



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

Omusundi v Ethics and Anti-Corruption Commission & 2 others (Environment and Land Petition E002 of 2023) [2025] KEELC 4978 (KLR) (3 July 2025) (Ruling)

Neutral citation: [2025] KEELC 4978 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT AND LAND PETITION E002 OF 2023**

A OMBWAYO, J

JULY 3, 2025

BETWEEN

LABAN OMUSUNDI APPLICANT

AND

ETHICS AND ANTI-CORRUPTION COMMISSION 1ST RESPONDENT

**KENYA INDUSTRIAL ESTATES, SOUTH RIFT BRANCH - NAKURU &
ANOTHER & ANOTHER & ANOTHER 2ND RESPONDENT**

RULING

Brief Facts

1. The 3rd Interested party filed the instant application dated 10th April, 2025 seeking the following orders:
 1. Spent.
 2. That this Honourable Court be pleased to order 1st Interested party / Susan Kiprono and family's property be attached and/or that the Respondent Susan Kiprono be detained in prison for having breached and disobeyed the orders granted by the Honourable Court in Nakuru ELCPET /2 /2023
 3. That the 1st Interested party/Susan Kiprono and family do further purge the contempt by allowing in the property garage business/ subdividing the property and or mechanics erecting gates on the disputed property after the Court Terminated/ struck out/ dismissed/case closed on the 27th January, 2025 failing which the Applicant/3rd Interested party be allowed to remove the same at the 1st Interested party /Susan Kiprono and family's cost
 4. That the 1st Interested party/Susan Kiprono and family do further purge the contempt by resisting/refusing the applicant 3rd Interested party/ John Mwangi Karanja from taking his



business premises yard after the Court Terminated/ struck out/ dismissed/case closed their appeal on the 27th January, 2025 failing which the 3rd Interested party/ John Mwangi Karanja be allowed to return the same at the Respondents/Susan Kiprono and family's cost.

5. That alternatively Susan Kiprono should be summoned before this Honourable Court to show cause why she should not be detained in prison for disobeying the Honourable Court aforesaid.
2. The Application was based on grounds set out and supported by the Affidavit of John Mwangi Karanja the 3rd Interested party/Applicant herein sworn on 10th April, 2025.
3. The Applicant stated that the court delivered its judgment and the same was served upon the 1st Interested party. He stated that the 1st Interested party in breach of the judgment, decrees and orders restrained the 3rd Interested party from accessing and using the business premises yard.
4. He stated that on several occasions the 1st interested party brought mechanics to run a garage, subdivided the suit property and did further construction. He stated that the 1st interested party's conduct subjects the judicial system to ridicule which the court should not countenance.
5. In conclusion, he urged the court to allow the application as prayed and urged the court to exercise its discretion and issue stay of execution orders.

Response

6. The 1st interested party filed her Replying Affidavit sworn on 13th June, 2025. She averred that her name was miswritten as her official names were Caroline Kiprono and not Susan Kiprono. She further averred that from the judgment delivered on 27th September, 2024, the court found that the suit parcel belonged to the Respondent. She further averred that the judgment was pending appeal awaiting copy of typed proceedings. She averred that the judgment talked of ownership but never allowed the Applicant back to the premises.
7. She also averred that they had made an application for stay pending appeal where the court dismissed it due to a technical hitch on the part of her counsel during virtual court.
8. She added that they filed the relevant application on 26th November, 2024 where the court granted status quo orders pending hearing and determination of appeal. She however stated that the application was dismissed for want of prosecution.
9. She urged the court to stay hearing of the present application pending hearing of the application dated 9th May, 2025.
10. The 3rd Interested party filed a further affidavit where he reiterated the contents of his supporting affidavit and added that the 1st interested party had been served with the application on 6th June, 2025. He however stated that the 1st interested party continued with subdivision and further construction of the suit property. He stated that the 1st interested party and her family have been soliciting money as rent from the public.

Submissions

11. The 3rd interested party filed his submissions dated 10th June, 2025 where he identified one issue for determination being whether the Respondents actions are in contempt of court.
12. He relied on the cases of Mutitika V Baharini Farm Ltd (1985) KLR and Katsuri Limited V Kapurch and Debar Shar (2016) eKLR which case set out the requirements that proved contempt.



13. He submits that the court on 8th October, 2024, the court issued an order which was clear and unambiguous. It is also his submission that the 1st interested party had knowledge of the court order as they were served on 9th October, 2024 and an affidavit of service sworn on 10th April, 2025. He also submits that the 1st interested party acted in breach of the said terms of the through his actions touching on the suit property.
14. It was his submission that the evidence on record proves that the 1st interested party acted in breach of the court order as evidenced from the photographs attached.
15. He relied on the case of *Abida Werimba Mwaniki & 2 Others V Samuel Njeru M'ngendo & 2 Others* [2017] and submits that the 1st interested party acted in contempt of court.
16. The final issue was whether the 1st interested party's conduct was deliberate. He submits in the affirmative and argues that despite service, they have not made any efforts to restore or purge the contempt. He further relied on the case of *Shimmers Plaza Ltd V National Bank of Kenya Nairobi Civil Appeal No. 33 of 2012* [2015] eKLR and urged the court to punish the 1st interested party for breach of court orders.

Analysis and Determination

17. This court has considered the application and submissions and is of the view that the main issue for determination is whether the 1st interested party is in contempt of court.
18. The Black's Law Dictionary 9th Edition, defines contempt as:

The act or state of despising; the conduct of being despised. Conduct that defies the authority or dignity of a court or legislature. Because such conduct interferes with the administration of justice. Section 29 of the Environment and Land Court provides 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”
19. In the case of *North Tetu Farmers Co. Ltd v. Joseph Nderitu Wanjohi* (2016) eKLR Justice Mativo 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 - (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.”
20. It is not in dispute that the 3rd interested party served the 1st interested party the said order as evidenced vide Whatsapp. The 1st interested party was also aware of the terms of the order as evidenced by her response.
21. Notably, the 1st interested party in her response claimed that the orders of the court were on ownership having found that the suit property belonged to the Respondent. She never disputed the allegations of construction on the suit property.



22. Going to the alleged actions by the 1st interested party, the 3rd interested party contends that the 1st interested party has done construction on the suit property and further subdivided it. He annexed evidence of photographs showing the alleged construction but there was no evidence of subdivision.
23. It is not in dispute that this court via orders given on 27th September, 2024 found that the suit land together with the open spaces belonged to the Respondent. It further directed that the 1st interested party be restrained from acting as the landlord on the Respondent's land and from collecting rent, threatening and evicting the tenants in the open spaces.
24. It is this court's view that the alleged claims against the 1st interested party amounts to actions breach of the court orders. I say so because, the alleged actions of construction can only be done by the owner of the property which this court had earlier estopped through its judgment.
25. In view of the foregoing, this court has established that the 1st interested party was in breach of the court orders issued on 27th September, 2024 since through the alleged construction, she interfered with the suit property through.
26. Consequently, this court orders that the 1st interested party be imprisoned for a term of one month or pay a fine of Ksh 200,000.

HON. JUSTICE ANTONY O. OMBWAYO

ENVIRONMENT AND LAND COURT

2025-07-03

