



**Otieno v Ndirangu (Environment and Land Appeal E036 of 2023)
[2025] KEELC 3949 (KLR) (23 May 2025) (Ruling)**

Neutral citation: [2025] KEELC 3949 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT AND LAND APPEAL E036 OF 2023**

**A OMBWAYO, J
MAY 23, 2025**

BETWEEN

KEFA OMUYOMA OTIENO APPLICANT

AND

FRANCIS GATHAMBO NDIRANGU RESPONDENT

RULING

1. The Respondent/Applicant herein filed an application under certificate of urgency dated 1st March 2025 seeking orders that there be a stay of execution of the order issued on 17th January 2025 together with all consequential orders emanating therefrom and that in the event the Respondent/Applicant has been arrested, he be released from jail immediately and/or with reasonable terms and conditions as he is a person of straw. That in case the Respondent/Applicant has been sent to jail, he be released unconditionally and/or with reasonable bond terms as this Honourable Court may deem fit.
2. The applicant prayed that the orders issued on 17th January 2025 be set aside and the application dated 6th June 2024 be listed for hearing on merit inter partes. Lastly, that the costs of this application be provided for. The Appellant/Respondent opposes the application in its entirety and relies on the Replying Affidavit sworn on 11TH March 2025.
3. I have considered the application, reply and rival submissions and do find that the facts of the case are that the Appellant (hereinafter referred to as the Respondent), appealed against the judgment and decree of the Honourable A. Mukenga delivered on 8TH November 2023 in Molo CMC ELC No. 23 of 2020. Accompanying the appeal, the Respondent filed a Notice of Motion dated 7th February 2024, seeking an order of temporary injunction, pending the hearing and determination of the appeal. The injunction sought to restrain the Respondent/Applicant (herein after the Applicant) from dealing with entering, remaining on, constructing, selling, alienating, trespassing, interfering with, charging, or in any other way dealing with the parcel of land known as L.R No. 40836/43, situated in Kangawa Area, measuring approximately 1.25 acres. The application was based on the grounds that the lower



court had ruled that the suit was time-barred, holding that the applicable limitation period for contracts relating to land was six years, instead of twelve years as argued by the Respondent.

4. The Respondent contended that he had appealed the decision and that unless the injunction was granted, any impending eviction would cause substantial loss and irreparable prejudice.
5. Upon hearing the application, this Honourable Court granted injunctive orders on 11th April 2024, restraining the Applicant from interfering with the suit property pending the hearing and
6. determination of the appeal. On 1st May 2024, the Applicant was duly served with the Court's orders and acknowledged receipt by signing on the back of the document. I do find that in breach and disobedience of the Court's orders, the Applicant destroyed and broke down the Respondent's fence on the suit land. Additionally, the Applicant herein continued to block the Respondent herein from accessing the land by employing thugs and goons who chased away the Respondent and his workers whenever they attempt to cultivate the land. Despite being personally served with the orders and being fully aware of their existence, the Applicant flagrantly disregarded them, undermining the integrity of the Court's authority.
7. I do find that the Respondent herein served the Applicant with notices to comply with the Court's orders, but the Applicant ignored these notices and failed to comply. On 16th January 2025, the Applicant, Francis, was subsequently held in contempt by the Court for disobeying the orders issued on 11th April 2024. As a result, the Court directed that the Applicant herein be committed to civil jail for two months. Alternatively, the Court ordered that the Applicant herein pays a fine of two hundred thousand. Following the same warrant of arrest were issued which consequently led to the Applicant filing this instant application.
8. I do find that the application lacks merit and is a misuse of the Court process. The Applicant has failed to comply with the Court's orders, and instead of complying seeks to frustrate the judicial process. The applicant cannot approbate and reprobate; he cannot disregard the Court's authority and later seek its discretionary relief.
9. I agree that Equity does not assist a party who is guilty of disobedience to Court orders as held in *Shimmers Plaza Limited v National Bank of Kenya Limited* (Civil Appeal 33 of 2012) [2015] KECA 945 (KLR) while citing Romer; L.J. In *Hadkinson v Hadkinson*, [1952] ALL ER 567,

It is the plain and unqualified obligation of every person against, or in respect of, whom an order is made 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. Lord Cottenham, L.C., said in *Chuck v Crenner (1)* (1 Coop. temp. Cott 342):

"A party, who knows of an order, whether null or valid, regular or irregular, cannot be permitted to disobey it... It would be most dangerous to hold that the suitors, or their solicitors, could themselves judge whether an order was null or valid: whether it was regular or irregular. That they should come to the court and not take upon themselves to determine such a question. That the course of a party knowing of an order, which was null or irregular, and who might be affected by it, was plain. He should apply to the court that it might be discharged. As long as it exists it must not be disobeyed." The Applicant has not demonstrated any legal basis for the relief he seeks, and as such, the application has no basis. The application is dismissed with costs

SIGNED BY: HON. JUSTICE ANTONY O. OMBWAYO

**THE JUDICIARY OF KENYA. NAKURU ENVIRONMENT AND LAND COURT
ENVIRONMENT AND LAND COURT**



DATE: 2025-05-23 11:16:29

THE JUDICIARY OF KENYA

