



Koskei v Lipton Tea and Infusion Kenya Plc & 2 others (Environment and Land Constitutional Petition E001 of 2024) [2025] KEELC 6034 (KLR) (18 September 2025) (Ruling)

Neutral citation: [2025] KEELC 6034 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KERICHO
ENVIRONMENT AND LAND CONSTITUTIONAL PETITION E001 OF 2024
LA OMOLLO, J
SEPTEMBER 18, 2025**

BETWEEN

WILFRED KIPKEMOI KOSKEI PETITIONER

AND

LIPTON TEA AND INFUSION KENYA PLC 1ST RESPONDENT

MERCY CHIRCHIR 2ND RESPONDENT

KEN TUWEI 3RD RESPONDENT

RULING

Introduction.

1. This ruling is in respect of the Petitioner/Applicant's Notice of Motion application dated 3rd July, 2025. It is expressed to be brought under Section 5 (1) of the *Judicature Act*, Order 52 Rule 3 of the Rules of the Supreme Court of England 1965 and Section 3A of the *Civil Procedure Act*.
2. The application seeks the following orders;
 - a. That this Honourable Court do find that the 1st, 3rd and 4th Respondents are in contempt of Court for deliberately disobeying orders of the Court issued on 16th December 2024 by Hon. Lady Justice Lynette A Omollo of Kericho Environment and Land Court.
 - b. That upon grant of prayer 1 of the said orders above, Mr. Rajiv Bandarana (Head of Plantations of the 1st Respondent), Mr Keneth Odire (Country General Manager of the 1st Respondent), Mercy Chirchir 2nd Respondent, and Ken Tuwei 3rd Respondent be committed to civil jail for a period of 6 months.
 - c. That costs occasioned by this motion and for obtaining leave thereto be paid by the Respondents.



3. The application is based on the grounds on its face and the supporting affidavit of Wilfred Kipkemoi Koskei sworn on 3rd July, 2025.

Factual Background.

4. The Petitioner/Applicant commenced the present proceedings vide the Petition dated 15th October, 2024 where he seeks the following orders;
 - a. An order compelling the Respondents to pay the Petitioner Kshs 2,750,000/= being compensation for the damages and/or destroyed goods and for malicious and wrongful eviction and/or wrongful termination of a controlled tenancy in contravention of the law.
 - b. An order compelling the Respondents to restore and or (sic) repair the Petitioner's shop at their expenses.
 - c. An order compelling the Respondents to unconditionally re-admit the Petitioner back to his business premises.
 - d. An order compelling the Respondents to provide an alternative business premises but of similar standard and proximity to conduct his businesses.
 - e. A declaration that the Respondentsmalicious (sic), forcible and wrongful eviction of the Petitioneris (sic) illegal, null and void.
 - f. An order compelling the Respondents to pay the Respondent (sic) compensation for loss of income at Kshs. 90,000 per month until he settled in his businesses. (sic)
 - g. An order compelling the Respondents to take up the Petitioner's loan facilities in various financial institution (sic) which stand at Kshs. 270,000/=.
 - h. An order compelling the Respondents to settle Petitioner's children school fees balance of Ksh 70,000 and pay another Kshs70,000/= (sic) per term until the Petitioner gets alternative place for doing business.
 - i. An order of prohibition against the Respondents, their agents, employees, and/or any other person acting on the 1st Respondent's instructions from harassing, issuing illegal directives and interfering with the Petitioners' shop until this Petition is determined.
 - j. Compensation for violation of fundamental rights.
 - k. Cost of the suit.
5. As at the time of writing of this ruling, the Respondents had not filed their response to the Petition.
6. The application under consideration first came up for hearing on 9th July, 2025 when the Court directed that it be heard by way of written submissions.
7. On 31st July, 2025, the application was mentioned to confirm filing of submissions and then reserved for ruling.

The Petitioner/Applicant's Contention.

8. The Petitioner/Applicant contends that the Respondents have disobeyed the orders of this Court issued on 16th December, 2024 in respect of the application dated 13th December, 2024.



9. The Petitioner/Applicant also contends that the Court issued an order that the status quo obtaining as at that date be maintained pending the inter partes hearing of the application dated 13th December, 2024. The said application was to be heard on 11th February, 2025.
10. The Petitioner/Applicant further contends that the Respondents were served with the said orders on 18th December, 2024 and an affidavit of service filed in Court.
11. It is the Petitioner/Applicant's contention that despite being served with the said order, the Respondents proceeded to let out the suit premises to third parties in disregard to the orders of this Court.
12. It is also the Petitioner/Applicant's contention that the 2nd and 3rd Respondents in particular supervised the renovation and the re-allocation of the suit premises.
13. It is further the Petitioner/Applicant's contention that the Respondents were aware of the orders of the Court and they chose to disobey them.
14. He contends that the Respondents have not complied with the orders of this Court that were served upon them.
15. He also contends that the Respondents actions are offences against administration of justice and that the application has been filed in the interest of justice.
16. He ends his deposition by stating that unless the Respondents are punished, the orders of this Court will become mere letters and cease to be sacrosanct.

The Respondents Response.

17. The Respondents filed a Replying Affidavit sworn by Cindy Felicity Dana the General Counsel – Plantations on 22nd July, 2025.
18. She deposes that the 1st Respondent is the registered proprietor of the property known as House Number A. no 221096/31 and shop/hotel A No. 233310/3, the suit premises in the present proceedings.
19. She also deposes that the Petitioner/Applicant and the 1st Respondent's predecessor, Unilever Tea Kenya Limited entered into a series of tenancy agreements. The last tenancy agreement entered into by the said parties was dated 1st January, 2022 and was for a fixed term of ten months.
20. She further deposes that the agreement expired at the end of October 2022 and the tenancy was converted into a periodic tenancy whose term was month to month with monthly rental payments of KShs. 4,500/=.
21. It is her deposition that the Petitioner/Applicant defaulted in payment of rent as and when it fell due. She goes on to state that the 1st Respondent issued a written notice dated January, 2024 pursuant to Sections 57(4) and 65(2)(b) of the Land Act requiring the Petitioner/Applicant to vacate the suit premises within thirty days because of continued breach of the terms of their tenancy agreement.
22. It is further her deposition that the notice reminded the Petitioner/Applicant of the 1st Respondent's right to re-enter the suit premises and dispose of any uncollected items in accordance with the Disposal of Uncollected Goods Act.
23. She deposes that despite the said notice, the Petitioner/Applicant persisted in his default and failed to vacate the suit premises. She goes on to state that on 21st May, 2024 the 1st Respondent evicted



- the Petitioner/Applicant from the suit premises in the presence of police officers and the area Chief pursuant to Section 73 of the *Land Act*.
24. She also deposes that the Petitioner/Applicant filed a Petition before the High Court dated 25 June, 2024 together with a Notice of Motion application also dated the same date against the Respondents herein.
 25. She further deposes that the Petitioner/Applicant alleged that the Respondents had unlawfully evicted him and sought among other reliefs, a conservatory order restraining the Respondents from interfering with his quiet enjoyment of the suit premises. She adds that the High Court declined to grant any orders.
 26. It is her deposition that on 9th October, 2024 the High Court upheld the 1st Respondent's preliminary objection which challenged the High Court's jurisdiction to hear the Petition. The Petitioner/Applicant's Petition was struck out with costs to the Respondents. The judgement is in the judicial decision of *Koske v CEO/Managing Director Lipton Teas & Infusions Kenya PLC & 2 Others [2024] KEHC 12057 (KLR)*.
 27. It is further her deposition that the Petitioner/Applicant filed a fresh petition before this Court dated 15th October, 2024 also alleging that the Respondents forcibly and unlawfully evicted him from the suit premises.
 28. It is her deposition that the Petitioner/Applicant also filed a Notice of Motion application dated 13th December, 2024 seeking among other reliefs a conservatory order barring the Respondents from letting, leasing, renting out, using and/or dispossessing the Petitioner/Applicant of the suit premises.
 29. She deposes that on 16th December, 2024 this Court issued an order directing that the status quo ante be maintained pending the inter partes hearing of the application dated 13th December, 2024.
 30. She also deposes that the contempt application seeks to impose a six-month prison sentence on Rajiv Bandarana, Keneth Odire, Mercy Chirchir and Ken Tuwei for alleged contempt.
 31. She further deposes that she has been advised by the Respondents Counsel on record that the law requires personal service of the Court order issued on 16th December, 2024 on each alleged contemnor. She goes on to state that each of the above listed persons were not personally served with the said order.
 32. It is her deposition that the Petitioner/Applicant has not filed an affidavit of service that demonstrates any such personal service upon them. She goes on to state that the failure to effect personal service is fatal and the Court in the said circumstances cannot make any finding of contempt.
 33. It is also her deposition that she is advised by the Respondents Counsel on record that before the Court makes a finding on contempt, it must be demonstrated that a penal notice was endorsed on and served together with the Court order. She goes on to state that the purpose of the penal notice is to inform the parties responsible for compliance of the Court order of the potential consequences of any breach.
 34. It is further her deposition that in the present matter, no penal notice was served upon the alleged contemnors as required by law. She adds that the Petitioner/Applicant has failed to comply with the essential procedural requirements and therefore the contempt application is fatally defective, incompetent and ought to be disallowed.
 35. She deposes that without prejudice to the above averments, the allegation that the Respondents are in contempt of the status quo orders is incorrect and unfounded.



36. She also deposes that at the time of the issuance of the status quo orders, the Petitioner/Applicant was not in possession of the suit premises. She goes on to state that the Petitioner/Applicant admits at paragraph 5 of the Petition that he was evicted on 21st May, 2024.
37. She further deposes that the status quo as at 16th December, 2024 was that the Petitioner/Applicant was not in possession of the suit premises. She adds that there was no order for reinstatement of the Petitioner/Applicant to the suit premises. Therefore, the Respondents could not have violated the orders of status quo.
38. It is her deposition that upon the dismissal of High Court Constitutional Petition No. E005 of 2024, there was no Court order restraining the Respondents from leasing the suit premises.
39. It is also her deposition that the 1st Respondent consequently initiated the process of securing a tenant. The process entailed identifying suitable prospects and engaging in negotiations that culminated in the execution of the tenancy agreement dated 16th December, 2024 with one Beatrice Wairimu.
40. It is further her deposition that the leasing out of the suit premises was done before the Court issued orders of status quo on 16th December, 2024. She goes on to state that the prevailing status was that there was a third-party tenant who was already in occupation of the suit premises.
41. She deposes that the 1st Respondent is a law-abiding corporate citizen who is committed to complying with the orders issued by this Court. She adds that the Respondents have consistently demonstrated respect for Court orders and have complied with the directives issued by the Court.
42. She also deposes that upon the issuance of the status quo orders, the Respondents did not undertake any renovations on the suit premises as alleged.
43. She further deposes that in response to the Petitioner/Applicant's assertions at paragraph 6 of the affidavit in support of the application that the 2nd and 3rd Respondents supervised renovations, the Petitioner/Applicant has not provided any evidence to demonstrate any such renovations were undertaken after the issuance of the status quo orders. She goes on to state mere allegations without proof of deliberate disobedience of Court orders cannot sustain contempt.
44. It is her deposition that in light of the status quo orders of 16th December, 2024 and given that there is a new tenant in occupation of the suit premises, it is in the interest of justice that the new tenant be allowed to enjoy quiet possession without interference.
45. It is also her deposition that any adverse orders in this matter touching on a third party who has not joined the present proceedings will violate the third party's rights.
46. It is further her deposition that the Petitioner/Applicant's characterization of the Respondents defiance of Court orders is both unjustified and unfair.
47. She ends her deposition by stating that based on the foregoing, the Petitioner/Applicant's application is misconceived and presented in bad faith. She goes on to state that no acts of contempt have been demonstrated against the Respondents.

Issues for Determination.

48. The Petitioner/Applicant filed submissions on 23rd July, 2025 while the Respondents filed their submissions on 31st July, 2025.
49. The Petitioner/Applicant submits that he filed a Petition dated 15th October, 2024 together with an application filed under Certificate of Urgency dated 13th December, 2024.



50. The Petitioner/Applicant also submits that in the said application he sought for a conservatory order barring the Respondents from interfering with his (Petitioner/Applicant) possession of House Number A. No 221096/31 and shop/hotel A No. 233310/3.
51. He submits that he also sought an order barring the Respondents from destroying his (Petitioner/Applicant) goods and personal items and an order compelling the Respondents to repair the Petitioner/Applicant's premises at their expense.
52. He further submits that he sought for an order compelling the Respondents to unconditionally allow him (Petitioner/Applicant) to go back to his business premises.
53. It is the Petitioner's submission that the four prayers were sought pending hearing and determination of the application dated 13th December, 2024.
54. The Petitioner/Applicant also submits that he sought an order of prohibition against the Respondents restraining them from limiting his (Petitioner/Applicant) movement and interfering with his premises until the Petition is heard and determined.
55. The Petitioner/Applicant submits that on 16th December, 2024 this Court issued among other orders, orders of status quo which orders were served upon the Respondents on 18th December, 2024 through their email address disputeresolution@ikm.dlapiperafrica.com.
56. The Petitioner/Applicant also submits that despite the issuance of the said orders, the Respondents leased out the suit premises to third parties upon renovations that were supervised by the 2nd and 3rd Respondents.
57. The Petitioner/Applicant submits on the following issues;
 - a. Whether the Respondent committed contempt of Court order. (sic)
 - b. Whether the Respondents should be fined or be committed to civil jail for contempt of Court orders.
 - c. Whether the Petitioner/Applicant deserves costs.
58. On the first issue, the Petitioner/Applicant reiterates that the Respondents violated the order of status quo by renovating and leasing out the suit premises.
59. The Petitioner/Applicant submits that the Respondents in their Replying Affidavit admit that the Court issued orders of status quo on 16th December, 2024 and they therefore disobeyed the said order by repairing and letting out the suit premises.
60. The Petitioner/Applicant also submits that the Respondents were duly served through their Counsel on record even though they (Respondents) contend that there was no personal service of the said orders upon them.
61. The Petitioner/Applicant further submits that he filed an Affidavit of Service sworn on 18th December, 2024.
62. It is the Petitioner/Applicant's submissions that he has on several other occasions served the Respondents Counsel through their email and they have attended Court.
63. It is also the Petitioner/Applicant's submissions that no formal orders were extracted in respect of service of the penal notice and personal service on the Respondents, but there is proof that the Respondents were aware of the said orders.



64. It is further the Petitioner/Applicant's submissions that knowledge of a Court order suffices to prove service and it dispenses with personal service for purposes of contempt proceedings.
65. The Petitioner/Applicant relies on *Basil Criticos vs Attorney General and 8 Others* [2012] eKLR as was cited in *Shimmers Plaza Limited vs National Bank of Kenya Limited* [2015] eKLR, the judicial decision of *Hadkinson vs Hadkinson* [1952] ALL ER 567 and the Supreme Court of India judicial decision of *T.N Gadavarman Thiru Mulpad vs Ashok Khot and anor* [2005] 5 SCC in support of his submissions.
66. The Petitioner/Applicant reiterates that despite being served with the said orders, the Respondents chose to circumvent them and proceeded to allocate the suit premises to third parties.
67. The Petitioner/Applicant submits that Rajiv Bandarana (Head of Plantations of the 1st Respondent), Keneth Odire (Country General Manager of the 1st Respondent), Mercy Chirchir the 2nd Respondent and Ken Tuwei the 3rd Respondent should be committed to civil jail for a period of six months in order to protect the sanctity of this Court and the rule of law.
68. On the second issue, the Petitioner/Applicant relies on the judicial decision of *Econet Wireless Kenya Limited vs Minister for Information and Communication of Kenya Authority* [2005] eKLR and submits that the Respondents have used the stamps of Ekaterra Ltd and Lipton Teas and Infusions on the documents attached and marked as annexures 7 and 8 and yet they changed their corporate name from Ekaterra to Lipton Teas and Infusions on 9th January, 2023.
69. The Petitioner/Applicant submits that the said documents marked as annexures 7 and 8 were procured through fraud and they should therefore be expunged from the Court record or the makers should be called for cross examination.
70. The Petitioner/Applicant also submits that annexure 8 states that the tenancy period runs from 16th December, 2024 to 16th December, 2024 (sic).
71. The Petitioner/Applicant further submits that the said document was fraudulently drafted in order to defeat the orders of status quo that were issued on 16th December, 2024.
72. It is the Petitioner/Applicant's submissions that the Respondents have not tendered any evidence of payment of rent by the said Beatrice Wairimu as per paragraph 1(c) of the said agreement which states that payment is to be made through a pay bill.
73. On the third issue, the Petitioner/Applicant relies on the judicial decisions of *DGM v EWG* [2021] (sic), *Margan Air Cargo Limited v Everest Enterprises Limited* [2014] eKLR and urges the Court to allow his application with costs.
74. The Respondents submit on the following issues;
 - a. Whether the alleged contemnors had knowledge of or proper notice of the terms of the Court order.
 - b. Whether the alleged contemnors deliberately disobeyed the terms of the Court order.
 - c. Whether the Applicant is entitled to the orders sought
 - d. Who ought to bear costs of the application.
75. On the first issue, the Respondents rely on Rule 81 of the Civil Procedure Rules of England 2012, the judicial decision of *Mutitika vs Baharini Farm Limited* [1985] KLR 229 as was cited in *Republic v Ahmad Abolfathi Mohammed & another* [2018] eKLR, the judicial decision of *In the matter of an*



- application by Gurbaresh Singh & sons Ltd- Misc. Civil Case No. 50 of 1983 as was cited in Freight In Time Limited v Image Apparels Ltd [2015] eKLR and reiterate that there was no evidence of personal service of the said orders upon Rajiv Bandarana, Kenneth Odire, Mercy Chirchir and Ken Tuwei.
76. The Respondents also submit that the Petitioner/Applicant has not demonstrated that there was a Court order that dispensed with personal service and that the Court order attached to the Petitioner/Applicant's affidavit in support of the application does not have a penal notice.
 77. It is the Respondents submissions that the said omissions render the contempt of Court application defective. They rely on the judicial decisions of Woburn Estate Limited v Margaret Bashforth [2016] eKLR and Dunstan Mutuku Wambua v Glory Rent A Car Limited [2017] KECA 592 (KLR) in support of their submissions.
 78. On the second issue, the Respondents rely on the judicial decision of Republic vs Ahmad Abolfathi Mohammed & another [2018] eKLR and submit that the Petitioner/Applicant has not tendered any proof to show the alleged contemnors deliberately disobeyed Court Orders.
 79. The Respondents reiterate their averments in their Replying Affidavit and submit that the tenancy agreement was entered into by the parties before the 1st Respondent was served with the order of status quo on 18th December, 2024.
 80. The Respondents submit that the photographs attached to the Petitioner/Applicant's supplementary affidavit are inadmissible under Section 106 B of the *Evidence Act*.
 81. It is also the Respondents submissions that even if the photographs were to be considered, they bear no date and neither do they have a timestamp. They further submit that the said photographs have no probative value to demonstrate that any activity took place after the orders of status quo were issued.
 82. The Respondents submit that the Petitioner/Applicant's contention that the use of the Ekaterra stamp on the tenancy agreement is evidence of fraud is misconceived and lacks merit. The Respondents also submit that the said issue has been raised for the first time in the submissions.
 83. The Respondents further submit that it is trite law that parties are bound by their pleadings and that submissions cannot be used to introduce new facts and/or claims.
 84. It is the Respondents submissions that since the year 2022 the 1st Respondent has undergone a series of corporate transitions including changes in ownership and branding from Unilever Tea Kenya LPC to Ekaterra Tea Kenya PLC then to Lipton Teas and Infusions Kenya PLC and most recently to Browns East Africa Plantations.
 85. It is also the Respondents submissions that even though the 1st Respondent's name was changed to Lipton Teas and Infusions Kenya PLC, the majority shareholder remained to be Ekaterra and therefore it was standard practice for the 1st Respondent to continue using the Ekaterra stamp.
 86. It is further the Respondents submissions that the continued use of the Ekaterra stamp does not invalidate any agreement or suggest fraudulent intent.
 87. The Respondents submit that the term of the said lease is one year starting from 16th December, 2024 and the dates contained in the commencement and end dates are handwritten.
 88. The Respondents also submit that the indication of the same date as both the start and end date is a clerical error which does not affect the validity of the said document.
 89. The Respondents further submit that the Petitioner/Applicant has not produced any evidence of fraud. The Respondents rely on the judicial decisions of Silverse Lisamula Anami vs Justus Kizito



Mugali & 2 Others [2017] eKLR and Nelifa Holdings Limited v Kanee (Civil Appeal E026 of 2023) [2024] KEELC 686 (KLR) (15 February 2024) (Judgement) in support of their submissions.

90. The Respondents conclude their submissions by urging the Court to dismiss the Petitioner/Applicant's application with costs.
91. This Court notes that the Respondents have submitted on photographs alleged to have been attached to the Petitioner/Applicant's Supplementary Affidavit.
92. This Court has established that the Petitioner/Applicant did not file any supplementary affidavit to the application under consideration.
93. The only Supplementary Affidavit on the Court record was filed on 13th February, 2025 in respect to the application dated 6th February, 2025 which application was withdrawn on 3rd July, 2025.

Analysis and Determination.

94. I have considered the Petitioner/Applicant's application, the response thereto and the rival submissions.
95. It is my view that the following issues arise for determination;
 - a. Whether Rajiv Bandarana, Kenneth Odire, Mercy Chirchir and Ken Tuwei are in contempt of this Honourable Court.
 - b. Whether Rajiv Bandarana, Kenneth Odire, Mercy Chirchir and Ken Tuwei should be committed to civil jail or whether they should be issued with a notice to show cause why they should not be committed to civil jail.
 - c. Who should bear costs of the application.

A. Whether Rajiv Bandarana, Kenneth Odire, Mercy Chirchir and Ken Tuwei are in contempt of this Honourable Court.

96. Section 5(1) of the *Judicature Act* provides as follows:

“The High Court and the Court of Appeal shall have the same power to punish for contempt of Court as is for the time being possessed by the High Court of Justice in England, and that power shall extend to upholding the authority and dignity of subordinate Courts.”

97. Section 29 of the *Environment and Land Court Act* further 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.”

98. In the judicial decision of North Tetu Farmers Co. Ltd v. Joseph Nderitu Wanjohi [2016] eKLR the Court cited excerpts of the book titled “Contempt in Modern New Zealand”. In the said book, elements of civil contempt are set out 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.”

99. The Petitioner/Applicant contends that the Court issued orders of status quo on 16th December, 2024.
100. The Petitioner/Applicant also contends that despite the said order, the Respondents renovated the suit premises and leased it out to a third party.
101. The Petitioner/Applicant therefore contends that Rajiv Bandarana (the 1st Respondent's Head of Plantations), Kenneth Odire (the 1st Respondent's Country General Manager), Mercy Chirchir and Ken Tuwei are in contempt of the orders of the Court.
102. The Petitioner/Applicant has attached to his affidavit in support of the application a copy of the Court order issued on 16th December, 2024. The orders issued are as follows;
- a. I am not persuaded as to the urgency of the application.
 - b. The Applicant shall serve this application and Petition upon the Respondents within 7 days of the date hereof and file an affidavit of service.
 - c. The Respondents shall file their responses within 14 days upon service.
 - d. The application shall be heard inter partes on 11th February, 2025.
 - e. I hereby order that the status quo obtaining as at the date hereof shall be maintained pending inter partes hearing of this application.
103. The Petitioner/Applicant has also attached a copy of an Affidavit of Service sworn by Kipkirui Kemboi on 18th December, 2024. He deposes that he served the application dated 13th December, 2024 and the orders of this Court issued on 16th December, 2024 on the Respondents counsel on 18th December, 2024 through the email Hiram.Nyaburi@ikm.diapiperafrica.com.
104. Attached to the Affidavit of service is a copy of an email sent on 18th December, 2024 at 10:58 am by kaptelwaandassociates@gamil.com to disputeresolution@ikm.diapiperafrica.com.
105. In response, the Respondents contend that there was no personal service of the said order upon Rajiv Bandarana (the 1st Respondent's Head of Plantations), Kenneth Odire (the 1st Respondent's Country General Manager), Mercy Chirchir and Ken Tuwei.
106. The Respondents also contend that the said order issued on 16th December, 2024 does not contain a penal notice.
107. The Respondents further submit that at the time of the issuance of the orders of status quo, the Petitioner/Applicant had already been evicted from the suit premises and the suit premises leased to a third party.
108. It is the Respondents submissions that the Respondents fully complied with the orders of status quo and they did not undertake any renovations on the suit premises.



109. Among the documents attached to the Respondents Replying Affidavit is a tenancy agreement between Lipton Teas and Infusions Kenya PLC the landlord and Beatrice Wairimu the tenant. The agreement is dated 16th December, 2024 and it is to commence on 16th December, 2024 to 16th December, 2024 (sic). The tenant was to pay a sum of Kshs. 3,170/= at the commencement of the agreement, the said amount being two months' rent and the payment of rent was to be made through a pay bill.
110. As afore stated, the Respondents contend that there was no personal service of the order of status quo upon Rajiv Bandarana (the 1st Respondent's Head of Plantations), Kenneth Odire (the 1st Respondent's Country General Manager), Mercy Chirchir and Ken Tuwei.
111. In response, the Petitioner/Applicant submits that the Respondents were aware of the said orders as the orders were served upon their Counsel on record.
112. The Petitioner/Applicant also submits that since the Respondents were aware of the said order, personal service was not necessary.
113. The Court of Appeal in *Shimmers Plaza Limited v National Bank of Kenya Limited* [2015] KECA 945 (KLR) held as follows;

“On the other hand however, this Court has slowly and gradually moved from the position that service of the order along with the penal notice must be personally served on a person before contempt can be proved. This is in line with the dispensations covered under 81.8 (1) (supra).

Kenya's growing jurisprudence right from the High Court has reiterated that knowledge of a Court order suffices to prove service and dispense with personal

service for the purposes of contempt proceedings. For instance, Lenaola J in the case of *Basil Criticos Vs Attorney General and 8 Others* [2012] eKLR pronounced himself as follows:-

“...the law has changed and as it stands today knowledge supersedes personal service.....where a party clearly acts and shows that he had knowledge of a Court Order; the strict requirement that personal service must be proved is rendered unnecessary”

This position has been affirmed by this Court in several other cases including the *Wambora* case (supra).

It is important however that the Court satisfies itself beyond any shadow of a doubt that the person alleged to be in contempt committed the act complained of with full knowledge or notice of the existence of the order of the Court forbidding it. The threshold is quite high as it involves possible deprivation of a

person's liberty. This standard has not changed since the old celebrated case of *Ex parte Langley* 1879, 13

Ch D. 110 (C.A), where Thesiger L.J stated as follows. at p. 119:

“...the question in each case, and depending upon the particular circumstance of the case, must be, was there or was there not such a notice given to the person who is charged with contempt of Court that you can infer from the facts that he had notice in fact of the order which has been made? And, in a matter of this kind, bearing in mind that the liberty of the subject is to be affected, I think that those who assert that there was such a notice ought to prove it beyond reasonable doubt.”



What then amounts to “notice”? Black’s Law Dictionary, 9th Ed defines notice as follows:-

“A person has notice of a fact or condition if that person-

Has actual knowledge of it;

Has received information about it;

Has reason to know about it;

Knows about a related fact;

Is considered as having been able to ascertain it by checking an official filing or recording.”

114. In the above cited judicial decision, the Court of Appeal held that knowledge of a Court order suffices to prove service and it dispenses with the requirement of personal service for purposes of contempt proceedings. To this end, submissions by the Respondent that there was no proof of personal service upon the Respondents cannot hold and shall not be the basis upon which this application is determined.
115. As afore stated, the Petitioner/Applicant contends that the Respondents had knowledge of the orders of the Court. The Respondents concede that they were served with the said orders on 18th December, 2024.
116. It is not disputed that at the time the Court was issuing orders of status quo, the Petitioner/Applicant was not in possession of the suit premises.
117. It is also not disputed that the said orders of status quo were served upon the Respondents counsel on 18th December, 2024.
118. It is further not disputed that the suit premises has been leased out to a third party; Beatrice Wairimu.
119. What is in dispute is when the suit premises was leased out.
120. The Respondents contend that they leased out the suit premises on 16th December, 2024 before they were served with the order of status quo.
121. The Petitioner/Applicant in response alleges that the tenancy agreement displayed by the Respondents was fraudulently drafted and dated 16th December, 2024 in order to defeat the orders of status quo that were also issued on 16th December, 2024.
122. On one hand the Respondents allege that they leased out the suit premises before the orders of status quo were issued while on the other hand, the Petitioner/Applicant is adamant that the suit premises were leased out upon service of the said order.
123. It is this Court’s view that despite the Petitioner/Applicant contending that the suit premises were leased out after the orders of status quo were issued, nothing has been placed before this Court in support of the said contention. The lease agreement annexed to the replying affidavit by the Respondents show that the suit premises were leased out on 16th December, 2024. The Applicant’s affidavit of service speaks to the fact that the order of this Court was served upon the Respondent’s counsel on 18th December, 2024.
124. It is logical to deduce that the Respondents’ had no knowledge and/or notice of the Court order as at the time of signing a lease agreement with Beatrice Wairimu.



125. While the Applicant alleges that the lease agreement was entered into fraudulently and solely for purposes of defeating orders of this Court, no such evidence of fraud has been placed before this Court. Further and importantly, no evidence of notice/knowledge of the Court order of 16th December 2024 by the Respondents has been placed before this court.

126. The seriousness with which to treat contempt of Court proceedings and the strictness of the burden of proof that is placed on a person seeking that another or other be found to be in contempt was discussed in *Gatharia K. Mutikika v Baharini Farm Limited* [1985] KLR 227 wherein it was held as follows;

“A contempt of Court is an offence of a criminal character. A man may be sent to prison. It must be proved satisfactorily.... It must be higher than proof on a balance of probabilities, almost but not exactly, beyond reasonable doubt. The standard of proof beyond reasonable doubt ought to be left where it belongs, to wit criminal cases. It is not safe to extend it to offences which can be said to be quasi-criminal in nature. However, the guilt has to be proved with such strictness of proof as is consistent with the gravity of the charge...Recourse ought not to be had (sic) to process of contempt of Court in aid of a civil remedy where there is any other method of doing justice. The jurisdiction of committing for contempt being practically arbitrary and unlimited, should be most jealously and carefully watched and exercised with the greatest reluctance and the

greatest anxiety on the party (sic) of

the Judge to see whether there is no other mode which is not open to the objection of arbitrariness and which can be brought to bear upon the subject...applying the test that the standard of proof should be consistent with the gravity of the alleged contempt... it is competent for the Court where contempt is alleged to or has been committed, and or an application to commit, to take the lenient course of granting an injunction instead of making an order for committal or sequestration, whether the offender is a party to the proceedings or not.” (Emphasis mine)

127. Liberty of Rajiv Bandarana, Keneth Odire, Mercy Chirchir and Ken Tuwei is at stake. The Petitioner/Applicant must place evidence before this Court that points to the fact that Rajiv Bandarana, Keneth Odire, Mercy Chirchir and Ken Tuwei are in willful disobedience of the orders of this Court.

128. The Petitioner/Applicant must demonstrate that the said persons acted in breach of the terms of the Court order and that their conduct was deliberate.

129. In the absence of evidence that the suit premises were leased out to a third party after service of the Court order, it is impossible to state with certainty that Rajiv Bandarana, Keneth Odire, Mercy Chirchir and Ken Tuwei are in contempt of the orders of this Honourable Court.

B. Whether Rajiv Bandarana, Kenneth Odire, Mercy Chirchir and Ken Tuwei should be committed to civil jail or whether they should be issued with a notice to show cause why they should not be committed to civil jail.

130. Given my finding on issue (a) above, the question of committal to civil jail and/or issuance of a notice to show cause is not ripe for determination.



C. Who should bear costs of the application.

131. On the question of costs, it is now settled that costs shall follow the event. This is in accordance with the provisions of Section 27 of the *Civil Procedure Act* (Cap. 21). A successful party should ordinarily be awarded costs of an action unless the Court, for good reason, directs otherwise.

Disposition.

132. Taking the foregoing into consideration, I find that the Petitioner/Applicant's application dated 3rd July, 2025 lacks merit and it is hereby dismissed with costs to the Respondents.

133. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KERICHO THIS 18TH DAY OF SEPTEMBER, 2025.

L. A. OMOLLO

JUDGE.

In the presence of: -

Mr. Kipkirui for the Petitioner/Applicant.

Mr. Odhiambo for Nyaburi for the Respondents.

Court Assistant; Mr. Joseph Makori.

