



REPUBLIC OF KENYA



**Odhiambo v Mfangano Division ACC & 2 others (Judicial Review  
1 of 2022) [2025] KEELC 5053 (KLR) (18 June 2025) (Ruling)**

Neutral citation: [2025] KEELC 5053 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT HOMA BAY  
JUDICIAL REVIEW 1 OF 2022  
FO NYAGAKA, J  
JUNE 18, 2025**

**BETWEEN**

**PATRICK OCHIENG ODHIAMBO ..... APPLICANT**

**AND**

**MFANGANO DIVISION ACC ..... 1<sup>ST</sup> RESPONDENT**

**THE HON. ATTORNEY GENERAL ..... 2<sup>ND</sup> RESPONDENT**

**SAMWEL OKEYO OTINDO ..... 3<sup>RD</sup> RESPONDENT**

**RULING**

1. Before this court is the Applicants' Notice of Motion dated 28/03/2025 seeking the following orders
  1. The contempt of court ruling and all consequential orders on the 25<sup>th</sup> July 2023 be set aside and, or varied.
  2. That the applicant be granted leave to file a supplementary response to the contempt Application out of time.
  3. There be a stay of execution of the contempt orders pending the hearing and determination of the Application.
  3. The cost of this Application be provided for.
2. The Application is premised on the grounds on the face of it and the contents of the affidavit sworn by Samwel Okeyo Otindo. In his affidavit, he deposed that he was never served with the court order dated 27/09/2018 and further, that he was never served with hearing notices and denied the alleged contempt.
3. I note that the applicant herein had earlier on filed an Application dated 03/10/2024 wherein he sought for stay of execution of the orders dated 25/07/2023, setting aside of the same and that he be accorded



an opportunity to file a supplementary affidavit, documents and submissions. It is clearly evident that the applicant is seeking similar orders in this Application. The orders, though worded slightly different, are in every way, shape, form, content and import completely similar to the orders sought in the present Application.

4. The grounds contained in both affidavits paint a similar picture wherein the applicant alleges non service of the attendant mention and hearing notices pertaining to the Application filed on 29/04/2019, which Application resulted in the impugned ruling dated 25/07/2023. The Application sought for the detention of the Interested Party for disobedience of the court order issued on 27/09/2018, attachment of his property for said disobedience and his arrest for the contempt. Consequential orders were accordingly issued. In the ruling, subject of the Application herein.
5. The court then delivered its ruling on 25/03/2025 directing the Interested Party present himself for mitigation and sentencing on 25/04/2025. The present Application is, in my considered view, an attempt to impede the proceedings as it was filed after the directions and date for mitigation and sentencing had been set. There are two fronts on which this Application fails. On one hand, it meets the criteria referred to as considered res judicata and on the other, it seeks to have the court sit on appeal on its own decision.
6. Section 7 of the [Civil Procedure Act](#) Cap 21 Laws of Kenya defines the doctrine of Res Judicata in the following terms: -

“No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court.”
7. In the dicta in re Estate of Riungu Nkuuri (Deceased) [2021] eKLR the court stated as follows:

“The test for determining the Application of the doctrine of res-judicata in any given case is spelt out under Section 7 of the [Civil Procedure Act](#). In Independent Electoral & Boundaries Commission vs Maina Kiai & 5 Others [2017] eKLR, the Supreme Court while considering the said provision held that all the elements outlined thereunder must be satisfied conjunctively for the doctrine to be invoked. That is:

  - (a) The suit or issue was directly and substantially in issue in the former suit.
  - (b) That former suit was between the same parties or parties under whom they or any of them claim.
  - (c) Those parties were litigating under the same title.
  - (d) The issue was heard and finally determined in the former suit.
  - (e) The court that formerly heard and determined the issue was competent to try the subsequent suit or the suit in which the issue is raised.”
8. As aforementioned, the Application seeks the same orders as those sought in the Application dated 03/10/2024. These were determined vide the ruling delivered on 25/03/2025. The issues therein were heard and determined on merit. It is therefore my finding that the Application is res judicata.



9. It also follows that the Applicant, in this application, is seeking an appeal through the backdoor. As he is clearly aggrieved with the ruling delivered on 25/07/2019, and this court already rendered a decision on 25/03/2025, his only recourse is in lodging an appeal as a court cannot sit on appeal on its own decision.
10. Section 16 of the *Environment and Land Court Act* provides as follows;
- Appeals from the Court shall lie to the Court of Appeal against any judgement, award, order or decree issued by the Court in accordance with Article 164(3) of *the Constitution*.
11. Article 164(3) of *the Constitution* provides as follows;
- (3) The Court of Appeal has jurisdiction to hear appeals from—
- (a) the High Court; and
- (b) any other court or tribunal as prescribed by an Act of Parliament.
12. Clearly, there are mechanisms of challenging a decision of this Court by an aggrieved party. One is by way of appeal as stipulated in the above legal provisions. This is what the Applicant should have done when the Ruling impugned by his instant application was delivered. The upshot of the foregoing is that the Application dated 28/03/2025 is dismissed for lack of merit. Costs to be awarded to the Respondents.
13. The matter shall be mentioned on 02<sup>nd</sup> July 2025 when the applicant shall attend in person to either show that he shall have complied by paying the sum ordered or he shall be imprisoned for contempt of court as found by the Court.
14. Orders accordingly.

**RULING DATED, SIGNED AND DELIVERED VIA THE TEAMS PLATFORM THIS 18<sup>TH</sup> DAY OF JUNE 2025**

**HON. DR. IUR FRED NYAGAKA,**

**JUDGE**

In the presence of,

Ms Ogutu Advocate for Nyakwamba Adv. for Applicant

Mr. Osoro Advocate for the Respondent.

