barawa Joseph Sanga the 3rd petitioner herein. He depones that the contemnor brought in construction materials and began construction of a permanent house on the suit property and refused to stop when challenged by the applicant.
6. The deponent also states that the issue was escalated to the alleged contemnor's advocate Mr Mwakireti who denied knowledge of the happenings but who promised to counter check the facts and revert to Mr Tindika the applicants' advocate but no response has ever come from the two persons.
7. Photographs have been attached to the supporting affidavit showing a house under construction as well as a thatched hut; there is a photograph of what looks like a block of concrete on top of a hole.
8. Also attached are photographs of freshly ploughed land.
9. They alleged contemnor filed a replying affidavit through Mwakireti and Asige Advocates on 16th May 2024. He deposed that no such land as "Plot Number 438 Pingilikani Adjudication Section" belonging to the petitioners exists which the court has restrained him from interfering with; that the adjudication process in Pingilikani was concluded long ago before the filing of this petition; that the petitioners' land was adjudicated as Title Number Kilifi/Pingilikani/438; that he has never entered upon that land or put up in this structures they are on. He exhibits a copy of the title thereto, stating that he is one of the registered owners of plot number 1210 measuring 4.19 hectares of which he has also exhibited a copy of title. He states that his father settled in plot number 1210 in the 1960s as seen in a sketch map filed in Kaloleni Civil Case Number 3 of 1979. A copy of a judgment in that case is exhibited; he states that he was born on the said land in 1967, has lived there on and cultivated the same since then to date. Consequently, he says, the order restraining him from activities on the said land is superfluous.
10. He further narrates that before adjudication was concluded the petitioners filed Mombasa High Court Civil Case Number 207 Of 2007 seeking ownership of Plot Number 438 but withdrew the case on 28th November 2014 after filing the present petition; that after filing the petition, the petitioners have abused the court order by forcefully ploughing on Plot Number 1210 since 2015. They attempted to evict him therefrom and his complaints to various offices have failed to bear fruit allegedly due to the financial influence of the petitioners and his indigence. However, in 2015 the Area Assistant Chief directed them to stop their unlawful activities.
11. He also exhibited copies of Police OB reports.



12. He averred that in 2023 the petitioners destroyed his house on Plot Number 1210 purportedly to create the impression that he was not in possession of the land and create the impression that he had recently entered the land illegally in breach of a court order. Photographs are attached. They show the ruins of what appears to have been a mud walled house.
13. After that demolition he was helped by well-wishers to put up a new structure in place of the one demolished, and such construction is not in breach of any order of the court since he has been living on Plot Number 1210 since he was born.
14. He exhibits a copy of judgment in Kilifi Criminal Case Number 165 Of 2001-Republic Versus Daniel Mwangome Shumaa, Joseph Sanga Shumaa, Barawa Joseph Shumaa, Willington Rimba Shumaa, And Wycliffe Mwangome Shumaa where some of the applicants or their kin were parentally convicted for malicious damage on Plot No 1210.
15. He states that in April 2024 on two occasions a group of men visited the land and ordered him to vacate under threat of death; that on 4th May 2024 a brother to the 3rd petitioner and brothers the other petitioners came with tractors and a crowd of rowdy men armed with machetes and chased the respondent away, cut down his trees, poisoned his fowls, and forcibly cultivated the land while attempting to eradicate evidence of his occupation thereof.
16. He states that the title he holds in respect of Plot Number 1210 is valid and has not been canceled by any competent authority and so the petitioners cannot use the order obtained in this case to forcibly evict him or demolish his houses and thus breach his constitutional right under Article 40 and 40(3) of [*the Constitution*](#) to own property and adequate housing respectively, and then around and claim that he has violated a court order. He asserts that the petitioners live in Chasimba more than 4 km away from the land and they have never occupied either plot number 1210 or 695 or their own plot Title Number 438. Instead of plowing their own Title Number 438 they have been forcibly cultivating plots number 1210 and 695.
17. He avers that he does not have any claim to Plot Number 438 and he has not encroached there on. On the basis of the foregoing statements he denies having breached any court order.
18. The applicant filed as supplementary affidavit dated 25th June 2024 also sworn by the third applicant. In that affidavit it was stated as follows: the petitioners' fathers were the registered owners of Plot Number 438 during the adjudication process. Before the adjudication process, Land Case Number 3 Of 1979 had been concluded in their favor granting them the land. The father to the 6th respondent was charged and convicted of trespassing on the suit property in 1982. The respondent has no claim to Plot Number 438. The area was declared an Adjudication Section in 1995 and the suit property was registered in the names of the petitioners' fathers; that the conservatory orders were issued after the hearing of all parties on 2nd October 2015; that it has not been denied that the court order was served on the respondent. That Plot Number 1210 was not in existence as at the time the respondent was born. Consequently, his allegation that he was born there on in 1967 are false. The plot was hived off from Plot Number 438 illegally during the adjudication process and which is one of the issues for determination in the petition herein.
19. It is denied that the applicant conducted raids on the premises, and it is alleged that it is respondent who pulled down his own properties in an attempt blame it on the petitioners. That owing to the manner in which titles to Plot Number 695 and 1210 were procured which is an issue in this petition, the respondent cannot claim that he holds title to the same.



Submissions

20. The applicants filed their submissions dated 8th July 2024 on the application. The respondent filed his submissions dated 19th July 2024. I have considered both sets of submissions in preparation of this ruling.

Analysis And Determination

21. The issue for determination before the court is whether the 2nd respondent is guilty of contempt of court as alleged by the applicants.
22. Section 29 of the *Environment and Land Court Act*, provides as follows:

“29. Offences

Any person who refuses, fails or neglects to obey an order or direction of the Court given under this Act, commits an offence, and shall, on conviction, be liable to a fine not exceeding twenty million shillings or to imprisonment for a term not exceeding two years, or to both.”

23. Order 40 rule (3) of the Civil Procedure Rules (2010) provides that in cases of disobedience, or of breach of any terms of a temporary injunction, the court granting that 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.
24. It is thus clear that this court has legal power to punish contemnors.
25. The ingredients of an offence of contempt are as follows:
- a. Existence of the order said to have been breached;
 - b. Knowledge of that order by the respondent;
 - c. Wilful disobedience of the order by the respondent.
26. The existence of the order alluded to by the petitioners in this case is not in doubt.
27. Neither the existence nor service and knowledge of the order issued by this court on 2nd October 2015 is in controversy. The respondent appears to be quite aware of that order even in his response to the committal application. Court orders must be obeyed. Ibrahim J as he then was in *Econet Wireless Kenya Ltd v Minister for Information & Communication of Kenya & another* [2005] KLR 828 stated as follows:

“It is essential for the maintenance of the rule of law and order that the authority and the 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 whom an order is made by court of competent jurisdiction, to obey it unless and until the 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 the order believes it to be irregular or void.”



28. However, what I find the respondent to be saying in his defence is that he has not wilfully disobeyed the court order.
29. The respondent's defence is that he has been living on Plot Number 1210 since he was born and he has no interest in Plot Number 438 registered in the name of the petitioners. He avers that petitioners have failed to utilize Plot Number 438 in preference for Plot Numbers 1210 and 695 which are not registered in the petitioners' names. The only outstanding issue therefore in the present application is whether there has been wilful breach of the order.
30. Proof of contempt is usually above the standard normally applied to proof of matters in civil cases; it is above the balance of probabilities.
31. Having regard for the respondent's defence in determining the present application therefore, the framing of the orders issued by this court on 2nd October 2015 is relevant. That order reads as follows:
- “A conservatory order restraining the first up to the 10th respondents by themselves agents... from entering into planting cultivating subdividing.... howsoever interfering with the petitioners' ownership and quiet position and enjoyment of all that piece or parcel of land known as Plot Number 438 Pingilikani Adjudication Section Kilifi currently encompassing title numbers Kilifi/Pingilikani/438 695 and 1210) as it was in 1979 and/or at the onset of the adjudication pending the hearing and determination of this petition.”
32. It is thus clear that the focus of that order is "plot number 438 Pingilikani Adjudication Section Kilifi as it was in 1979 and or at their own set of adjudication."
33. Does "Plot Number 438 Pingilikani Adjudication Section, as it was in 1979 or at the onset of the adjudication process," still exist? The answer to this question has been answered by both parties whom as I have stated before admit that plots number 695 and 1210 we are carved out of Plot No 438 and independent properties bearing their own title deeds.
34. Both parties thus agree on one thing: Plot Numbers 695 and 1210 were hived out of Plot Number 438 and the propriety of such excision or subdivision is an issue for determination in these proceedings. That is an express admission that the Plot No 438 does not exist on the ground as it was in 1979 unless it is reconstructed by order of a competent court. It mutated into three different plots and titles thereto have issued. Sections 25 and 26 of the [Land Registration Act](#) provide as follows:

“25.

- (1) The rights of a proprietor, whether acquired on first registration or subsequently for valuable consideration or by an order of court, shall not be liable to be defeated except as provided in this Act, and shall be held by the proprietor, together with all privileges and appurtenances belonging thereto, free from all other interests and claims whatsoever, but subject—
- (a) to the leases, charges and other encumbrances and to the conditions and restrictions, if any, shown in the register; and
- (b) to such liabilities, rights and interests as affect the same and are declared by section 28 not to



require noting on the register, unless the contrary is expressed in the register.

- (2) Nothing in this section shall be taken to relieve a proprietor from any duty or obligation to which the person is subject to as a trustee.

26.

- (1) The certificate of title issued by the Registrar upon registration, or to a purchaser of land upon a transfer or transmission by the proprietor shall be taken by all courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner, subject to the encumbrances, easements, restrictions and conditions contained or endorsed in the certificate, and the title of that proprietor shall not be subject to challenge, except—
 - (a) on the ground of fraud or misrepresentation to which the person is proved to be a party; or
 - (b) where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.”

35. If the law exists as per the provisions set out herein above, and, further this court recognized in its ruling of 2/10/2015 that an appeal to the Minister under Cap 84 has not been determined, issue before this court is not as simple as examining whether the respondent went to the land or cultivated and upon establishing that, jail him or fine him for contempt of the court order. The issue is much more complex. The final rights of the parties to own sub-plots carved out of Plot No 438 are in issue in this petition and have not been determined. This is unlike a case where a respondent completely lacks title or registered interest in disputed land.
36. The very explicit fact before this court is that at the present moment Plot Number 695, 1210 and 438 are three different plots with three different title deeds. The respondent’s response depicts the petitioners as having omitted to exploit or utilize the existing Plot Number 438 Pingilikani registered in their name in favor of invading plot number 695 and 1210.
37. It is noteworthy that the claim by the respondent the applicants have failed to utilize Plot Number 438 has not been denied at all. In this court’s opinion if that plot was to be taken over by persons other than the respondent, the latter is not to blame since he is concentrating on the Plot Number 1210 which he believes is rightfully his as a title has been issued in his name among other people. In any event the apprehension that there are other persons who may invade the petitioners land is still unsubstantiated.
38. This is litigation in which the parties’ registered private interests’ owners are still battling it out for supremacy. The eventuality of declaring legal or illegal the excision of Plot Number 695 and 1210 from Plot Number 438 has not yet been arrived at in these proceedings or in any other litigation. Further, the persons involved in this case are related by blood: what also emerges from the ruling is that the petitioners and the respondents belong to one clan and the provisions of *the constitution* in Article 45 charge the state with the protection of family.



39. Also, this is a petition that was filed in the year 2014 yet for some reason it has not been concluded 10 years later. The applicants much to their discredit in relation to the reasons for the longevity of the present petition, and raising the possible spectre of deliberate delay of the case, have attempted to paint a picture of a situation where other people are becoming encouraged to invade the land and occupied on the basis of the respondent example and I do not think this is the correct position on the ground. This is not an issue of “squatters” competing for a registered owners’ title by way of adverse possession. Use and occupation may matter in this case, but this court hardly thinks that this is a matter in which use and occupation of the suit land occurring after the filing of the petition rank so highly that they may defeat either the petitioner’s or the respondents’ claims; clearly, the parties’ respective claims are hinged on other material antecedents dating back before the filing of the present petition, and they are all well documented.
40. As they are born of an adjudication process sanctioned by the law, the title deeds to Plots Nos 695 and 1210 are recognized under the Land Registration Act unless and until they have been successfully challenged and canceled by a competent court of law which has not yet happened. However, delving further into that line of argument may end up prejudicing or embarrassing the trial of the petition hearing and this court is disinclined to make any further observations in that regard. However, ineluctably so, the respondent is right when he says that his title, issued and protected title under the law and the Constitution, has not been cancelled; this court will add the words: “for now” to that his statement, for the fate of this litigation is not yet known.
41. Title that is inexistence is protected by law. I have examined the provisions of Sections 25 and 26 of the Land Registration Act herein above. Article 40(1) of the Constitution provides for the protection of the right to own property and as long as a title has not been canceled it is deemed to be property protected by the law and the Constitution. I have examined the ruling dated 2nd October 2015 relied on by the petitioners. In that ruling the court recognized that the last decision that exists and which was made under the adjudication process was the Arbitration Board decision in favor of the respondents who were said to be “on the ground”; in the same ruling this court indicated that the respondents claimed to have their homesteads on plot number 1210; meaning they were in occupation of the suit land in so far as it describes the plot now referred to as “1210”. It is indicated that an appeal to the Minister was lodged but no decision therefrom has been exhibited.
42. In this court’s view insofar as the birth of that Plot No 1210 is traceable to the adjudication processes whose Arbitration Board proceedings reflected occupation by his familial predecessors long before the present suit was filed, the mere presence of the respondent on that plot is not conclusive basis upon which this court should hold the respondent in contempt unless and until a substantive decision is made by a competent court declaring the said title to that plot invalid.
43. Therefore, having considered the existence of title to the parcel occupied by the respondent and out of respect for the provisions of Section 26 of the Land Registration Act and Article 40(1) of Constitution of Kenya 2010 and in view of the pendency of this petition, and also in view of the fact that a petition is a constitutional proceeding premised on the constitution which guards the rights of all parties regardless of status, it would be inimical the administration of justice if this court were to exercise its power and punish the respondent for apparent contempt only for it to turn out at the substantive determination of the petition that he was right after all.
44. This court thus finds that the application for committal of the 2nd respondent lacks merit and it is hereby dismissed with costs.

DATED, SIGNED AND DELIVERED AT MALINDI VIA ELECTRONIC MAIL ON THIS 3RD DAY OF APRIL 2025.



MWANGI NJOROGI
JUDGE, ELC, MALINDI.

