



**Kalumba v Kiswii (Environment and Land Case 334 of 2017)
[2025] KEELC 5140 (KLR) (10 July 2025) (Ruling)**

Neutral citation: [2025] KEELC 5140 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MAKUENI
ENVIRONMENT AND LAND CASE 334 OF 2017**

**EO OBAGA, J
JULY 10, 2025**

BETWEEN

FREDRICK KALUMBA PLAINTIFF

AND

MATHIAS MULI KISWII DEFENDANT

RULING

1. This is a ruling in respect of a Notice of Motion dated 22nd January, 2025 in which the Defendant/Applicant seeks the following orders:
 1. Spent
 2. That this honourable court be pleased to order the committal to civil jail and/or fine of the Plaintiff/Respondent who is in contempt of an injunction order/status quo order issued on 30th October, 2024.
 3. That this honourable court be pleased to order the Plaintiff/Respondent to pay damages for the destroyed crops on land parcel No. Makueni/Kiou/1694.
 4. That the Officer Commanding Police Station at Sultan Hamud police station or police officers serving under him be and are directed to ensure full compliance with the order issued herein.
 5. That this honourable court be pleased to issue any other or further orders as it may deem just, necessary and expedient in the circumstances so as to ensure proper compliance with the order issued herein.
 6. That cost of this application be provided for.
2. It is the Applicant's contention that on 30th October, 2024 the court issued an order of maintenance of status quo in respect of LR. No. Makueni/Kiou/1694. Despite the orders of maintenance of status



quo being in force, the Plaintiff/Respondent went ahead to destroy his crops which he had planted on the suit property. The Applicant went and reported the incident to the area assistance chief, the chief and Sultan Hamud Police Station. He states that he had planted the crops prior to issuance of the orders of maintenance of status quo. It is on this basis that he wants the Respondent punished for contempt of the court order and he be compelled to pay for the damaged crops.

3. The Applicant's application was opposed by the Respondent through a replying affidavit sworn on 31st January, 2025. The Respondent contends that the orders of maintenance of status quo were issued in his favour while still in occupation and use of the 2.5 acres in the suit property. The orders given meant that he was to continue occupying and utilizing the 2.5 acres until the hearing and determination of the suit property.
4. The orders were given preventing the Applicant from proceeding to excise one acre from the suit property which would have interfered with the subject matter of the suit. He further states that he was the one in occupation of the 2.5 acres prior to the issuance of maintenance of orders of status quo. He denies violating the terms of the orders and destroying the Applicant's crops. He states that it is the Applicant who was in breach of the orders as he attempted to interfere with the status quo which had been ordered.
5. The Respondent contends that the Applicant has not tendered any evidence of destruction of his crops and that the Applicant's application is frivolous and is only meant to delay the finalization of this case.
6. The court directed the parties to dispose the application by way of written submissions. The Applicant filed his submissions dated 10th March, 2025. The Respondent filed his submissions dated 13th February, 2025. I have carefully considered the Applicant's application, the opposition to the same by the Respondent, the submissions filed by the parties as well as the authorities cited. The only issue for determination is whether the Applicant has proved contempt against the Respondent and destruction of his crops.
7. In the case of North Tetu Farmers Co. Ltd –vs- Joseph Nderitu Wanjohi (2016) KEHC 7193 (KLR) Justice Mativo 'as he then was' stated as follows:

“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) that:-

- 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”.
8. What prompted the court to issue an order of maintenance of status quo is an application which the Respondent had made on 14th June, 2024 in which he sought to restrain the Applicant from excising one acre from the suit property in execution of a judgment from Kilungu Principal Magistrate's court in ELC Case 13 of 2022. (Jacquiline Munini –vs- Mathias Muli Kiswii).



9. In the Instant case it is clear that the order of maintenance of status quo was given at the instance of the Respondent. The order meant that the status quo as at 30th October, 2024 was to be maintained. The status as at 30th October, 2024 was that it was the Respondent who was in occupation and use of 2.5 acres. This was the position which was to be maintained.
10. There is no evidence adduced that the Respondent went outside this order. There is also no evidence given to show that the Applicant had planted any crops on the 2.5 acres being claimed by the Respondent as at 30th October, 2024. The Applicant did not even mention which crops were destroyed and or give any evidence of destruction of the crops. The Applicant ought to have filed a report of an agricultural officer to support his claim that his crops were destroyed.
11. In the case of Kenya Airline Pilots Association (Kalpa) –vs- Co-operative Bank of Kenya & Another (2020) eKLR the court held as follows:

“.....By maintaining the status quo, the court strives to safeguard the situation so that the substratum of the subject matter of the dispute before it is not so eroded or radically changed or that one of the parties before it is not so negatively prejudiced that the status quo ante cannot be restored thereby rendering nugatory its proposed decision”.
12. The Respondent had been using the 2.5 acres which he purchased in 2007. When the surveyors wanted to come and curve out one acre for Jacqueline Munini, the Respondent moved to court to prevent this. The order given on 30th October, 2024 meant that the Respondent was to keep his 2.5 acres intact pending the hearing and determination of the suit. If the Applicant went to plant crops on the 2.5 acres after the order of maintenance of status quo was given, then he is the one in contempt of the order and not vice versa.
13. In the case of Mutitika –vs- Baharinin Farm Ltd (1985) eKLR the learned Judges quoted Lord Denning in Re Breamblevale Ltd (1969) 3 KLER 1062 where he stated as follows:

“ A contempt of court is an offence of a criminal character. A man may be sent to prison. It must be satisfactorily proved. To use the time – honoured phrase, it must be proved beyond reasonable doubt”.
14. The Applicant has not placed any evidence before the court to prove that the Respondent committed any contempt of the orders which were given in his favour. He has also not given any evidence of destruction of his crops as alleged. I therefore find that the application is devoid of merit. The same is dismissed with costs to the Respondent.

It is so ordered.

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HON. E. O. OBAGA

JUDGE

RULING DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS THIS 10TH DAY OF JULY, 2025.

In the presence of:

Mr. Onyancha for Defendant/Applicant

Mr. Muendo for Mr. Muthiani for Plaintiff/Respondent.



Court assistant – Steve Musyoki

