



Githunguri & another (Suing as the Personal Representatives of the Estate of Stanley Munga Githunguri (Deceased)) v Somoe & 6 others (Environment & Land Case E330 of 2024) [2025] KEELC 3941 (KLR) (19 May 2025) (Ruling)

Neutral citation: [2025] KEELC 3941 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE E330 OF 2024**

**CG MBOGO, J
MAY 19, 2025**

BETWEEN

**LILIAN N GITHUNGURI 1ST PLAINTIFF
CLARE N GITHUNGURI 2ND PLAINTIFF
SUING AS THE PERSONAL REPRESENTATIVES OF THE ESTATE OF
STANLEY MUNGA GITHUNGURI (DECEASED)**

AND

**WILLIAM LANGAT SOMOE 1ST DEFENDANT
SAMUEL MBUGUA KARIUKI 2ND DEFENDANT
FREDRICK KIMEMIA KIMANI 3RD DEFENDANT
GULF AFRICAN BANK 4TH DEFENDANT
PHILIPS INTERNATIONAL AUCTIONEERS 5TH DEFENDANT
PURPLE ROYAL AUCTIONEERS 6TH DEFENDANT
CHIEF LAND REGISTRAR 7TH DEFENDANT**

RULING

1. Before this court for determination is the notice of motion dated 8th November, 2024, filed by the plaintiffs/applicants. The application is expressed to be brought under Section 5(1) of the [Judicature Act](#) incorporating Order 52 Rule 3 of the Rules of the Supreme Court of England and Wales as modified by the Civil Procedure (Amendment No. 2) Rules, 2012 (Rule 81.4 of Part 8 thereof), seeking the following orders: -



- a. Spent.
 - b. Spent.
 - c. The 1st to 17th contemnors be committed to civil jail for a period of six (6) months each and/or until further orders of this honourable court.
 - d. The contemnors be fined such amount as this honourable court shall deem fit and their property in Kenya be attached.
 - e. The 1st to 17th contemnors to purge this contempt by complying with the orders of the honourable court issued on the 23rd August, 2024.
 - f. The 1st to 17th contemnors purge their contempt by ceasing all attempts to forcefully gain access to the suit properties and alienation of the suit properties.
 - g. This honourable court be pleased to make any other orders as the justice of this case may demand.
 - h. That costs of the application notice be awarded to the applicants.
2. The application is premised on the grounds inter alia that the plaintiffs/applicants are the personal representatives of the estate of the late Stanley Githunguri who is the registered and beneficial owner of LR. Nos 12XX5/8X, 12XX5/X0, 12XX5/X1, 12XX5/X2, 12XX5/X3 and 12XX5/X4, the suit properties. The application is supported by the affidavit of the 1st plaintiff/applicant sworn on even date. The 1st plaintiff/applicant deposed that this court issued orders on 23rd August, 2024 for the maintenance of status quo on the suit property which was to remain in force pending the hearing and determination of the application dated Xth August, 2024. That notwithstanding these orders, the defendants/respondents have failed to comply with the orders and are in contempt. Further, that the defendants/respondents have attempted to gain access to the suit properties on 12th September, 2024, and 7th November, 2024 as witnessed by their security guards. That in particular, the 4th-17th respondents through their agents demanded to be allowed entry and upon refusal, forcefully attempted to break into and open the gate to the suit properties.
 3. She deposed that the contemnors have also removed a copy of the court orders which was attached on the gate of the suit properties on the said two dates which their property manager reported at the police station. She deposed that the defendants'/respondents' actions amount to contempt, and they are apprehensive that the suit properties could be illegally disposed. The 1st plaintiff/applicant deposed that the defendants/respondents should be held liable for contempt as their actions undermine the dignity and authority of this court.
 4. The application was opposed vide the replying affidavit of the 3rd defendant/respondent sworn on 30th January, 2025. The 3rd defendant/respondent deposed that he is the registered owner of land known as Nairobi/Block X2/2X1 having purchased the same from Kamulu Academy Limited in December, 2014. The 3rd defendant/respondent went on to depose on the events leading to his ownership of the land, and averred that the suit properties exists as parallel titles to the singular parcel Nairobi/Block/ X2/2X1, and that they are fraudulently superimposed on the similarly fraudulent survey plan no. 1X7/87.
 5. The 3rd defendant/respondent deposed that having reported the matter to the police the two guards at the suit properties were arrested and taken into custody for interrogation, and on the same day (13th November, 2024), he deployed his own guards to man his property.



6. The 3rd defendant/respondent further deposed that on 14th November, 2024, some unknown people pinned a court order on the gate of the suit properties, and that is when he first learnt of this suit. He deposed that the instant application is an attempt by the plaintiffs/applicants to circumvent the ongoing investigations by the police, and to steal a march in these proceedings by forcing the hand of the court in an unorthodox manner. Further, that the orders issued on 22nd August, 2024 do not identify any suit property, and are thus ambiguous and unenforceable. Further, that the plaintiffs/applicants have not demonstrated to this court personal service of the orders upon him. Further, that they confirmed that it was the agents of the 4th defendant/respondents and the bank officers who drove to the suit properties and attempted to gain entry on 12th September, 2024 and 7th November, 2024.
7. He deposed that the plaintiffs/applicants do not identify any of the defendants/respondents in the application. He averred that he is a law-abiding citizen who followed the due process of the law in an attempt to recover his land, and that he did this without any knowledge of the current proceedings. The 3rd defendant/respondent further deposed that the plaintiffs/applicants have no title to land, and that this application has been instituted to divert the hearing and determination of the main application.
8. That considering the current circumstances of this matter, the earlier orders were obtained through concealment of material facts and he urged the court to find that this application is an afterthought.
- X. The 4th, 5th and 6th defendants/respondents opposed the application vide the replying affidavit of Lawi Sato, the senior legal counsel for the 4th defendant respondent sworn on 3rd December, 2024. The 4th defendant/respondent deposed that the suit as filed has only seven defendants/respondents, however, the application purports to add parties identified as the 5th to 15th defendants/respondents who are not parties in the original suit, and cannot be added willy-nilly as the plaintiffs/applicants have. The 4th defendant/respondent deposed that the listed 5th to 15th defendants/respondents are its directors, and it has not been shown what the shareholders have done to constitute an act of contempt. Further, that the 5th and 6th defendants are agents retained by the 4th defendant/respondent to realize the charged property by public auction, and it has not been shown that either of them has since the orders of 23rd August, 2024 advertised the property for sale.
10. The 4th defendant/respondent deposed that they have not instructed any person to sell, access or in any way interfere with the status quo obtaining. That in fact, the 3rd defendant/respondent alluded to accessing the property on 13th November, 2024 and it could be this instance of access that the plaintiffs/applicants are blaming the 4th to 6th defendants/ respondents.
11. The 1st plaintiff/applicant filed a supplementary affidavit in response thereto sworn on 7th February, 2025. The 1st plaintiff/applicant deposed that the court orders remain in force and binding on all affected parties unless and until the order is set aside or discharged. Further, that the 3rd defendant/respondent has admitted to be behind the unlawful and illegal eviction thereby undermining the sacred authority and dignity of this honourable court. The 1st plaintiff/ applicant deposed that this court granted them leave to serve the pleadings by way of substituted service, thus personal service was dispensed with by this court. Further, that they have since established from the reporting that it is the 3rd defendant/respondent who has been in breach, and violation of the court orders and who sent his agents to commit the acts. The 1st plaintiff/applicant further deposed as to the history of possession and ownership of the suit properties, and that the contempt needs to be purged by the defendants/respondents to restore the dignity of the court, and protect the rule of law via the restoration of ground possession of the suit properties to them.



12. The application was canvassed by way of written submissions. The plaintiffs/applicants filed their written submissions dated 21st February, 2025 where they raised two issues for determination as follows: -
 - i. Whether the application is merited.
 - ii. Who should bear the costs of the application.
13. On the first issue, the plaintiffs/applicants submitted that the terms of the order were clear and unambiguous and binding on the defendants/respondents. Further, that the defendants/respondents had knowledge of proper notice of the terms of the order, and have acted in breach of the terms of the order, and their conduct was deliberate. The plaintiffs/applicants relied on the cases of Shimmers Plaza Limited v National Bank of Kenya Limited [2015] eKLR, Samuel M.N Mweru & Others versus National Land Commission & 2 Others [2020] KEHC X233 (KLR) and Lemein v Nabaala; Mutiri & 10 Others (Interested Parties) (Environment and Land Case Civil Suit E001 of 2021) [2023] KEELC 20353 (KLR) (4 October 2023) (Ruling).
14. On the second issue, the plaintiffs/applicants submitted that they have proved that the defendants/respondents are in contempt, and ought to be punished for whittling down the dignity and authority of this court.
15. The 3rd defendant/respondent filed his written submissions dated 6th March, 2025. While relying on the case of Katsuri Limited v Kapurchand Depar Shah [2016] eKLR, the 3rd defendant/respondent submitted that the orders issued do not identify and disclose any suit property and therefore, the orders for maintenance of status quo are irregular and unenforceable in all respects. Further, he submitted that he was never served with the court orders of 23rd August, 2024, prior to 12th September, 2024 and 7th November, 2024, when the alleged contempt is said to have occurred. Further, that from the applicants own affidavit, there is no proof that the 3rd defendant/respondent was served with the orders. To buttress on this submission, the 3rd defendant relied on the case of Nyamodi Ochieng Nyamodo & Another versus Kenya Posts & Telecommunications Corporation [1XX4] eKLR. He further submitted that nothing has been laid down to prove that he deliberately disobeyed the court order.
16. In conclusion, the 3rd defendant/respondent submitted that the nature and totality of the facts of the case before this court make it extremely unsafe for the court to positively consider the application, and he urged the court to find that the plaintiffs/applicants attempt to use the penal power of the court to hijack the ongoing police investigations and take possession of the 3rd defendant/respondent property by treachery, and is thus grossly unmerited and must fail.
17. The 4th to 6th defendants/respondents filed their written submissions dated 20th February, 2025. The 4th to 6th defendants/respondents submitted that the 5th to 15th defendants/respondents are not parties to the suit, and they urged the court to strike out the names of the persons listed as the 5th to 15th defendants/respondents. Reliance was placed in the case of Zephir Holdings Limited v Mimosa Plantations Limited, Jeremiah Matagaro & Ezekiel Misango Mutisya [2014] KEHC 1X81 (KLR). The 4th to 6th defendants/respondents submitted that for the plaintiffs/applicants to succeed against the proper parties, they must show the terms of the orders were clear, were known to the persons sought to be cited, and that the persons have failed to comply with these clear terms as it was found in the case of Samuel M. N. Mweru & Others v National Land Commission & 2 Others [2020] KEHC X233 (KLR).



18. Further, they submitted that the failure to comply with the orders of the court must be willful, and that although willfulness may be inferred, the person accused may show that there was no willfulness for there is no proof that the 4th to 6th defendants/respondents did anything that the order precluded them from doing. While relying on the case of *Mutitika v Baharini Farm Ltd* [1X85] KECA 60 (KLR), the 4th to 6th defendants/respondents submitted that the plaintiffs/applicants have fallen short of proving contempt against them.
- 1X. The Black’s Law Dictionary (Ninth Edition) defines contempt of Court as: -
- “Conduct that defies the authority or dignity of a court. Because such conduct interferes with the administration of justice, it is punishable usually by fine or imprisonment.”
20. The law guiding the present application is Order 40 Rule 3(1) of the Civil Procedure Rules which stipulates as follows: -
- “In cases of disobedience, or of breach of any such terms, the court granting an injunction may order the property of the person guilty of such disobedience or breach to be attached, and may also order such person to be detained in prison for a term not exceeding six months unless in the meantime the court directs his release.”
21. Also, Section 2X of the *Environment and Land Court Act* is clear to the effect 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.”
22. In the case of *Samuel M. N. Mweru & Others versus National Land Commission & 2 others* [2020] eKLR the court held that
- “A court without contempt power is not a court. [30] The contempt power (both in its civil and criminal form) is so innate in the concept of jurisdictional authority that a court that could not secure compliance with its own judgments and orders is a contradiction in terms, an “oxymoron.” Contempt power is something regarded as intrinsic to the notion of court; even obvious, I would say. In the common lawyer’s eye, the power of contempt “is inherent in courts, and automatically exists by its very nature...”
- If courts are to perform their duties and functions effectively and remain true to the spirit which they are sacredly entrusted with, the dignity and authority of the courts has to be respected and protected at all costs. Otherwise the very cornerstone of our constitutional scheme will give way and with it will disappear the Rule of Law and a civilized life in the society. It is for this purpose that courts are entrusted with the extraordinary power of punishing those who indulge in acts whether inside or outside courts which tend to undermine their authority and bring them in disrepute and disrespect by scandalizing them and obstructing them from discharging their duties. When the court exercises this power, it does so to uphold the majesty of the law and of the administration of justice. The foundation of judiciary is the trust and confidence of the people in its ability to deliver fearless and impartial justice. When the foundation itself is shaken by acts which tend to create disaffection and disrespect for the authority of the court by creating distrust in its working the edifice of the judicial system gets eroded.



33. It is essential for the maintenance of the Rule of Law and order that the authority and the dignity of courts is upheld at all times. The court will not condone deliberate disobedience of its orders and will not shy away from its responsibility to deal firmly with proved contemnors. It is the plain and unqualified obligation of every person against, or in respect of whom, an order is made by a court of competent jurisdiction, to obey it unless and until that order is discharged. The uncompromising nature of this obligation is shown by the fact that it extends even to cases where the person affected by an order believes it to be irregular or void.[32]
34. It is the duty of the court not to condone deliberate disobedience of its orders nor waiver from its responsibility to deal decisively and firmly with contemnors.[33] The court does not, and ought not be seen to make orders in vain; otherwise the court would be exposed to ridicule, and no agency of the constitutional order would then be left in place to serve as a guarantee for legality, and for the rights of all people.[34]”
23. First and foremost, it would be necessary to address the unprocedural manner in which the plaintiffs/applicants on their own volition and without notice to the other parties, and the court, sought to introduce parties who are not in the main suit. I have perused the pleadings herein and the suit as filed has seven defendants. Interestingly, there are additional ‘parties’ in this application whose inclusion defies the court’s procedures. That said and without labouring much, any claim against such parties is a nullity and must fail.
24. In this case, the plaintiffs/applicants contended that the defendants/respondents disobeyed the orders of this court issued on 23rd August, 2024 through unlawful entry into the suit properties. From the pleadings, it appears, that the plaintiffs/applicants after exchange of pleadings came to the realization that not all the defendants/respondents were involved in the alleged contempt. In their supplementary affidavit, they concluded that it is in fact, the 3rd defendant/respondent who is responsible for the contempt as he admitted to have entered into the suit properties. As I have understood the plaintiffs/applicants, it appears that they no longer have any claim as against the 1st, 2nd, 4th, 5th, 6th and 7th defendants/respondents.
25. Secondly, even if it were the case that the 3rd defendant/ respondent is in contempt, no evidence has been shown that he gained access to the suit properties on 12th September, 2024 and 7th November, 2024. It will be noted that the orders sought in contempt proceedings are in the nature of arrest with a possibility of committal to civil jail. Thus, to prove such a claim, a party has to show the court that there was knowledge of the orders and willful disobedience of the same. However, the 3rd defendant/ respondent averred that he entered into the suit property on 13th November, 2024. Would it be correct for this court to state that the 3rd defendant/respondent was in disobedience of the court order through unlawful entry into the suit property on the two dates which have not been proven? I think not.
26. In my view, the plaintiffs/applicants have not proved the claim of contempt of court orders issued on 23rd August, 2024. The notice of motion dated 8th November, 2024 is thus dismissed. Each party to bear its own costs. Orders accordingly.

Orders accordingly.

DATED, SIGNED & DELIVERED VIRTUALLY

THIS 19TH DAY OF MAY, 2025.



HON. MBOGO C.G.
JUDGE

