



Greenbelt Movement v Nairobi City County Government & 3 others; Law Society of Kenya & 12 others (Interested Parties) (Environment and Planning Petition E033 of 2024) [2025] KEELC 4413 (KLR) (5 June 2025) (Ruling)

Neutral citation: [2025] KEELC 4413 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND PLANNING PETITION E033 OF 2024**

**AA OMOLLO, J
JUNE 5, 2025**

BETWEEN

THE GREENBELT MOVEMENT PETITIONER

AND

**THE NAIROBI CITY COUNTY GOVERNMENT 1ST RESPONDENT
COUNTY EXECUTIVE COMMITTEE MEMBER, BUILT ENVIRONMENT &
URBAN PLANNING 2ND RESPONDENT
WATER, FOOD AND AGRICULTURE 3RD RESPONDENT
NAIROBI COUNTY DIRECTOR OF PHYSICAL AND LAND USE
PLANNING 4TH RESPONDENT**

AND

**THE LAW SOCIETY OF KENYA INTERESTED PARTY
NATURAL JUSTICE INTERESTED PARTY
KATIBA INSTITUTE INTERESTED PARTY
KILIMANI PROJECT FOUNDATION INTERESTED PARTY
MATHARE SOCIAL JUSTICE CENTRE INTERESTED PARTY
KAMUKUNJI HUMAN RIGHTS DEFENDERS INTERESTED PARTY
KIAMAIKO SOCIAL JUSTICE CENTRE INTERESTED PARTY
MAKADARA SOCIAL JUSTICE CENTRE INTERESTED PARTY
KIBERA COMMUNITY JUSTICE CENTRE INTERESTED PARTY
KARIOBANGI SOCIAL JUSTICE CENTRE INTERESTED PARTY**



KASARANI SOCIAL JUSTICE CENTRE INTERESTED PARTY
NGONG SOCIAL JUSTICE CENTRE INTERESTED PARTY
UTALII YOUTH GROUP INTERESTED PARTY

RULING

1. The Petitioners/Applicants filed a notice of motion dated 12th February 2025 seeking for the following orders;
 - a. That John Paul Malawi being the Director, Environment at Nairobi City County, the 1st Respondent be summoned before this Honourable Court to show cause why he should not be committed to civil jail for blatantly, and maliciously on oath lying to the court as to the proprietary of opening of Uhuru Park and Central Park and further failing to comply with the court orders issued by Honourable Justice A. Omollo on 16th December 2024.
 - b. That Geoffrey Mosiria being the County Executive Committee Member, Environment, Water, Food and Agriculture the 3rd Respondent be summoned before this Honourable Court to show cause why he should not be committed to civil jail for blatantly failing to comply with the court orders issued by Honourable Justice A. Omollo on 16th December 2024.
 - c. That on failing to show necessary cause, John Paul Malawi and the 2nd Respondent be condemned to pay a fine, be committed to civil jail for a maximum period of six (6) months or both, for contempt/disobedience of orders issued by Honourable Justice A. Omollo on 16th December 2024.
 - d. That Officer Commanding Central Police Station at Capital Hill Police Station Nairobi do execute the Order 4 herein.
 - e. That cost of this application be borne by the Respondents.
2. The motion was supported by affidavits sworn by Harry Karanja and Nyaguthie Chege on 12th February 2025. The grounds for the motion were that parties attended Court on numerous occasions leading up to the 16th of December 2024 when the application was allowed in terms of prayer 3 thereto. That prior to this, on the 13th of December 2024, Mr. John Paul Malawi, swore an affidavit deposing to this Court that Uhuru Park and Central Park had been re-opened to the public a fact he knew to be false and meant to defeat the ends of justice for the members of public represented in this Petition.
3. That on the 16th of December 2024, the Court upon hearing the parties issued the Order for the immediate opening of Central Park but the orders have neither been acted upon nor honoured by the Respondents, despite them carrying a penal notice for non-compliance. The Petitioners state that the public is not only entitled to access the park, but the Respondents being public officers should always work to comply with orders of this Court.
4. That obedience of a court order is fundamental to the administration of justice and the rule of law and the Applicants are apprehensive that they may not have another way to ensure compliance with the orders of the Court as there exists no other way of enforcing the said orders unless the orders sought here are granted.
5. In support of the application, the interested party filed an affidavit sworn by Florence Muturi on 4th March 2025 stating that the application arises from the Respondents' continued refusal to comply



with a court order issued on 16th December 2024, which required the immediate reopening of Central Park to the public. She deposes that despite being fully aware of the order and given reasonable time to comply, the Respondents have defied the court's instructions, keeping the park closed, a conduct that undermines the authority of the court, violates public rights, and threatens the rule of law. They emphasized that ignoring court orders damages public trust and sets a dangerous precedent, encouraging lawlessness.

6. In opposition of the filed motion, the 1st, 2nd, 3rd and 4th Respondents filed two replying affidavits, one sworn by John Paul Malawi, the director for Environment at the Nairobi City County and the other sworn by Geoffrey Mosiria, Chief Officer at the Nairobi City County on 3rd March 2025. Geoffrey Mosiria contend that he is not the County Executive Committee Member in charge of Environment, Water, Food and Agriculture as put by the Applicants.
7. The Respondents stated that the Applicants have failed to demonstrate the elements required in contempt proceedings being; the terms of the order (or injunction or undertaking) were clear and unambiguous and were binding on the defendant, the defendant had knowledge of or proper notice of the terms of the order, the defendant has acted in breach of the terms of the order and the defendant's conduct was deliberate.
8. The Respondents aver that they have taken steps to ensure full compliance with the orders of the court including initiating the necessary administrative processes to facilitate full compliance. That due to budgetary constraints, full implementation of the orders has taken and will require more time than had been anticipated.
9. Mr. Malawi stated that prior to the issuance of the orders, the Central park was open for the contractor to complete the remaining works but has been closed for revitalization and is still under the Kenya Defence Forces who is the project manager and is yet to hand it over to the Respondents. She highlighted that there are unfinished works thus not safe to allow the public full access and that full reopening involves multi-agency coordination, security assessments and infrastructural readiness.
10. He added that Uhuru Park was reopened on 28th September 2024 and any discrepancies as regards the Central Park's accessibility were not intentional but rather attributable to the evolving circumstances regarding its accessibility. He argued that finding of guilt for contempt of court must be exercised with great circumspection and an order committing a party for contempt of court should be adopted as a measure of last resort and in clearest of cases.

Submissions

11. The Applicants filed written submissions dated 9th May 2025 in support of their motion while the Respondents filed their submissions dated 26th May 2025.
12. In their submissions, the petitioners stated that the key issues for determination is whether the Respondents' actions constitute contempt of court and whether the court should grant the relief sought. They stated that it is established that contempt of court is intrinsic to judicial authority, and failure to comply with court orders undermines the rule of law. In support, they cited the case of Samuel M. N. Mweru & Others v National Land Commission and Christine Wangari Gachege vs. Elizabeth Wanjiru Evans & 11 Others, which affirmed that courts possess inherent powers and that failure to comply with orders can result in punitive actions.
13. Further, the petitioner argues that the court order was clear and binding, and the Respondents' failure to act in accordance with it amounts to deliberate contempt. That in civil contempt proceedings, it is



essential that the terms of the court order are clear, the defendant has proper notice, and their actions breach the order deliberately.

14. In this case, it is submitted the Respondents had sufficient notice of the court order and chose to ignore it. Thus citing lack of resources is not a valid excuse for non-compliance, as was established in cases like *Republic v Nairobi City County & 3 Others* where the court rejected the excuse of insufficient funds for failing to implement a court order. The petitioners assert that without enforcing court orders, the judicial process would lose its credibility and effectiveness and the Respondents' defiance of the order poses a serious threat to public trust and judicial authority.
15. The Respondents submitted that the Applicants had not established the four elements that must be proved to make a case for civil contempt. These four elements being; the terms of the order must be clear, the Defendant had knowledge of the terms of the order, the order has been breached and the Defendant's conduct was deliberate.
16. The Respondents cited the case of *Katsuri Ltd vs Kapurchand Depar Shah (2016)* for the proposition that proof must be made that the Defendant's conduct was deliberate. It is their argument that the Petitioners have not demonstrated willful failure or malafides on the part of the Respondents. They urged the court to find the present application as premature, unnecessary and undeserving.

Analysis and Determination:

17. The issue for determination is whether the two persons named in the application are guilty of contempt of court and if yes, should they be punished for the contempt. In the case of *North Tetu Farmers Co. Ltd v. Joseph Nderitu Wanjohi (2016) eKLR* (also cited by the Respondents), Justice Mativo (as he then was) listed the four elements that must be established thus:

“ 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.”
18. The Respondents contend that they had made tangible steps in re- opening the parks to the public, clarifying that Uhuru Park was reopened on 28th September 2024 and Central Park's accessibility being denied was not intentional but rather attributable to the evolving circumstances regarding its reopening.
19. Geoffery Mosiria, one of the alleged contemnors deposed that he is a chief Officer at the Nairobi City County and not the County Executive Committee Member in charge of Environment, Water, Food and Agriculture as put by the Applicants. The Respondents argue that there being unfinished works in the park it was unsafe to allow the public full access. Further, that full reopening involves multi-agency coordination, security assessments and infrastructural readiness which is not only under the control of one Mr Malawi.



20. In the case of Samuel M. N. Mweru & Others v National Land Commission & 2 others [2020] eKLR Mativo J. also stated that;

“...The test for when disobedience of a civil order constitutes contempt has come to be stated as whether the breach was committed ‘deliberately and mala fide.’ A deliberate disregard is not enough, since the non-complier may genuinely, albeit mistakenly, believe he/she is entitled to act in the way claimed to constitute the contempt. In such a case good faith avoids the infraction...”

21. Going by the depositions made in opposition to the application, there is no doubt that the Central park has not been re-opened as directed by the order of this court 16th December 2024. In regard to knowledge of the order, the same was issued in the presence of counsel for the Respondents. Consequently, they are deemed to have been aware of the same (see the case of Shimmers Plaza Ltd vs National Bank of Kenya Ltd (2015)eKLR).

22. Were the terms of the order clear and unambiguous? In his replying affidavit dated 14th November, 2024 Mr Malawi deposed that Uhuru park was re-opened to the general public on 28th September 2024 while Central Park was still undergoing renovations by the Ministry of Defence. However, before the impugned order was granted, Mr John Paul Malawi swore a replying affidavit dated 13.12.2024 where he deposed at paragraph 4 & 5 thus;

“ 4. That I wish to confirm that both Central park and Uhuru park are now open and accessible to the public, and is currently receiving users on a daily basis

5. That the Respondents are committed to ensuring that the two parks continue to remain open and accessible to the public in a clean healthy and sustainable state”

23. Previously aware that the Central Park was under renovation, Mr Malawi one month later confirms to the court under oath that the Central Park was also now open to the public. Now in responding to the current application, the alleged contemnor highlights at paragraph 10 of his replying affidavit the outstanding works and in paragraph 12 he avers that “any discrepancies on accessibility of the Central park was not intentional but are attributed to the evolving circumstances regarding the Park’s accessibility.”

24. Although the alleged contemnors depose to lack of proof on the alleged contempt, paragraph 10-12 of Mr J. P Malawi’s affidavit clearly confirms breach of the impugned orders which were issued pursuant to his own admission that both Parks were already opened. The impugned order was clear as it required of the Respondents to allow the public unlimited access both to Uhuru and Central Parks and which has not happened with regards central Park.

25. On whether the disobedience was deliberate, the answer is in the negative given the contents of the replying affidavit sworn on 14th November, 2024 by the Respondents and the explanation stated in the responses filed in opposition to the contempt application. Instead, I find that John Paul Malawi lied under oath vide his affidavit sworn on 13th December, 2024 and for which he must bear the consequences. Therefore, I am persuaded that there is merit on the first limb of prayer (a) of the present motion.

26. As regards prayer (b) seeking to have Geoffrey Mosiria convicted for being in contempt of the impugned order of 16th December, 2024, my finding is that he is not guilty. He has explained that he does not hold the position of CEC in the 1st Respondent’s government. Secondly, having stated that



the failure to comply with the order of 16th December 2024 was not deliberate as there were on going works before the issuance of the said order, the said explanation is satisfactory to answer to the charges of contempt.

27. In conclusion, I allow the application on the following terms:

- a. *That John Paul Malawi being the Director, Environment at Nairobi City County (the 1st Respondent) is found guilty for blatantly, and maliciously on oath lying to the court as to the proprietary of opening of Central Park when he knew the status of the ongoing works at Central Park.
- b. Mr John Paul Malawi shall appear before this court on a date to be given when this Ruling is delivered to show cause for sentencing.

c.

Costs of the application to the Petitioner/Applicant in the cause.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 5TH DAY OF JUNE, 2025

A. OMOLLO

JUDGE

