



**Embakasi Jua Kali Housing Association (Suing through James Billy O Anunda -Charman, Meshack O Magati - Secretary & John Muya - Treasurer) v Embakasi Developers Ltd & 5 others (Enviromental and Land Originating Summons 1002 of 2015) [2025] KEELC 3542 (KLR) (6 May 2025) (Ruling)**

Neutral citation: [2025] KEELC 3542 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIROMENTAL AND LAND ORIGINATING SUMMONS 1002 OF 2015  
CA OCHIENG, J  
MAY 6, 2025**

**BETWEEN**

**EMBAKASI JUA KALI HOUSING ASSOCIATION (SUING THROUGH JAMES BILLY O ANUNDA - CHARMAN, MESHACK O MAGATI - SECRETARY & JOHN MUYA - TREASURER) ..... PLAINTIFF**

**AND**

**EMBAKASI DEVELOPERS LTD ..... 1<sup>ST</sup> RESPONDENT  
NAIROBI CITY COUNTY ..... 2<sup>ND</sup> RESPONDENT  
RASIKKUMAR DAIHYABHAI PATEL ..... 3<sup>RD</sup> RESPONDENT  
BHANUMATIBEN PATEL RASIKBHAI ..... 4<sup>TH</sup> RESPONDENT  
JAMES MURIGI WANJIKU ..... 5<sup>TH</sup> RESPONDENT  
LYDIA ODONGO ..... 6<sup>TH</sup> RESPONDENT**

**RULING**

1. What is before Court for determination is the Plaintiff’s Notice of Motion application dated the 11<sup>th</sup> November 2024 where it seeks the following Orders:
  - a. Spent.
  - b. Spent.
  - c. Spent.



- d. That pending the hearing and determination of this suit, the 1<sup>st</sup> and 2<sup>nd</sup> Respondents be restrained by themselves, their agents or servants from interfering in any manner whatsoever with the Applicants' possession and enjoyment of the suit properties formerly existing infrastructure in the suit properties formerly LR No. 7109/3, LR No. 7109/4, LR No. 7109/5 and LR No. 7109/3 whether through sale or otherwise.
  - e. That pending the hearing and determination of this suit the 1<sup>st</sup> and 2<sup>nd</sup> Respondents be restrained by themselves, their agents or servants from interfering in any manner whatsoever with the existing infrastructure in the suit properties formerly LR No. 7109/3, LR No. 7109/4, LR No. 7109/5 and LR No. 7109/7.
  - f. That this Honourable court be pleased to declare and hold that, having been served/having been aware of the order made by this Honourable Court on 26<sup>th</sup> September 2024 dismissing the 1<sup>st</sup> Defendant's application seeking declaratory orders that a compromise had been reached between the Plaintiff and the 1<sup>st</sup> Defendant in terms that every member of the Plaintiff/ occupier of a plot on either formerly LR No. 7109/3, LR No. 7109/4, LR No. 7109/5 and LR No. 7109/7 respectively as of the time this suit was filed in 2015 has a right to purchase the same from the 1<sup>st</sup> Defendant at the market place within the period agreed between the two parties, the Respondents have disobeyed the same by having pamphlets distributed in the area where the Plaintiffs occupy and reside advertising the said parcels for sale under the same terms.
  - g. That the said Respondents members of the Board of the 1<sup>st</sup> Defendant be committed to civil jail for a period of 6 months each or any other period, or any other or further section, as this court may deem fit and appropriate.
  - h. That costs of this application be provided for.
2. The application is premised on grounds on its face and on the supporting affidavit of Meshack Magati, a secretary of the Plaintiff. He explains that vide an application dated the 16<sup>th</sup> October 2023, the 1<sup>st</sup> Defendant sought a declaration that, it has compromised this suit with the Plaintiff in terms that every member of the Plaintiff/occupier of a plot on either former LR No. 7109/3 or former LR No. 7109/4 or former LR No. 7109/5 or former LR No. 7109/7 respectively as of the time this suit was filed in 2015, has a right to purchase the same from the 1<sup>st</sup> Defendant at the market price, within the period agreed between the two parties. The Court vide its Ruling dated the 26<sup>th</sup> September 2024, dismissed the said application.
  3. He states that the 1<sup>st</sup> Defendant through its directors published an advertisement at page 11 of the Daily Nation Newspaper of Friday 25<sup>th</sup> October, 2024, under the same terms as those contained in the application dated the 16<sup>th</sup> October 2023, which was dismissed on 26<sup>th</sup> September 2024. He contends that the 1<sup>st</sup> Defendant's action was followed by it dropping pamphlets in the area occupied by the Plaintiff's members, in which it claimed that the suit properties were up for sale under similar terms as the impugned advertisement. Further, that the advertisement was couched in terms and a manner to defeat the Plaintiff's suit by illegally interfering with the subject matter before court, yet the question of ownership of the suit properties is pending determination. He avers that unless the orders for injunction are granted, the Plaintiff's case will be rendered nugatory.
  4. He reaffirms that when the Respondents advertised the suit properties for sale, they were well aware of the orders contained in the Ruling of 26<sup>th</sup> September 2024 and unless they are punished for contempt, they will continue to illegally rewrite this court's orders issued on 26<sup>th</sup> September 2024.



5. The application is opposed by the 1<sup>st</sup> Defendant vide its Grounds of Opposition. It contends that the application is res judicata thus an abuse of court process. Further, that unless the Plaintiff's relief for adverse possession is granted, it has no locus standi to seek the injunction sought and that no prima facie case has been demonstrated.
6. In response to the 1<sup>st</sup> Defendant's reply, the Plaintiff filed a further affidavit sworn by Meshack Magati. He avers that the Plaintiff is clothed with rights over the suit properties since its members are in possession. Further, that the Plaintiff are part-owners /shareholders of the 1<sup>st</sup> Defendant by virtue of a Share Agreement entered into with the 1<sup>st</sup> Defendant in which, the Plaintiff was purchasing the 1<sup>st</sup> Defendant and all its assets, which are the suit properties herein and by virtue of the Plaintiff having paid a substantive amount towards the purchase of the said shares and having catered for all the subdivision costs to enable the finalization of the payment of the share purchase price.
7. The application was canvassed by way of written submissions.

### Submissions

8. The Plaintiff in its submissions contends that it has established a prima facie case to warrant the orders as sought as it has demonstrated how its members acquired title to the suit properties through adverse possession. Further, that its members are still on the said land. It insists that by performing its obligations as required in the Share Purchase Agreement between the 1<sup>st</sup> Defendant and itself, it is clothed with proprietary rights over the suit properties, which rights warrant protection by an order of injunction. Further, that its members loss of possession and control over the suit properties through the actions of the Defendants would not only disrupt their acquired legal and equitable rights but would also lead to irreversible consequences that this court would not be able to redress. It reiterates that the balance of convenience tilts heavily in its favour. It asserts that the Respondents have greatly undermined the authority of this court hence they ought to be punished. It insists that the 3<sup>rd</sup> - 6<sup>th</sup> Respondents should be found liable for contempt and be sanctioned to pay a fine of Kshs. 10,000,000 / = each and serve a sentence of six (6) months each, so as to deter them from future disregard of the law. To buttress its averments, it relied on the following decision: *Giella v Cassman Brown & co. Ltd* [1973] EA 358
9. The 1<sup>st</sup> Defendant/Respondent in its submissions insists that the instant application is frivolous and an abuse of the Court process as the Plaintiff has no proprietary rights that need to be protected by this court. Further, that its proprietary rights are protected under Section 25 of the [Land Registration Act](#) and are not liable to be defeated except as provided in the Act. It reiterates that the instant application offends the provisions of section 7 of the [Civil Procedure Act](#).
10. It is pointed out that the Plaintiff has filed other suits including HCCC No.116 of 2000: *Makau Mutie, Joshua Owino and Joseph Njoroge (Suing on behalf of Mukuru Embakasi Jua Kali Association) v Concreters Limited and Embakasi Developers Limited* which was consolidated with HCCC No. 299 of 1999: [Embakasi Developers Limited v Councilor Simon Mwatolo Muteti, The Seventh Day Adventist Church E.A Union, Pastor Joshua Obuya, Pastor James Mutie and Pastor John Mutwiri](#) where an injunction was issued restraining the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants in the matter from interfering with the Plaintiff's use of the parcels known as: formerly LR No.7109/5 and 7109/7 which were amalgamated, subdivided and converted into titles No's Nairobi/Block 263/4091-4607 pending the final determination of the suit. It is also pointed out that the Plaintiff also filed ELC Civil Suit No. 456 of 2010 (O.S) [James Billy O. Anunda, John Muya, Njoki Wainaina \(Suing on behalf of Embakasi Jua Kali Housing Association v Embakasi Developers Limited and City Council](#).



11. To support its averments, it relied on the following decisions: *Stephen Somek Takwenyi & another v David Mbutia Githare & 2 Others* Nairobi (Milimani)HCCC No. 363 of 2009; *Rev. Madara Evans Okanga Dondo v Housing Finance Company of Kenya* Nakuru HCC No. 262 of 2005; *Independent Electoral & Boundaries Commission v Maina Kiai & 5 Others* [2017] eKLR *Lotta v Tanaki* [2003] 2 EA 556 and *Uhuru Highway Development Limited v Central Bank of Kenya & 2 Others* [1996] eKLR.

### Analysis and Determination

12. Upon consideration of the instant Notice of Motion application including the affidavits, Grounds of Opposition and rivalling submissions, the following are the issues for determination: Whether the Plaintiff has met the threshold for grant of an interlocutory injunction restraining the Respondents from interfering with the suit properties pending outcome of this suit. Whether the Respondents are in contempt of this court's orders issued on 26<sup>th</sup> September 2024.

As to whether the Plaintiff has met the threshold for grant of an interlocutory injunction restraining the Respondents from interfering with the suit properties pending outcome of this suit.

13. The Plaintiff seeks an interlocutory injunction to restrain the Respondents from interfering with the suit properties on the ground that its members are in possession of the suit properties, which ownership is yet to be ascertained. Further, that its members are clothed with rights as part owners /shareholders of the 1<sup>st</sup> Respondent/Defendant pursuant to a Share Purchase Agreement between them.
14. On its part, the 1<sup>st</sup> Respondent/Defendant contends that the application is an abuse of court process and that the Plaintiff lacks locus to file the application since it has no proprietary rights over the suit properties.
15. On the Plaintiff's prayer for an injunction, I will rely on the case of *Giella v Cassman Brown* (1973) EA 358 which sets out the essential conditions to be satisfied by an Applicant that seeks injunctive orders.
16. On perusal of the Court record, I note the Plaintiff had filed an application dated the 8<sup>th</sup> October, 2015 seeking injunctive orders as against the Defendants in respect to the suit properties and Lady Justice L. Gacheru vide her very exhaustive Ruling dated the 10<sup>th</sup> March, 2017 dismissed the said application. Further, in the said Ruling, I note she stated that the Plaintiff in ELC 456 of 2010 had obtained orders of interlocutory injunction against the Defendants but when the Defendants filed an application seeking to strike out that suit, the Plaintiff withdrew it.
17. In my view since an earlier application seeking orders of injunction had been determined on merit, the instant application amounts to an abuse of the court process (see the case of *Muchanga Investments Limited vs Safaris Unlimited (Africa) Ltd & 2 others* Civil Appeal No. 25 of 2002 (2009) eKLR). Further, I find that the instant application should be deemed as res judicata as it offends the provisions of section 7 of the *Civil Procedure Act*. I opine that the Plaintiff's action of filing a fresh application seeking similar orders is improper. In the circumstances, noting that the Plaintiff's members are not the registered proprietors of the suit properties, I find that they have not established a prima facie case to warrant the orders of temporary injunction as sought.

As to whether the Defendants/Respondents are in contempt of this Court's orders issued on 26<sup>th</sup> September 2024.

18. The Plaintiff explains that vide this Court's Ruling of 26<sup>th</sup> September 2024, the 1<sup>st</sup> Respondent/Defendant's application dated the 16<sup>th</sup> October 2023 was dismissed. In the said application, the 1<sup>st</sup> Respondent/Defendant sought for a settlement of the suit in terms that every member of the Plaintiff/



- occupier of the suit plots, had a right to purchase the same from the 1<sup>st</sup> Defendant at the market price agreed between them and within the period agreed between the two parties.
19. It contends that even after dismissal of the said application, the 1<sup>st</sup> Respondent/Defendant through its directors went ahead to publish an advertisement at page 11 of the Daily Nation Newspaper of Friday 25<sup>th</sup> October, 2024 under the same terms as those contained in the application dated the 16<sup>th</sup> October 2023. It therefore seeks orders to have the Respondents cited for contempt of court.
20. *Black's Law Dictionary* (Tenth Edition) defines contempt of court as follows:
- “Conduct that defies the authority or dignity of a court. Because such conduct interferes with the administration of justice, it is punishable usually by fine or imprisonment.”
21. While Section 29 of the *Environment and Land Court Act* states that:
- “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.”
22. Further, section 4(1) (a) of the *Contempt of Court Act* defines civil contempt as:
- “Willful disobedience of any judgement, decree, direction, order, or other process of a court or willful breach of an undertaking given to a court”.
23. In the case of *North Tetu Farmers Co. Ltd v. Joseph Nderitu Wanjobi* (2016) eKLR, Justice Mativo (as he then was) provided parameters on civil contempt and stated inter alia:
- “Writing on proving the elements of civil contempt, learned authors of the book *Contempt in Modern New Zealand* have authoritatively stated as follows:-
- “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 - (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 order; (c) the defendant has acted in breach of the terms of the order; and (d) the defendant's conduct was deliberate.’
24. While in *Mutitika v Baharini Farm Ltd* [1985] eKLR, the Court of Appeal held;
- In our view the standard of proof in contempt proceedings must be higher than proof on the balance of probabilities, almost but not exactly, beyond reasonable doubt. We envisage no difficulty in courts determining the suggested standard of proof. The standard of proof beyond reasonable doubt ought to be left where it belongs, to wit, in criminal cases.
25. See also the case of *Teachers Service Commission vs. Kenya National Union of Teachers & 2 Others* [2013] eKLR.
26. From a reading of the impugned Ruling delivered on 26<sup>th</sup> September, 2024, I find that the Plaintiff has failed to demonstrate which portion of the said Ruling, the 1<sup>st</sup> Defendant/Respondent and all other Respondents have contravened.
27. Based on the facts before Court while associating myself with the decisions cited above, I opine that there is no clear nor indicated Order issued on 26<sup>th</sup> September, 2024 which the Respondents/



Defendants have violated. In my view, there was no indication in the impugned Ruling, that the Respondents/Defendants were barred from advertising or selling the plots emanating from the suit properties. In that regard, I find that the Respondents/Defendants have not acted in breach of the Orders of this Court dated the 26<sup>th</sup> September, 2024, as claimed by the Plaintiff.

28. It is against the foregoing that I find the Plaintiff's Notice of Motion application dated the 11<sup>th</sup> November 2024 unmerited and will dismiss it with costs.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 6<sup>TH</sup> DAY OF MAY 2025**

**CHRISTINE OCHIENG**

**JUDGE**

**In the presence of:**

Otao holding brief for Esachi for Plaintiff/Applicant

Ms Nyakundi holding brief for Koceyo for 2<sup>nd</sup> Defendant

Gakunju holding brief for Elijah Mwangi for 1<sup>st</sup> Defendant

Court Assistant: Susan

