



**Nairobi City County v Waithaka (Environment & Land Case
E116 of 2024) [2025] KEELC 3940 (KLR) (19 May 2025) (Ruling)**

Neutral citation: [2025] KEELC 3940 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE E116 OF 2024**

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

BETWEEN

NAIROBI CITY COUNTY PLAINTIFF

AND

JOHN MACHUA WAITHAKA DEFENDANT

RULING

1. Before this court for determination is the notice of motion dated 7th February, 2025, filed by the defendant/applicant and it is expressed to be brought under Section 29 of the [Environment and Land Court Act](#), Section 5 of the [Judicature Act](#), Part 81.4 of the Civil Procedure (Amendment No. 2) Rules of England, 2012 and Section 3A of the [Civil Procedure Act](#), seeking the following orders: -
 1. That the respondent is in contempt of the court order issued by this honourable court on 20th May, 2024 and should hereby be fined Kshs. 20,000,000/- or such amount of money that the honourable court may deem fit.
 2. That the purported taking possession of the suit property LR. No. 209/ 12621 on 29th and 30th January, 2025 and the purported launch of an alleged construction of a public market are in utter, blatant and brazen contempt of the consent orders made by this honourable court on 20th May, 2024.
 3. That upon granting of orders 2 and 3 above this honourable court do commit Dr. Anastacia Nyalita, the Chief Executive for Hustler and Business Opportunities, (CECM), Mr. David Githaiga Baruga, Markets officer, and Joel Muli, Director Markets and Waithera Chege, the Member of County Assembly (MCA) Nairobi South B, to civil jail for two (2) years for contempt of court.
 4. That the court to grant such further or other orders as it shall deem fit under the circumstances of this case.



5. That the defendant/applicant be awarded the costs of this application.
2. The application is premised on the grounds inter alia that this court issued a consent order on 20th May, 2024 under which it was directed that the plaintiff/respondent shall not interfere with the defendant's/ applicant's possession and occupation of the suit property (LR. No. 209/ 12621) situate in South B until the hearing and determination of the suit.
3. The application was supported by the affidavit of the defendant/applicant sworn on even date. The defendant/applicant deposed that the plaintiff/respondent has entered into the suit property, and fenced it in violation of the consent orders made by this court on 20th May, 2024. He deposed that the plaintiff/respondent undertook not to interfere with his possession and use of the suit property in any manner during the pendency of the suit. That to his surprise, the plaintiff/respondent through its senior members of staff accompanied by Waithera Chege, the local MCA on 29th and 30th January, 2025, visited the suit property, fenced it with iron sheets, and purported to commence construction of a public market. Further, he deposed that on 30th January, 2025, Dr. Anastacia Nyalita, the CECM for Hustler and Business opportunities, David Githaiga Baruga, the Markets Officer, Joel Muli and the MCA together with other county officials and members of the public officiated at a launching or ground breaking event.
4. The defendant/applicant further deposed that the ground breaking event was attended by the Cabinet Secretary for Lands, and Housing-Hon. Alice Wahome on 29th January, 2025 as per the photographs annexed. Further, that the event on 30th January, 2025 on the suit property was widely covered on social media. The defendant/ applicant deposed on the issues of ownership of the suit property by his late father including its use, occupation and possession. He deposed that it was atrocious for the plaintiff/respondent to take the law into its own hands a few days to the hearing and forcefully move in to take possession. He deposed that the actions amounted to undermining, ridiculing and demeaning the authority of the court, and that they should be held accountable for their illegal actions.
5. The defendant/applicant further deposed that the contempt of court was carried out openly in full glare of media cameras and that senior members of staff of the plaintiff/ respondent must be put to account and found culpable of disobedience.
6. The application was opposed vide the replying affidavit of Dr. Anastacia Nyalita, the County Executive Committee Member in charge of business and hustler opportunities sectors sworn on 24th February, 2025. She deposed that she is not in contempt as alleged as the claims are unfounded and devoid of merit. She deposed that she is not aware of the court orders issued on 20th May, 2024, as she has not been personally served with the same. Further, she deposed that on 30th January, 2025, the Cabinet Secretary for Lands, Public Works, Housing and Urban development was conducting a ministerial development tour and her presence was deemed necessary. Further, that during the visit, she discovered that the plaintiff/ respondent and the MCA were launching two projects under the Ministry of Lands, Public Works in Nairobi South Ward and Clay City.
7. Dr. Anastacia further deposed that she attended the public gathering as a guest of the visiting cabinet secretary and member of parliament. Further, that the plaintiff/respondent has not participated in any capacity to the proposed construction of a modern market in the Nairobi South Ward, on the suit property or otherwise. She deposed that the defendant/applicant has not produced evidence to show that the plaintiff/respondent has interfered with his occupation and use of the suit property in the manner complained of.
8. The application was further opposed by the replying affidavit of David Githaiga, the Acting Assistant Director Markets of the plaintiff/respondent sworn on 24th February, 2025. The depositions contained



in his replying affidavit are similar to the depositions made by Dr. Anastacia Nyalitu. The application was further opposed vide the replying affidavit of Esther Waithera Chege (MCA) sworn on 24th February, 2025. The deposition contained in this affidavit are similar to the averments made by Dr. Anastacia and David Githaiga save that the MCA contended that she is neither an employee nor a representative of the plaintiff/ respondent in the matter before this court. The MCA deposed that she is not a party in this suit, and hence, not aware of the orders the subject of the contempt proceedings.

9. Further, that on 30th January, 2025, she was invited by the Cabinet Secretary for a ministerial development tour within her ward, and in the meeting, she ascertained that the Cabinet Secretary accompanied by the MP Starehe Constituency, Amos Mwago intended to initiate the ground breaking ceremony for the construction of a modern market under the auspices of the national government and the ministry of lands, public works housing and urban development within the confines of her ward.
10. The MCA deposed that the entirety of the project is exclusively contracted, funded and supervised by the Ministry of Lands, Public Works, and is in no way associated with her. The application was further opposed vide the replying affidavit of Joel Muli, the Deputy director for Inspectorate of the plaintiff/ respondent sworn on 24th February, 2025. He made depositions similar to that of Dr. Anastacia, David Githaiga, and the MCA.
11. The application was also opposed by the replying affidavit of Cecila Koigu, the Chief Officer, Lands of the plaintiff/respondent. She deposed that the allegations are wholly unfounded and devoid of merit, and that the plaintiff/respondent has not taken possession of the suit property in contravention of the court order issued on 24th May, 2024. Cecilia further deposed that the plaintiff/respondent is not involved in the proposed construction of the market nor has it participated in any activities related to the construction of the proposed market. That should there be any ongoing construction on the suit property, the same is conducted by the National Government through the Ministry of Lands.
12. She deposed that after investigating the matter, she learnt that there was a public advertisement for a proposed construction of a market in South B which was awarded to Jyan Construction Services Limited. Further, that the defendant/applicant admitted that the ground breaking ceremony was attended by the Cabinet Secretary and member of parliament on behalf of the national government and not on behalf of the plaintiff/ respondent. Cecilia deposed that had the event complained of been initiated by the plaintiff/respondent, the ground-breaking ceremony would have been presided over by the Governor who was not present nor represented in the ceremony.
13. The application was canvassed by way of written submissions. The defendant/ applicant filed his written submissions dated 12th March, 2025. The defendant/applicant submitted the plaintiff/ respondent through its senior staff was fully aware of the existence of the court orders prohibiting any interference with the suit property. Further, that the plaintiff/ respondent is bound to ensure that the court orders are obeyed and to inform any party acting contrary to the court orders accordingly. Also, that it was duty bound to inform the ministry of housing lands and physical planning of the existence of the court orders. The defendant/applicant questioned the plaintiff/respondent's conduct owing to its interest in the suit property, and submitted that the only inference that can be drawn from its conduct is that it connived and condoned with the ministry and is now hiding behind the ministry.
14. The defendant/applicant further submitted that the defence of lack of knowledge of personal service cannot succeed because the orders were made in the presence of its counsel in court. Further, that the knowledge by the counsel for the plaintiff/respondent must be imputed upon the citees. Reliance was placed in the cases of Basil Criticos v Attorney General & 8 others & 4 others [2012] eKLR, and Shimmers Plaza Limited v National Bank of Kenya Limited [2015] eKLR. The defendant/ applicant further submitted that the law recognizes that court orders must be obeyed, and that those who



- disobey them expose themselves to court displeasure and punishment. He submitted that a fine of Kshs. 20,000,000/- should be sufficient penalty to demonstrate court's determination to protect its dignity and authority.
15. The plaintiff/respondent filed its written submissions dated 24th March, 2025 where it raised two issues for determination as listed below: -
 - i. Whether the application is merited.
 - ii. Whether the orders sought are warranted.
 16. On the first issue, the plaintiff/respondent submitted that the court need not impute knowledge of the orders upon the citees based solely on the fact that its advocates on record was present in court during the pronouncement of the said orders. Further, it was submitted that knowledge of court orders is a matter of fact, not conjecture or inference, and that an applicant is duty bound to sufficiently demonstrate to the required standards that the citees as a matter of fact were aware of the existence of the orders prohibiting the commission of an act or otherwise. Reliance was placed in the case of Sheila Cassat Issenberg & another v Anthony Machatha Kinyanjui [2021] KEHC 5692(KLR). The plaintiff/respondent further submitted that the citees cannot be expected to reasonably have knowledge of every judicial pronouncement pertaining to the county. It was submitted that knowledge inferred from the actions of the citees must be affirmatively proved.
 17. Further, it was submitted that together with the citees it became aware of the intention for construction of a modern market in South B subsequent to a public pronouncement by the Cabinet Secretary. The plaintiff/respondent submitted that it possesses neither the mandate nor the capacity to exert influence over the actions or decisions of the national government, and that the county assembly which the Hon. Waithera Chege is a member, is a distinct and independent organ of the county government and neither reports nor takes instructions from it. Further, that the citees had no prior notice or awareness of the events in question, and that they did not in any manner take part in the ground breaking ceremony.
 18. The plaintiff/respondent further submitted that the defendant/applicant has failed to discharge the burden of proving that the citees knowingly and deliberately contravened the orders of the court. To buttress on this submission, the plaintiff/respondent relied on the cases of Samuel M.N Mweru & Others v National Land Commission & 2 others [2020] eKLR, North Tetu Farmers Co. Ltd v Joseph Nderitu Wanjohi [2016] KEHC 7193 (KLR), Odindo & 13 others v County Government of Kisumu [2025] KEELRC 692 (KLR), and Silvy Merie v James Mwangi Gakuya, Registrar of Titles, Nairobi & Attorney General [2022] KEELC 948 (KLR).
 19. The plaintiff/respondent further submitted that the evidence adduced falls short of establishing with any degree of certainty or precision that the photographs were indeed capture within Nairobi, South Ward, and that even if it did occur, it is not proven that the same took place on the suit property for want of compliance with Sections 106A and 106B of the Evidence Act.
 20. On the second issue, the plaintiff/respondent submitted that the defendant/applicant has failed to conclusively demonstrate to the requisite standard of proof that the citees had knowledge of the orders, and in bad faith contravened the orders of this court.
 21. The defendant/applicant filed his reply to the written submissions by the plaintiff/respondent dated 26th March, 2025. While reiterating the issues canvassed in his initial submissions, he submitted that there is no denial by the contemnors that they were present on 30th January, 2025, and that neither has the photographic evidence been denied by the contemnors. He submitted that the MCA knew of



- the existence of the court orders as she had applied to be enjoined as an interested party to the court proceedings at a time when the orders were already in place.
22. I have considered the application, the replies thereof and the written submissions filed as well as the authorities cited. In my view the issue for determination is whether the plaintiff/respondent and the citees are in contempt of the orders of this court issued on 20th May, 2024.
23. Contempt of court is that conduct or action that defies or disrespects authority of court. 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.
24. The law is very clear on the obedience of the court orders and gives consequences of such disobedience. Order 40 Rule 3(1) of the Civil Procedure Rules provides that: -
- “In case of disobedience or 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 six months unless in the meantime the Court directs his release.”
25. Further Section 63 (c) of the [Civil Procedure Act](#) provides that:-
- “In order to prevent the ends of justice from being defeated, the court may if it is prescribed; grant a temporary injunction and in case of disobedience convict the person guilty thereof to prison and order that his property be attached and sold”.
26. The provisions of the Environment and [Land Act](#) also buttress the above position. Section 29 of the Act provides: -
- “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 one million shillings or to imprisonment for a term not exceeding two years or both”.
27. In addition, Section 5 of the [Judicature Act](#) confers jurisdiction on the superior courts to punish for contempt. The reason why courts punish for contempt is to uphold the dignity and authority of the court, ensure compliance with directions of the court, observance and respect of due process of law, preserve an effective and impartial system of justice, and maintain public confidence in the administration of justice by courts. Without sanctions for contempt, there would be a serious threat to the rule of law and administration of justice. For a party to be cited for contempt, he must have violated and or disobeyed an order that was directed at him.
28. It is not disputed that on 20th May, 2024, when this matter came up for directions on the application dated 19th March, 2024, that the parties, through their advocates on record entered into a consent. The orders provided for the dealing of the suit property in either manner by the parties, which orders were to subsist during the pendency of the suit. Notably, is that these orders were made in the presence of counsel for all the parties. More importantly, is that these orders are still in existence as there is no other order setting aside or varying the same in place. On 29th and 30th January, 2025, the defendant/applicant was surprised to learn that the plaintiff/respondent through its senior members of staff have moved into the suit property, and fenced the same with the intention of setting up a market.



29. In response thereto, the plaintiff/respondent through the various averments contained in the affidavits denied these claims, and completely distanced themselves from the allegations on the ground that it was a project fully contracted and run by the national government. Also, the cited contemnors argued that they were not aware of the orders as they were not personally served. While considering the various arguments, I do note that the plaintiff/respondent through the cited contemnors did not deny being on the suit property on 29th and 30th January, 2025. They also did not deny the photographic evidence adduced before the court. This is an issue that was only addressed in their written submissions, therefore, it was an afterthought.
30. Contempt of court is in the nature of criminal proceedings and, therefore, proof of a case against a contemnor is higher than that of balance of probability. This is because liberty of the subject is usually at stake and the applicant must prove willful and deliberate disobedience of the court order, if he were to succeed. This was stated in *Gatharia K. Mutikika versus Baharini Farm Limited* [1985] KLR 227, that:-
- “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 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 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 on 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.”
31. Due to the gravity of consequences that flow from contempt proceedings, it is proper that the order be served and the person cited for contempt should have had personal knowledge of that order. All the cited contemnors denied knowledge of existence of the orders as well as personal service of the same. However, the Chief Officer of Lands of the plaintiff/respondent did not deny this knowledge. In my view, this should have been the person best fit to be cited for contempt. In fact, and as rightly so stated by the defendant/applicant, the plaintiff/respondent has an interest in the suit property owing to the institution of this suit against him. If at all its claims over the suit property are to go by, then it would be keen to ensure, and bring it to the attention of the relevant officers of the existence of this suit.
32. From the above, it is my finding that while the orders were made in the presence of counsel for both parties, the plaintiff/respondent had knowledge of the existence of these orders. As such, the plaintiff/respondent is in contempt of the orders of this court issued on 20th May, 2024. Whereas the Chief Officer Lands was not cited for contempt, yet filed a replying affidavit in response thereto, she ought to appear before the court and show cause why the plaintiff/respondent should not be punished.



33. The notice of motion dated 7th February, 2025 has merit and it is hereby allowed in the following terms:

- i. The plaintiff/respondent is in contempt of the court orders issued on 20th May, 2024.
- ii. Cecila Koigu, the Chief Officer, Lands of the plaintiff/respondent to appear in court on 1st July, 2025 to show cause why the plaintiff/ respondent should not be punished.
- iii. Failure to comply with order (ii) above warrants of arrest to issue.
- iv. The defendant/applicant is awarded the costs of this application.

Orders accordingly.

DATED, SIGNED & DELIVERED VIRTUALLY THIS 19TH DAY OF MAY, 2025.

HON. MBOGO C.G.

JUDGE

19/05/2025.

In the presence of:

Ms. Betty Cheronno - Court assistant

Mr. Kamaara for the Defendant /Applicant - present

Mr. Muthama holding brief for Mrs. Maina for the Plaintiff/Respondent – present

