



Syokimau Residents Association v Director General National Environment Management Authority & 3 others (Environment & Land Case E014 of 2024) [2025] KEELC 4697 (KLR) (25 June 2025) (Ruling)

Neutral citation: [2025] KEELC 4697 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS
ENVIRONMENT & LAND CASE E014 OF 2024**

NA MATHEKA, J

JUNE 25, 2025

BETWEEN

SYOKIMAU RESIDENTS ASSOCIATION PLAINTIFF

AND

DIRECTOR GENERAL NATIONAL ENVIRONMENT MANAGEMENT AUTHORITY 1ST DEFENDANT

COUNTY GOVERNMENT OF MACHAKOS 2ND DEFENDANT

AHMED OSMAN MOHAMED 3RD DEFENDANT

DAHIYA MAHMUD HUSSEIN 4TH DEFENDANT

RULING

1. The application is dated 18th December 2024 and is brought under Order 40 Rule 1 & 7, Order 45, Order 51, of the Civil Procedure Rules, Sections 1A, 1B, 3A, 80 of the [Civil Procedure Act](#) and Article 159 of [the Constitution](#) seeking the following orders;
 1. That this Application be certified urgent and heard in the first instance.
 2. That the this Honourable Court be pleased to grant an order of stay of the orders granted on 5th November, 2024 issued against the 3rd and 4th Defendants pending the hearing and determination of this Application.
 3. That this Honourable Court do grant an order setting aside, vary and or review the orders issued on 5th November, 2024.
 4. That the execution of the contempt orders given on 5th November, 2024 against the 3rd and 4th Defendants be stayed pending the hearing and determination of this Application.



5. That the contempt orders issued against the 3rd and 4th Defendants be lifted, vacated and/or set aside.
6. That costs of this Application be provided for.
2. It is based on the following grounds, the annexed Affidavit of DAHIYA MAHMUD HUSSEIN and further grounds that the 3rd and 4th Defendants are the registered owners of the suit property. The Plaintiff herein has filed an application under Certificate of Urgency for an order for this Honourable Court to cite the 3rd and 4th Defendants for contempt of court orders of 22nd April, 2023 which order was never served upon the 3rd and 4th Defendants. That the said court order was never served upon the 3rd and 4th Defendants and they learnt of the said order on 4th December, 2024 when the order issued on 21st November, 2024 was sent through WhatsApp to the 4th Defendant. That 3rd and 4th Defendants came to learn of the orders made on 22nd April, 2024 and 5th November, 2024 on 4th December, 2024 as they were never served with the order of 22nd April, 2024. That the Plaintiff has no locus standi to institute this suit on its name contrary to Section 41(1) of the Societies Act as such the Plaintiff lacks capacity to institute proceedings in its own name. That unless the Application and orders sought are granted in the first instance, the 3rd and 4th Defendants will suffer irreparable loss and prejudice and it is the interest of justice that the orders sought be granted.
3. This court has considered the application and the submissions therein. The Applicant submits that the Plaintiff has no locus standi to institute this suit on its name contrary to Section 41(1) of the Societies Act as such the Plaintiff lacks capacity to institute proceedings in its own name.
4. In the case of Alfred Njau & Others v City Council of Nairobi [1982] KAR 229, the court held as follows;

“The term locus standi means a right to appear in court and conversely to say that a person has no locus standi means that the has no right to appear or be heard in such and such proceedings.”
5. Similarly, in the case of Law Society of Kenya v Commissioner of Lands & Others, Nakuru High Court Civil Case No. 464 of 2000, the court held that;

“Locus standi signifies a right to be heard. A person must have sufficiency of interest to sustain his standing to sue in court of law.”
6. In the case of Mumo Matemo v Trusted Society of Human Rights Alliance & 5 Others, the court stated that while the court should not sanction hurdles to access to justice by restricting the definition of locus standi, it should nevertheless not entertain litigation that is hypothetical, abstract or is an abuse of the judicial process.
7. The Respondent states that it is a company hence they have locus standi. I have perused the court record and indeed find a certificate of incorporation dated 16th September 2010 “JIWA1” stating that the Plaintiff is a Company limited by guarantee under the Companies Act Cap 486. I therefore find that the Plaintiff does have locus standi to institute this suit.
8. On the issue of the orders to be set aside, 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.”



9. This application is anchored on section 63 (c) of the *Civil Procedure Act* which provides that;
- 63) In order to prevent the ends of justice from being defeated, the court may, if it is so prescribed:-
- (c) Grant a temporary injunction and in case of disobedience commit the person guilty thereof to prison and order that his property be attached and sold.”
10. Pursuant to section 63(c) aforesaid, it is provided under order 40 Rule 3(1) of the Civil Procedure Rules that;
- “3(1) in case of disobedient 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.”
11. In the case of *Teachers Service Commission v Kenya National Union of Teachers & 2 others* [2013] eKLR the court stated as follows;
- The reason why courts will punish for contempt of court then is to safe guard the rule of law which is fundamental in the administration of justice. It has nothing to do with the integrity of the judiciary or the court or even the personal ego of the presiding judge. Neither is it about placating the Applicant who moves the court by taking out contempt proceedings. It is about preserving and safeguarding the rule of law.”
12. Contempt of court is a grave matter as it concerns the dignity of the court when law and order is threatened and the fact that liberty and fundamental rights and freedoms of the alleged contemnor are at stake. The standard of proof is higher than proof on a balance of probabilities but not as high as proof beyond reasonable doubt. In the case of *Republic v Ahmad Abolfathi Mohammed & Another* [2018] eKLR, the Supreme Court stated as follows:
- We are also conscious of the standard of proof in contempt matters. The standard of proof in cases of contempt of Court is well established. In the case of *Mutitika v. Baharini Farm Limited* [1985] KLR 229, 234 the Court of Appeal held that:
- “in our view, the standard of proof in contempt proceedings must be higher than proof on the 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, in criminal cases. It is not safe to extend it to an offence which can be said to be quasi-criminal in nature.”
13. The rationale for this standard is that if cited for contempt, and the prayer sought is for committal to jail, the liberty of the contemnor will be affected. As such, the standard of proof is higher than the standard in civil cases. This power, to commit a person to jail, must be exercised with utmost care, and exercised only as a last resort. It is of utmost importance, therefore, for the respondents to establish that the alleged contemnor’s conduct.”
14. In the instant case it is on record that the Court order was issued on 5th November, 2024. The Respondent states that, the 3rd and 4th Defendants were at all times represented by counsel Nyangayo of Swan and Company Advocates Swan Center, KMC Road Opposite Mavoko Law Courts, Ground Floor, Door 4, and of P.O. Box 61717 Athi River. That the 3rd and 4th Defendants have been aware of the proceedings in this case personally and through their counsel. That on 28th March, their Advocate on record served upon all parties the Application dated 23rd March, 2024, Hearing Notice dated 26th March, 2024 and Orders dated 26th March, 2024, including the 3rd and 4th Defendants personally



- through their contacts 0722755323 and 07211114446. That the Order dated 22nd April was served upon the 3rd and 4th Defendants personally and through their counsel, Nyangayo and Company Advocates on 24th April, 2024 as per the Affidavit of Service on record dated 30th April, 2024.
15. That further, on 26th November, 2024, it was served upon the 3rd and 4th Defendants' Contractor Kennedy Kamwilwa who is also the manager of Begres Investment Limited, through his email address: the Orders dated 5th November, 2024. That the Order dated 22nd April was made in presence of Mr. Vincent Nyangayo appearing for the 3rd and 4th Defendants. That on 3rd December, 2024, the Orders of 5th November, 2024 were served at the construction site/suit premises by pinning/affixing on the building. That even upon being served with the Orders of the 5th November, 2024, the 3rd and 4th Defendants continued construction on the suit premises. That where a litigant is represented, there is no requirement for personal service.
 16. The Applicants admit that they are the owners of the suit property, Land Reference number 12715/7678, in Syokimau area in Machakos County. That they came to learn of the orders made on 22nd April, 2024 and 5th November, 2024 on 4th December, 2024 as they were never served with the orders of 22nd April, 2024. That as far as they are concerned they were never served with the order of 22nd April, 2024 and upon perusal of the court, they had discovered that the order was served upon one Omar Ibrahim of telephone 0722 755 323 as confirmed by the Process Server which number does not belong to the 3rd Defendant. That on 4th December, 2024, the 4th Defendant received through WhatsApp the court order of 5th November 2024 issued on 21st November, 2024 citing them for contempt and for them to attend court on 29th January, 2025 which is only the first time they had received any document from the Plaintiff's advocates.
 17. That they had instructed the firm of Swan Advocates to represent them who had informed them that he had filed a Preliminary Objection and that the matter is still in progress. That the said law firm did not inform them of the orders in this suit except the matter in Mavoko ELC No. E018 of 2024 where the 4th Defendant had obtained an order issued on 28th March, 2024 against the Plaintiff and which order was never set aside and or stayed by the Plaintiff. That at the time the 4th Defendant was served the Court Order of 5th November, 2024, there was no development, activity and or construction since September, 2024 which has been ongoing on the suit property due to lack of funds.
 18. I have perused the court file and find that the application for contempt is dated 29th May 2024 and the same ought to have been served personally. Upon perusal of the affidavits of service, I find that service of the applications in this suit was either through the advocates and /or at the site. The 3rd and 4th Defendants were never personally served as required in any contempt proceedings. The 3rd Defendant was served through a phone number that was not his and the 4th Defendant received a WhatsApp message after the proceedings in November 2024. The Applicants confirm that no developments are taking place at the site from the time they received the order. I find that service was improper and contempt orders dated 5th November 2024 are set aside. I further order that status quo be maintained pending the hearing and determination of this suit. Parties are advised to comply with orders 11 and set down the matter for hearing. Costs of this application to be in the cause.

It is so ordered.

DELIVERED, DATED AND SIGNED AT MACHAKOS THIS 25TH DAY OF JUNE 2025.

N.A. MATHEKA

JUDGE

