



**County Government of Kiambu v Enchanting Construction Company Ltd & 8 others  
(Constitutional Petition E025 of 2025) [2025] KEHC 4707 (KLR) (8 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 4707 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KIAMBU  
CONSTITUTIONAL PETITION E025 OF 2025**

**DO CHEPKWONY, J**

**APRIL 8, 2025**

**IN THE MATTER OF: THE CONTRAVENTION OF ARTICLES 2, 3, 6(1) AND (2), 21(1),  
23(2), 43(1)(D), 62(2), 186(1), 189(1) AND 189(2) OF THE CONSTITUTION OF KENYA, 2010**

**AND**

**IN THE MATTER OF: THE COUNTY GOVERNMENT ACT, CAP 265 LAWS OF KENYA**

**AND**

**IN THE MATTER OF: THE PHYSICAL LAND USE AND PLANNING ACT, 2019**

**BETWEEN**

**COUNTY GOVERNMENT OF KIAMBU ..... PETITIONER**

**AND**

**ENCHANTING CONSTRUCTION COMPANY LTD ..... 1<sup>ST</sup> RESPONDENT**

**PERMANENT SECRETARY, STATE DEPARTMENT OF HOUSING AND  
URBAN DEVELOPMENT ..... 2<sup>ND</sup> RESPONDENT**

**SECRETARY URBAN AND METROPOLITAN DEVELOPMENT .... 3<sup>RD</sup>  
RESPONDENT**

**DIRECTOR OF URBAN DEVELOPMENT ..... 4<sup>TH</sup> RESPONDENT**

**INSPECTOR GENERAL OF THE NATIONAL POLICE  
SERVICE ..... 5<sup>TH</sup> RESPONDENT**

**COUNTY COMMISSIONER, KIAMBU COUNTY ..... 6<sup>TH</sup> RESPONDENT**

**COUNTY COMMANDER, KIAMBU COUNTY ..... 7<sup>TH</sup> RESPONDENT**

**OFFICER COMMANDING STATION, NGOLIBA POLICE STATION .... 8<sup>TH</sup>  
RESPONDENT**

**ATTORNEY GENERAL ..... 9<sup>TH</sup> RESPONDENT**



## RULING

1. The matter came up for mention for interparties hearing of the Notice of Motion application dated 27<sup>th</sup> March, 2025. However, upon listening to all counsel appearing for the parties herein, it emerged that there are four applications and a Notice of Preliminary Objection pending hearing and determination in this suit. As enumerated by counsel for the Petitioner, Mr. Kabata, they are as follows:-
  - a. A Notice of Motion application dated 27<sup>th</sup> March, 2025 filed by the Petitioner, seeking interim injunctive reliefs restraining the Respondents from undertaking construction activities on Land Reference Numbers Ngoliba/Township/93 and Ngoliba/Township/94 (“the suit properties”), as well as orders directing the Respondents to vacate the suit land and refrain from interfering with the Petitioner’s occupation. This application was certified urgent and interim reliefs granted therein on 28<sup>th</sup> March, 2025, pending inter parties hearing.
  - b. The second application is a Notice of Motion dated 1<sup>st</sup> April, 2025 also filed by the Petitioner and in this one, it is seeking to have the Respondents and/or their officers cited for contempt of court for allegedly disobeying the interim orders issued on 28<sup>th</sup> March, 2025.
  - c. The third application in a further Notice of Motion dated 1<sup>st</sup> April, 2025 and also filed by the Petitioner seeking substitution of the 1<sup>st</sup> Respondent’s name with its properly registered corporate name and corresponding leave to amend all pleadings they have filed herein.
  - d. The fourth application is a Notice of Motion application dated 1<sup>st</sup> April, 2025 filed by the 1<sup>st</sup> Respondent, seeking to set aside the interim conservatory orders issued on 28<sup>th</sup> March, 2025 on grounds that the construction works were sanctioned by a lawful tender process initiated by the National Government, and that the orders were obtained without full disclosure.
  - e. Lastly, A Notice of Preliminary Objection dated 7<sup>th</sup> April, 2025 filed by the 2<sup>nd</sup> to 9<sup>th</sup> Respondents, objecting to the jurisdiction of this Court to entertain the Petition on grounds, inter alia, that the Petition offends constitutional demarcations between the National and County Governments and that the proceedings are tainted by material non-disclosure.
2. Mr. Kabata, learned counsel for the Petitioner, urged the court to prioritize the hearing and determination of the Petitioner’s applications, especially the one seeking to cite the Respondents for contempt of court. He submitted that contempt of courts orders goes to the root of a court’s authority to proceed further in the matter. He argued that the Respondents have deliberately disobeyed valid court orders directing them to vacate the suit land and or refrain from interfering with the Petitioner’s peaceful occupation thereof pending the hearing and determination of the application and this Petition, both dated 27<sup>th</sup> March, 2025.
3. Mr. Pemba, counsel for the 1st Respondent, submitted and urged the court that it should first hear and determine the 1<sup>st</sup> Respondent’s application seeking to set aside the interim orders issued on 27<sup>th</sup> March, 2025. He contended that the dispute essentially represents a jurisdictional clash between the National Government and the County Government of Kiambu, with the National Government having awarded the tender that forms the basis of the ongoing construction that is part of the subject matter herein. He maintained that the construction is lawful and legitimate, and urged the court to grant Prayer 2 of the 1st Respondent’s application which seeks to vacate the said interim orders.
4. Mr. Motari, counsel appearing for the 2<sup>nd</sup> to 9<sup>th</sup> Respondents, submitted that the court should first determine the Notice of Preliminary Objection, as it raises fundamental issues regarding the court’s



jurisdiction to entertain the petition. He argued that the entire petition and the resulting orders were obtained through material non-disclosure, and that the petition itself is misconceived, particularly because it is directed against the National Government.

5. Having carefully considered the submissions and respective positions advanced by all counsel herein, the Court is of the view that, in order to facilitate a structured, just, expeditious, and efficient disposal of this matter, the Notice of Preliminary Objection and the Contempt Application should be heard first for the following reasons.
6. The Petitioner's application seeking to cite the Respondents for contempt of court needs to take precedence for the obvious reason that orders of the court, whether perceived to be right or wrong, must be obeyed by all parties unless and until they are set aside through due process. It is the cornerstone of the rule of law that judicial authority must be respected.
7. As was held by the Court of Appeal in the case of Teachers Service Commission –vs- Kenya National Union of Teachers & 2 Others [2013] eKLR, that court orders must be obeyed, and parties cannot take the law into their own hands by choosing whether or not to comply. Disobedience of court orders undermines the authority of a court and renders the judicial process ineffective.
8. Therefore, it should be noted that the application for contempt goes to the heart of a Court's jurisdiction and dignity. So much so that if it is established that the Respondents are in disobedience of the court and or its orders, it may affect their continued participation in these proceedings. It is important to note that the Court must first establish whether its authority is intact and its orders are being respected before it can fairly and lawfully proceed to consider and determine other substantive matters.
9. Similarly, the Notice of Preliminary Objection raised by the 2nd to 9th Respondents also requires to be prioritized and heard alongside the contempt application. The objection raises a pure point of law regarding the Court's jurisdiction to entertain the Petition, particularly with respect to whether the matter offends the principles of intergovernmental relations and the constitutional separation between National and County Governments.
10. The jurisprudence in the locus classicus case of the Owners of the Motor Vessel "Lillian S" -vs- Caltex Oil Kenya Limited [1989]KLR 1 is well settled that "Jurisdiction is everything. Without it, a court has no power to make one more step". It then follows that any challenge on a court's jurisdiction must be heard and determined at the earliest opportunity.
11. In the same breath, if upheld, the Notice of Preliminary Objection is capable of disposing of the entire suit. Therefore, it must accordingly be heard and determined in privity before the Court delves into any other substantive or interlocutory application that may have arisen herein.
12. As regards the 1st Respondent's application seeking to set aside the interim conservatory orders issued on 28<sup>th</sup> March, 2025, this Court takes this opportunity to remind the parties herein that conservatory orders are only provisional and preservative in nature. They serve to maintain the status quo and preserve the substratum of a dispute until the parties are heard and the same determined. Thus, the mere issuance of such interim relief does not prejudice the substantive rights of either party, and neither do such orders affect the Respondents' right to be heard.
13. This principle is well captured in the case of Centre for Rights Education and Awareness (CREAW) & 7 Others -vs- Attorney General [2011] eKLR, where the Court held that the purpose of conservatory orders is to maintain a state of affairs pending the hearing of the main dispute and to ensure that justice is not rendered nugatory by any developments during the pendency of the proceedings.



14. Lastly, the Petitioner's application dated 1<sup>st</sup> April, 2025, seeking to substitute the 1<sup>st</sup> Respondent's name with its correctly registered name was not opposed. Therefore, there being no opposition from any of the parties, the same ought to be allowed as prayed as the substitution is procedural and necessary for purposes of clarity and accuracy in the proceedings.
15. The remaining applications, including the application dated 27<sup>th</sup> March, 2025 seeking injunctive reliefs and the 1st Respondent's application seeking to set aside the interim orders shall be heard subsequent to the determination of the contempt application and the preliminary objection.
16. In conclusion, the court issue the following orders:-
  - a. That the Notice of Preliminary Objection dated 7<sup>th</sup> April, 2025 and the Contempt application be heard first and respective parties are granted leave to file and serve responses on the same within seven (7) days from the date of this ruling.
  - b. Upon being served with the Amended Pleadings, the Respondents be at liberty to file and serve amended responses, if need be, within five (5) days from the date of his ruling.
  - c. The Petitioner's application dated 1<sup>st</sup> April, 2025 seeking substitution of the 1st Respondent is hereby allowed, and consequently, the Petitioner is be and is hereby granted leave to amend all its pleadings accordingly within seven (7) days from the date hereof.
  - d. The Notice of Preliminary Objection and the contempt application shall be canvassed by way of written submissions and each party to file and exchange the same within seven (7) days of each other with the Applicant in either application going first from the date of being served with respective responses.
  - e. Mention on 29<sup>th</sup> April, 2025 for parties to confirm compliance and take directions on ruling date.

It is so ordered.

**RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT KIAMBU THIS 8<sup>TH</sup> DAY OF APRIL , 2025.**

**D. O. CHEPKWONY**

**JUDGE**

In the presence of:

Mr. Kabata appearing alongside M/S Nyambura counsel for Petitioner.

Mr. Pamba counsel for 1<sup>st</sup> Respondent

Mr. Motari appearing alongside M/S Wanjiru counsel for the 2<sup>nd</sup> to 9<sup>th</sup> Respondents.

Court Assistant - Martin

