



**Wanambisi v Ogega (Environmental and Land Originating Summons  
E001 of 2025) [2025] KEELC 4483 (KLR) (11 June 2025) (Ruling)**

Neutral citation: [2025] KEELC 4483 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KITALE  
ENVIROMENTAL AND LAND ORIGINATING SUMMONS E001 OF 2025**

**CK NZILI, J  
JUNE 11, 2025**

**BETWEEN**

**TOM LIHRU WANAMBISI ..... APPLICANT**

**AND**

**JOYCE MORAA OGEGA ..... RESPONDENT**

**RULING**

1. This ruling relates to two applications dated 21/1/2025 and 18/3/2025 and a Preliminary Objection dated 5/2/2025. The 1<sup>st</sup> application seeks restraining orders against the respondent, her agents, servants or employees from entering, trespassing, leasing, charging, mortgaging, subdividing, alienating, selling, constructing or in any way interfering with LR No. 2116/1077 Kitale Municipality, pending hearing and determination of this suit.
2. The application is based on the grounds on its face and a supporting affidavit of Tom Lihru Wanambisi sworn on 21/1/2025. It is deponed by the applicant that as the original registered owner of the land, he had charged it for a loan facility with the Co-operative Bank (K) Ltd, which unfortunately exercised a chargee's right of sale by way of public auction after she defaulted in loan repayment, in which the respondent was the successful bidder, but did not take exclusive possession of the same from her for the last 12 years.
3. The applicant deposes that the respondent has been aware of the continuous exclusive possession, where she has been growing beans, maize and vegetables until 19/9/2023, when a representative came to view the land, and took measurements with a view of constructing a perimeter fence and other structures. The applicant deposes that she has maintained barbed wire fence around the property, including keeping the bushes and shrubs on its road reserve with full knowledge of the respondent, hence has acquired beneficial interests, which should be protected by this court. The applicant urges the court to preserve the subject matter by way of temporary orders of injunction.



4. The respondent opposes the notice of motion through a preliminary objection dated 5/2/2025 on account of res judicata, since there was a similar suit and an application leading to a ruling delivered on 10/1/2024 in MC ELC No. 115 of 2022; that the applicant failed to comply with previous orders as to costs, that it is an abuse of the court process re-litigating the same matter already concluded by a court of competent jurisdiction.
5. The applicant relies on written submissions dated 28/1/2025, an another undated supplementary written submission that; the preliminary objection does not qualify as one under the law. Reliance is placed on *Isaac Cypriano Shingore v Kipketer Togom* [2016] eKLR, *Githu v Ndeete* [1984] KLR 776, *Benson Mukuwa Wachira v Assumption Sisters of Nairobi Registered Trustees* [2016 eKLR, *Robert Mugo wa Karanja v Eco Bank (K) Ltd & Another* [2009] eKLR, *Waithaka v KDC* [2001] KLR 347, *Amir v Amboseli Resort Ltd* [2004] eKLR, Mulla Code of Civil Procedure 18<sup>th</sup> Edition 2012, *Henderson v Henderson* [1984] 67 ER 313, *Oraro v Mbaja Nairobi HCC No. 85 of 1992 and Mukisa Biscuits Manufacturing Co. Ltd v West End Distributors Ltd* [1969] EA 696.
6. In the application dated 18/3/2025, the court is asked to cite and find Joyce Moraa Ogega and David Morris Ong'era guilty of contempt of court of the orders of status quo made on 23/1/2025 and proceed to sentence them as per the law. Further, the court is asked to restrain the citees, their agents, servants or employees from any further construction on the suit land, to vacate and restore the status quo ante, and to respect the orders of the court by resisting from interfering with the suit land until the originating summons is heard and determined, to order the respondent into respecting court processes or maintaining the last actual peaceful and uncontested state of things preceding the filing of the suit and lastly; for the OCS Meru Farm Police Station to ensure compliance of the orders of this court.
7. The grounds are set out on the face of the application and in the supporting affidavits of John Lihru Wanambisi sworn on 18/2/2025. It is deposed that after the public auction in 2006, the applicant remained in possession of the land and later on filed Kitale MC ELC Case No. E115 of 2022(OS), to which a restraining order, followed by a ruling dated 17/7/2024 as per annexure marked TLW-1, which dismissed the suit for lack of jurisdiction instead of transferring it. The applicant deposes that he thus filed the instant suit and obtained orders of status quo on 23/1/2025, which were issued upon the alleged contemnors as per annexure TLW-2. That between 5/3/2025 and 10/3/2025, the alleged 2<sup>nd</sup> contemnor was constantly harassing her, leading to a complaint letter annexed as TLW-3. The applicant deposes that on 13/3/2025, the 2<sup>nd</sup> citee entered the land, pulled down the fence and delivered construction materials to begin erecting a perimeter fence as per photos annexed as TLW-4 (a), (b), (c), (d), (e) and (f). The applicant terms the acts of the citees as willful interference with her possession and use to alter the status quo.
8. The application for contempt is opposed through a replying affidavit of Joyce Moraa Ogega sworn on 2/4/2025, as bad in law, misconceived, frivolous, vexatious, made in bad faith and out to embarrass her and her son. The respondent deposes that she successfully bid for the land at a public auction and a transfer agreement was signed on 12/10/2006 and became the registered owner as per annexures marked JMO-1, 2(a) and (b), 3(a) and (b), 4(a)-(m) and hence was a bona fide purchaser. The respondent deposes that she fenced the land using ordinary fencing wire which unfortunately has since been vandalized or destroyed by the applicant.
9. The respondent admits there was a similar suit at the lower court as per annexure JMO-5. Further, the respondent says that on 10/1/2024, her application dated 3/11/2023 seeking to nullify previous orders dated 11/10/2023 was allowed at a time she was the one on the land, going by annexure JMO-6, which was affirmed in a ruling dated 17/7/2024 annexed as JMO-7. The respondent deposes that she successfully challenged the jurisdiction of the trial court in view of the Court of Appel No. E141 of



2022, hence the orders issued on 10/2/2025 attached as JMO-8, only for the applicant to file the instant suit, while she was still in occupation as the lawful owner of the land. The respondent denies that the cellphone numbers 0722 520 823 and 0722 843 022 are her official registered numbers for her to have accessed WhatsApp services relating to the court orders, or her son. The respondent deposes that the applicant continues to lie while under oath, for he has never stayed on the land for 12 years as alleged, or at all, other than devising scheme to disinherit or forcefully take away the land without any basis in law.

10. The issues calling for determination are:

- (1) If the suit and the application for injunction is res judicata.
- (2) What was the status quo as at the issuance of the orders dated 2/1/2025?
- (3) If the citees are guilty of contempt of court.

11. It is not in dispute that when the applicant filed this suit, it was accompanied by application dated 21/1/2025, there was no disclosure of any previous or pending litigation on the subject matter or orders issued previously in favour of the respondent or the applicant touching on the suit land especially the one dated 17/1/2024, following an application dated 22/9/2023 in Kitale MC ELC No. 115 of 2022. Equally, there was no disclosure of the ruling dated 10/1/2024, the one dated 17/7/2024 and lastly, the ruling of 21/1/2025 by consent of parties striking out the suit for want of jurisdiction.

12. From the foregoing, it is quite clear that the same day that the applicant moved to this court is the same day that at the lower court, he appeared and consented to have his earlier suit struck out for want of prosecution. Failure to disclose material facts is a grave issue. In *Uhuru Highway Developers Ltd v CBK & Others* NRB Civil Appeal No. 140 of 1995, the court observed that a man who is prepared to deceive a court into granting him an order cannot validly claim that he has meritorious case and that there cannot be a reason for concealing some part of it from the court. In *Madara Evans Okanga Dondo v Housing Finance Company of Kenya* [2005] KEHC 506 (KLR), the court observed that *LN No. 128 of 2001* requires that a party swears an affidavit verifying the correctness of the averments in the suit. The court termed the suit as an abuse of the court process so as to procure interim orders by misleading the court. The court invoked its inherent jurisdiction to strike out the suit.

13. In *Alliance Media (K) Ltd & Another v Magnate Ventures Ltd & Another* [2012] eKLR, the court observed that the duty to disclose at the ex parte stage is not limited to a bland statement but extend to disclosing the nature, extend and content of the case, including all the facts and circumstances relating to the grant of similar orders by the subordinate court. The court held that Order 4 Rule (i) (f) of the *Civil Procedure Rules* imposes on the parties the duty to disclose both pending and previous proceedings regardless that the suit had been terminated, otherwise they will bear the consequences of such a failure.

14. In this suit, the applicant chose not to disclose the previous suit and the attendant orders, until the application for contempt of court dated 18/3/2025. The same came after the preliminary objection dated 5/2/2025. The applicant had no reason not to disclose the material facts which in my view were critical as to what was the status quo on the land as of 21/1/2025. Status quo refers to the ways as they are on the ground.

15. In the application dated 21/1/2025, the applicant had not given the history of the suit land between 20/9/2023 to 21/1/2025. It now turns out that a lot of litigation had occurred on who was on the land in the said period. The applicant only expressed fear that the respondent's agents were likely to return any time now and begin construction of a perimeter fence and other structures. The applicant did not disclose that there were status quo orders issued by a ruling dated 11/10/2023, following a criminal charge of forcible detainer. The applicant now admits that he filed this application on time



after the trial court failed to grant him time to transfer the suit to this court. It now turns out however that there was a consent to strike out the suit for want of jurisdiction on the very day that the applicant also moved to this court. In my considered view the averments on oath in paragraphs 4, 5 and 6 of the affidavit sworn on 18/3/2025 are not only false, an afterthought, but also should have been included in the notice of motion dated 21/1/2025 for the court, though seized with powers to issue status quo orders, to know the current status of the land as at the filing of the suit.

16. In *Republic v NET; Ex parte Palm Homes Ltd & Another* [2013] eKLR, Odunga J (as he then was), held that when status quo is granted, it is expected and the circumstances as at the time when the order is made or the status takes effect, must be maintained, to preserve the existing state of affairs of the actual scenario. In *Kalpa v Co-operative Bank (K) Ltd* [2020] eKLR, the court observed that by ordering status quo, it seeks to safeguard the substratum so that the subject matter of the dispute is not eroded or changed so drastically or radically, to negatively prejudice the status quo ante, rendering the proposed decision nugatory.
17. In *Fatuma Abdi Jillo v Kuro Lengesen & another* [2021] KEELC 2312 (KLR), the court observed that a status quo order is different from an order of injunction, the latter being where more is an established right, and a prima facie case, while the former merely leaves the situation or things as they stand pending the hearing of the reference or complaint. Further, in *Thugi River Estate Ltd & Another v NBK Ltd* [2015] eKLR, the court held that an order of status quo is given under the court's inherent powers based on the facts as a case management strategy.
18. The applicant urges the court to find the respondent and her son guilty of contempt of court. On the other hand, the citees, plead and submit that the applicant misled the court to obtain an ex parte order while he knew of the previous suit and its orders which defined who was on the land. Further, the respondent terms the suit as res judicata and an abuse of the court process.
19. Res judicata is applicable where there is an attempt to re-open already finally concluded issues on merits by a court of competent jurisdiction, over the same subject matter between the same parties or parties litigating under the same umbrella. See *IEBC & Others v Maina Kiai* [2017] eKLR. In *AHDL v CBK & Another* (supra), the court observed that an issue of injunction twice rejected by both the High Court and Court of Appeal and not appealed against amounted to res judicata, and that there must be an end to interlocutory application as much as there ought to be an end to litigation.
20. In this application, the applicant concedes existence of previous rulings on whether or not an injunction should issue against the respondent. There are no pending appeals or application for review against the rulings alluded to in the replying affidavit. In *KCB Ltd v Muiri Coffee Estate Ltd* [2016] eKLR, the court observed that the essence of res judicata is that once the legal rights of parties have been judiciously determined, such edict stands as a conclusive statement as to those rights.
21. The applicant does not deny there were previous rulings or orders regarding whether or not to grant a temporary injunction or set aside the initial interim orders. In *CCK v Royal Media Services & Others* [2014] eKLR, the court observed that res judicata aims to prevent a litigant a second bite at the cherry, where based on issue estoppel over a previously litigated claim he had lost, so as to protect the integrity of the administration of justice.
22. I find the applicant guilty of res judicata and uphold the preliminary objection on that account. As to the suit, the parties concede that the suit was merely struck out for lack of jurisdiction. It has not been heard and determined to finality by the previous court. It does not therefore fall under the doctrine of res judicata.



23. Coming to contempt of court, a party seeking for it has to establish whether the order issued was clear and unambiguous, if it was served upon the alleged contemnor and lastly, if there was willful and deliberate disobedience of the same. See *Shimmers Plaza v NBK Lt* [2015] eKLR and *William Gatheca Nguyo v Francis Kariuki Muthee & Another* [2019] eKLR. The applicant relies on an affidavit of service sworn on 4/2/2025 by Majune Kraido Advocate, that he served the order by cellphone numbers 9722 520 823 and 0722 843 022. The respondent denies that there was proper service of the order since there is no proof of ownership of the two phone numbers. Equally, the applicant relies on annexures MK 1(a) and (b), TLW-1, 2, 3 and 4(a), (b), (c), (d), (e) and (f) to show that there was service and willful disobedience of the orders of the court. It is doubtful if the photographs are accompanied by certificate of production or connect the citees to the activities complained of. See *Robinson Kamau Wangenya v Stanley Kamau Chege & Others* [2018] eKLR.
24. The conduct complained of under Order 40 Rule 3(1) of the Civil Procedure Rules that interfere with the administration of justice. See *Woburn Estate Ltd v Margaret Bashforth* [2016] eKLR. The court order is binding to a party until it is set aside. It is a crime to unlawfully and intentionally disobey it as held in *Samuel M.N. v Mweru & Others* [2020] eKLR. Knowledge of the terms of the order and the failure to comply is bestowed upon an applicant to prove beyond a shadow of doubt, for the outcome may deprive a party of his liberty as held in *Shimmers Plaza Ltd* (supra). Service of the order and its ambiguous or clarity is disputed by the respondent. Status quo, as held in *Shimmer Plaza Ltd v NBK* [2015] eKLR, cannot relate to the past or future occurrences or events. The applicant has to show what was frozen and awaited the discharge of the court order, as of the filing of his suit on 21/1/2025. Penal Notice, knowledge and service of the orders has to be proved since the order was issued exparte. See *Basil Criticos v Attorney General & Another* [2012] eKLR.
25. In my considered view, the applicant has failed to meet the threshold for this court to find the citees guilty of contempt of court. I decline to issue the orders sought, in both the applications dated 21/1/2025 and 18/3/2025. They are dismissed with costs.
26. Orders accordingly.

**RULING DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT KITALE ON THIS 11<sup>TH</sup> DAY OF JUNE 2025.**

In the presence of:

Court Assistant - Dennis

Kraido for the Applicant present

Ngeywa for Songole for the Respondent present

**HON. C.K. NZILI**

**JUDGE, ELC KITALE.**

