



**Adera v Okode (Environment and Land Case 296 of 2017)
[2025] KEELC 6467 (KLR) (18 September 2025) (Ruling)**

Neutral citation: [2025] KEELC 6467 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MIGORI
ENVIRONMENT AND LAND CASE 296 OF 2017
FO NYAGAKA, J
SEPTEMBER 18, 2025**

BETWEEN

JOHNSON OTIENO ADERA PLAINTIFF

AND

PAUL ODERA OKODE DEFENDANT

RULING

(On whether the Defendant/Respondent is in Contempt of Court)

1. The applicant herein filed a Notice of Motion Application dated 11th November, 2024. He brought it under Certificate of Urgency. He sought orders that:
 - a.Spent.
 - b. The defendant/respondent be found in contempt of the decree of this court for resisting and obstructing the applicant/plaintiff from possession and use of the suit land LR No. Kamangambo/Kanyimach 787 pursuant to a decree issued on 29th July, 2022 and an order granted on 13th July 2023 and be detained in prison for a period of thirty (30) days or such other period as this court may deem fit, just, proper and appropriate and to be fined a sum of Kshs. 2,000,000/= or such sum as this court may deem fit, just, and appropriate.
 - c. Cost be borne by the respondent/defendant.
2. The application was based on the grounds on the face of the application as well as the Affidavit sworn by the Plaintiff/Applicant. In a nutshell, the respondent's case is that on the 29th July, 2022, this court delivered a judgment by which it decreed that the defendant /respondent be permanently enjoined from occupying the suit property being LR No. Kamagambo/Kanyimach/787. That despite this court's said determination and decree, the Respondent did not vacate the said suit property to date.



3. Further to the above, the plaintiff/applicant maintained that on 13th July, 2023 this court “bent backwards” and granted a stay of execution of its decree dated 29th July, 2022 but only for a period of 90 days to enable the defendant /respondent to vacate the suit premises pursuant to the decree dated 29th July, 2022. The period lapsed. The defendant/respondent did not comply with order and still occupies the suit property to date.
4. The plaintiff/applicant also avers that the Defendant applicant was fully aware of the decree and order of this court. He has refused to comply with the same. It is also the plaintiff/applicant’s contention that there is no stay of execution of the decree in place.
5. The Plaintiff/Applicant also avers that on 10th November, 2024, at around 10.00 AM, his driver, acting on his instructions attempted to plough the suit property, but the defendant/respondent used violence to deny the plaintiff/applicant his right to utilize the suit property. The plaintiff/applicant depones that on the material date, the defendant/respondent incited villagers to attack his driver and risked his tractor being burnt hence forcing the said driver to flee from the suit property. The plaintiff/applicant maintains that the defendant/respondent has occupied his land for thirteen (13) years and that relies on violence to remain in occupation
6. The above stated actions, the plaintiff/applicant maintains, amount to contempt of court and calls upon the court to punish the defendant/respondent for this behavior. The plaintiff/applicant contents that, as a consequence of the defendant/applicant’s actions, this court has suffered disrepute and that his inability to enforce the orders of this court has subjected him to public ridicule.

The Response

7. The defendant /respondent filed a replying affidavit dated 19th December, 2024. In this affidavit, he admitted that this court indeed issued the order dated 13th July, 2023 directing that he be evicted from L.R Kamangambo/Kanyimach/787, which order which the plaintiff/applicant now seeks to enforce.
8. The defendant/respondent further deponed that he had filed a Reference at the Court of Appeal in Kisumu, being Kisumu Civil Application Ref. No. E416 of 2023 which touches on the said suit property and the same is yet to be heard and determined. Further, the defendant/ respondent deponed that he would be grossly prejudiced if the matter proceeds before this court before the said reference filed before the Court of Appeal is heard and determined.
9. Further to the foregoing, the defendant/respondent depones that he is a law-abiding citizen and that the suit property was the only he knows and that he had lived on the suit property for more that fifteen (15) years.
10. The defendant/respondent fears that if the plaintiff/applicant’s application is allowed, the reference filed in the Court of Appeal will be rendered nugatory and the same would be tantamount to condemning him unheard.

Submissions

11. The Plaintiff/applicant filed submissions dated 18th December 2024. He submitted that this court has inherent powers to punish those who disobey its orders.
12. The Plaintiff/applicant reiterated that this court, on 29th July, 2022 decreed that the defendant/respondent was permanently barred from occupying the suit property and directed him vacate the said property, which directions the defendant/respondent has to date declined obey.



13. On 13th July 2023, the plaintiff/applicant submitted that court granted a stay of execution for 90 days to allow the defendant/respondent to vacate the suit property, which order fell on deaf ears.
14. The plaintiff/applicant also reiterated that efforts by his driver, who was acting on his instructions to plough the suit property were met with violence from the defendant/respondent and that his tractor was almost burnt in the scuffle.
15. It was the plaintiff/applicant's submission that the defendant /respondent has been fully aware of the decree and order of the court and that he has chosen to disobey them to the detriment of the plaintiff/applicant.
16. The plaintiff/applicant placed reliance on several precedents, including Dr. Fred Matiang'i, the Cabinet Secretary, Ministry of Interior and Co-ordination of National Government v Miguna Miguna & 4 others; Woburn Estate Limited v National Bank of Kenya Limited, Civil Appeal No. 33 of 2012 and Eddie Kenya Limited v Irene Mwangi Anasi (sued as the Legal administratrix of the Estate of the late Abigail Kemunto Opande (deceased) Court of Appeal Kisumu Civil Application No. E034 of 2023.
17. In a nutshell, the plaintiff /applicant submitted that this court has jurisdiction to punish contemnors and that court orders must be respected in order to safeguard the authority and dignity of the court as well as uphold the rule of law. He also argued that the defendant /respondent was in contempt of the orders of this court which he was well aware of and that the application is unopposed. Finally, the defendant/applicant maintained that his averment that the defendant /respondent violently prevented his from ploughing the suit land despite the existing directives and order of the court have not been controverted. For these reasons, he prayed that this court grants him the prayers sought in his application.
18. For the record, the defendant/respondent did not file any written submissions in relation to this application. However, he made oral submissions during the inter partes hearing. In the said submissions the Defendant contended that he has filed an application to for a Reference in Kisumu Court of Appeal, as deponed above. Further, that on 16th May 2025 the Reference was allowed and he was required to file the Reference. He added that his then advocate was the only one who could tell whether the same had been filed or not. He argued that, therefore, the application was not merited.

Issues for Determination

19. After considering the applicant's application, supporting affidavits well as the respondent's replying affidavit, the law and the parties' submissions, I am of the opinion that the issues for determination in this application are:
 - a. Whether the defendant/respondent should be held in contempt of the court; and
 - b. Who should bear the costs of this application.

Analysis and Determination

20. I have carefully analyzed the plaintiff/applicant's application, supporting affidavit, and submissions together with the annexed authorities as well as the Respondent's Replying Affidavit and the accompanying annexures. The Plaintiff/applicant herein seeks the courts intervention to enable him enjoy the fruits of his judgment following a judgment in his favour delivered by this court on 29th July, 2022. In this judgment, this court granted a permanent injunction barring the defendant/respondent from occupying L.R. Kamangambo/Kanyimach/787.



21. After the defendant/respondent failed to obey this order, the plaintiff/applicant, sought this court's intervention to evict the defendant/applicant from the suit property. This court on 13th July 2023 granted a 90-day stay of execution to enable the defendant/respondent move to another property, an order that was also not obeyed. The respondent's conduct, according to the plaintiff/applicant amounts to contempt of court and should not go unpunished.
22. Contempt of court has been defined in the been defined in the Black's Dictionary (11th edition) as "Conduct that defies the authority or dignity of a court or legislature. Because such conduct interferes with the administration of justice, it is punishable usually by fine or imprisonment."
23. The power of this court to punish for defiance of its orders and decrees is stipulated in Section 29 of the *Environment and Land Court Act* which provides as follows:

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.
24. Section 38 of the *Civil Procedure Act* empowers courts to enforce the execution of Decrees and provides as hereunder:

"Subject to such conditions and limitations as may be prescribed, the Court may, on application of decree holder, order execution of the decree–
... (f)in such other manner as the nature of relief granted may require."
25. The need to enforce the obedience of orders of courts was spelt out by the Court of Appeal in *Shimmers Plaza Limited v National Bank of Kenya Limited*, Civil Appeal 33 of 2012) [2015] KECA 945 (KLR) (Civ), where the court emphasized that "[T]he duty to obey the law by all individuals and institutions is paramount in the maintenance of the rule of law, good order and the due administration of justice".
26. The court in *Shimmers plaza limited (supra)* proceed to state as follows:

We reiterate here that court orders must be obeyed. Parties against whom such orders are made cannot be allowed to trash them with impunity. Obedience of Court orders is not optional, rather, it is mandatory and a person does not choose whether to obey a court order or not...The courts should not fold their hands in helplessness and watch as their orders are disobeyed with impunity left, right and centre. This would amount to abdication of our sacrosanct duty bestowed on us by *the Constitution*. The dignity, and authority of the Court must be protected, and that is why those who flagrantly disobey them must be punished, lest they lead us all to a state of anarchy. We think we have said enough to send this important message across.
27. As was held in *Samuel M.N. Mweru & others v The National Land Commission & 2 others*, Nairobi (HC) Miscellaneous Civil Application No. 443 of 2017, the court's power to enforce the compliance of orders, judgments and decrees is so fundamental that it is tantamount to the very existence and functioning of the court. Thus, the court held:

"A court without contempt power is not a court. 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."

28. For a party to be held contempt of court, the test to be met was established in Samuel M.N. Mweru (supra) where the court held that:

"40. It is an established principle of law that in order to succeed in civil contempt proceedings, the applicant has to prove (i) the terms of the order, (ii) Knowledge of these terms by the Respondent, (iii). Failure by the Respondent to comply with the terms of the order. Upon proof of these requirements the presence of willfulness and bad faith on the part of the Respondent would normally be inferred, but the Respondent could rebut this inference by contrary proof on a balance of probabilities.[46] Perhaps the most comprehensive of the elements of civil contempt was stated by the learned authors of the book Contempt in Modern New Zealand[47] who succinctly stated: "There are essentially four elements that must be proved to make the case for civil contempt. The applicant must prove to the required standard (in civil contempt cases which is higher than civil cases) that:

- (a) the terms of the order (or injunction or undertaking) were clear and unambiguous and were binding on the defendant;
- (b) the defendant had knowledge of or proper notice of the terms of the order;
- (c) the defendant has acted in breach of the terms of the order; and
- (d) the defendant's conduct was deliberate".

29. The above requirements should be proved on a standard that is higher than the balance of probabilities standard applied in civil cases and below the proof beyond reasonable standard applied in criminal cases. see *Linah Jeriwo Sang v Cornelius Kiplimo Keter & 5 others Eldoret ELC Case No. E010 of 2023 [2024] KEELC 14136 (KLR)*.

30. There is no doubt that the court issued the decree dated 29th July, 2022 and subsequently ordered the defendant to vacate the suit property on 13th June, 2023. Indeed, the defendant/respondent admits this fact in his Replying Affidavit and maintains that he has filed a reference in the Court of Appeal in Kisumu in relation to the judgment and decree of this court requiring him to vacate the suit property.

31. As to whether the decree and order in question were clear, unambiguous and binding upon the defendant/respondent, I have examined the same and I do not find any ambiguity concerning the decree and order that the defendant/respondent is said to have disobeyed. The issue of ambiguity was never raised by the defendant/respondent in his replying affidavit, who admitted "the court issued an order on 6th October, 2023 directing that I be evicted from L.R No. Kamangambo/Kanyimach/787" and "the plaintiff/ applicant now seeks to enforce the said order." If the defendant/respondent had a challenge understanding these directives, he would have indicated as such in his replying affidavit. In *Linah Jeriwo Sang* (supra) the court had this to say concerning a Respondent who never raised the issue of the order complained of being unclear and ambiguous

"The order is clear and unambiguous and there has been no complaint from the Defendants that it was ambiguous or confusing in any way. For this reason, this court finds that there were in existence clear and unambiguous orders capable of being executed and/or obeyed by the Defendants".



32. I need not reiterate that the order complained of is binding upon the defendant/respondent since the same is directed towards the said defendant/respondent. In *Linah Jeriwo Sang (supra)*, the court emphasized that:

It is imperative that every person against whom or in respect of whom an order is made by a Court of competent jurisdiction has an obligation to obey it unless and until the order is discharged. This obligation is uncompromising and it applies even where one believes the order to be irregular or void.

33. The Defendant does not dispute that there is a decree herein which requires his eviction from the land. Actually, he does not contend that he is unaware of the same and that the time granted for him to vacate voluntarily has ended but he has not done so. It is also not in issue that there is no stay of execution, of the said decree, in existence issued by this Court or the Court of Appeal in Kisumu or any other court. All that the Plaintiff argues is that he has filed an application for leave to file a Reference at the Court of Appeal in Kisumu. The Application was Kisumu Civil Application Ref. N. E416 of 2023. At the time of the hearing of the instant application, on 30th July 2025, the Respondent informed the Court that the said application had been determined on 16th May 2025. That the Court of Appeal allowed the application.

34. This Court has taken the liberty to check through the Kenya Law website. Indeed that

35. The defendant/ respondent cannot be heard to say that he has filed a reference at the Court of Appeal in Kisumu and that the reference relates to the suit property thus creating an impression that he may have been absolved from obeying the order and decree of this court by dint of filing that reference. It is important to note that a reference is not an appeal and the fact of filing one at the Court of Appeal does not in any way guarantee that it will succeed. The Court of Appeal, in *Habo Agencies Limited v Wilfred Odhiambo Musigo Civil Appeal (Application No. 124 of 2004)*, shed light on the fact of a reference not being tantamount to an appeal.

36. Even if the defendant/respondent had filed an appeal, the same would not bar this court from exercising its powers to enforce its orders and decrees where the defendant/applicant has not obtained a stay of execution pending appeal. It is noteworthy that there is no stay of execution in place. As such, the defendant/respondent is bound to obey the orders of the court. Order 42 Rule 6 of the Civil Procedure Rules, 2010 which provides as hereunder is instructive on this matter:

“No appeal or second appeal shall operate as a stay of execution or proceedings under a decree or order appealed from except in so far as the court appealed from may order but, the court appealed from may for sufficient cause order stay of execution of such decree or order, and whether the application for such stay shall have been granted or refused by the court appealed from, the court to which such appeal is preferred shall be at liberty, on application being made, to consider such application and to make such order thereon as may to it seem just, and any person aggrieved by an order of stay made by the court from whose decision the appeal is preferred may apply to the appellate court to have such order set aside”

37. Without a doubt, the orders of this court have never been set aside or varied and as such remain binding upon the defendant/respondent, the reference said to have been filed at the Court of Appeal notwithstanding.

38. As to whether the defendant/respondent had proper knowledge or notice of the terms of the order, I have already stated that defendant/ respondent admitted in his replying affidavit that there was an order of the court dated 1 that directed that he be evicted from the suit property. he even went further to state



that he had filed reference in the Court of Appeal concerning the judgment and decree of the court mandating him to vacate the suit property. Again, the defendant/ respondent has not complained that he had no knowledge of the order or notice of its terms. For these reasons, I hold and find that the defendant/respondent had knowledge and notice of the contents of the decree and order of the court which he is said to have disobeyed.

39. The next aspect of the test that needs to be established is whether the defendant/respondent acted in breach of the terms of the order/decreed. The plaintiff /applicant maintains that the defendant/ respondent is still in occupation of the suit property despite the decree and order of the court mandating that he vacates the suit property. In response, the defendant /respondent maintained that he is a law-abiding citizen and that the suit property was the only land he knew, having called the same his home for the last fifteen (15) years. It is not disputed that the defendant/ respondent is still in occupation of the suit property, even after the decree and order of the court were issued mandating him to vacate the suit property.
40. I have had the benefit of reading this court's ruling in *Adera v Okode* (Environment & Land Case 296 of 2017) [2023] KEELC 19311 (KLR) dated 13th July, 2023 in which this court granted the defendant/ respondent 90 days stay of execution upon his request to enable him to move out of the suit property. This court pronounced itself as follows:
 11. In the instant case; even though the defendant/ respondent contends that he was served with an eviction notice, the Applicant has not demonstrated his compliance with the provisions of section 152E of the Land Act to the required standard; he has not annexed a copy of the said eviction notice to his Application. In the absence of the said proof, this court is unable to ascertain the contents of the said notice and the timelines issued thereto and whether the same meets the requirement set out in section 152E above.
 12. An eviction order has far reaching implications as it entails the forceful removal of the respondent from a land that he is in occupation of. This court must therefore be satisfied on the compliance with the statutory procedure governing the same. While I do acknowledge that the period given to the Respondent within which to vacate the suit land has since lapsed, I do also acknowledge the need to strictly comply with the statutory provisions before granting the orders sought.
 13. I have also noted that the Defendant /Respondent at paragraph 5 and 7 of his Replying Affidavit has sought a period of 4 months to enable him put his house in order and relocate to an alternative parcel of land, in full compliance with the orders of the court issued on July 29, 2022. (emphasis added).
41. The defendant/applicant did not comply with this directive and instead filed a reference at the Court of Appeal without obtaining a stay of execution pending the intended appeal. The defendant / respondent in his replying affidavit avers that he would be greatly prejudiced should the orders sought by the plaintiff/applicant be granted. I hold and find that the plaintiff/applicant has been prejudiced by the actions of the defendant/respondent who has been submitted by the plaintiff /applicant has occupied and utilized the plaintiff/applicant's land for 13 years. The defendant/respondent has refused to obey clearly stipulated orders of this court hence denying the plaintiff /applicant the right to enjoy the fruits of his judgement.



42. In his defence, the defendant/respondent maintains that he is law abiding citizen, which is clearly not the case since this disobedience has of the court orders has not been justified.
43. Finally, as to whether the defendant/respondent's actions of breaching the orders of the court were deliberate, I am inclined to find that in deed, the defendant/respondent deliberately disobeyed the court's orders. His replying affidavit does not demonstrate any difficult in obeying the order, save for the excuse that he knows no other land other than the suit property. This is contrasted to the fact that the defendant/respondent had prayed in his application that he be granted (four) 4 months to move to an alternative land as was noted in this court in *Odera v Okode* (supra). The defendant /respondent does not deny attacking the plaintiff/applicant on 10th November, 2024 and as such, these averments by the plaintiff/applicant are taken to have been admitted by the defendant/respondent. Given these set of circumstances, I find and hold that the defendant/respondent deliberately disobeyed this court's orders.
44. Before I conclude, I must disabuse the plaintiff/applicant's averment that this court has "bent backwards" to assist the defendant /respondent. This is an uncivil language by the applicant, insinuating biasness or partiality on the part of the Court. Suffice it to say that this court in its ruling dated 13th July, 2023 found that the plaintiff/applicant herein had not served the defendant with an eviction notice and granted the defendant/respondent the statutorily mandated 90-day period for effecting evictions. It was a decision based on facts, and it the applicant was not satisfied with it he had the opportunity and ability to appeal against it. I will say no more concerning this issue.

Conclusion

45. Given the foregoing, I find that the application is merited and is allowed with costs to the applicant. The Respondent, Paul Odera Okode is guilty of contempt of this court's orders/ decree as prayed in the application. I convict him accordingly and now call on him to mitigate, which he does orally.
46. The Respondent, in mitigation states that his advocate advises him that there was a stay of execution in this matter until the one in Court Appeal is heard and determined. Further, he states that he has people who depend on him: children and his father. He adds that if he is incarcerated he will not be able to proceed with the appeal.
47. This Court has considered the mitigation and the circumstances of this case. It is clear that the Respondent is neither aware of any Reference filed arising from the decree in issue. In any event, the filing of an appeal is not an automatic stay of execution of an order or decree. Moreover, taking into account that the applicant moved to the land to effect the decree but he was chased away from it and his and the driver's life endangered, this Court ought to mete out a deterrent sentence. The Respondent is not even remorseful but defiant. Cases of judgment debtors disobeying court orders and resisting evictions ordered are very rampant. Unless this Court firmly and decisively acts, this Country is descending into a lawless one where the law of the jungle rules. Thus, under Section 29 of the Environment and *Land Act* I sentence him to pay a fine of Kenya Shillings One Million (KShs 1,000,000/=) only in default, he serves year imprisonment. He shall forthwith be remanded in G.K. Prison, Migori. After complying or serving the sentence he shall vacate the land within only one week, in default the applicant to move the Court once again accordingly.
48. Orders accordingly.

**RULING DATED, SIGNED AND DELIVERED VIRTUALLY VIA THE TEAMS PLATFORM
THIS 18TH DAY OF SEPTEMBER, 2025.**

HON. DR. IUR NYAGAKA,



JUDGE.

In the presence of,

Court Assistant, Md. Lola

Paul Odera (Defendant/Respondent)

