



Goren & another v Ngetich (Environment and Planning Civil Case E001 of 2023) [2025] KEELC 6266 (KLR) (23 September 2025) (Ruling)

Neutral citation: [2025] KEELC 6266 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAPSABET
ENVIRONMENT AND PLANNING CIVIL CASE E001 OF 2023
GMA ONGONDO, J
SEPTEMBER 23, 2025**

BETWEEN

JOHN KIBIEGO GOREN 1ST PLAINTIFF

APTON GOREN 2ND PLAINTIFF

AND

ALEX KIPROTICH NGETICH DEFENDANT

RULING

1. The instant ruling is in respect of the application by way of a Notice of Motion date 27th February 2025 by the plaintiffs/applicants through Odede and Oduor Advocates for the following orders;
 - a. Spent
 - b. That this Honourable court be pleased to cancel entries numbers 9, 10 and 11 on the Certificate of Title No. I. R 18475, in the name of John Kipkemboi Arap Kemei, entered on the 19/07/2024 contrary to the orders issued by this Honourable Court on 6th December 2023 pending the hearing and determination of this suit.
 - c. That the defendant /Respondent, be found to be in contempt of the orders of this court.
 - d. That the defendant /Respondent be condemned to pay a fine to be determined by this Honourable court or be committed to civil jail for a period of six (6) months or such other period as this Honourable court may deem fit.
 - e. That the provisional title to the suit property in the name of John Kipkemboi Arap Kemei be submitted to the court for safe keeping pending the hearing and determination of this suit.
 - f. That this Honourable court be pleased to review it's orders issued on the 6th December 2023 to include the suit land parcel number being LR No. 10214/1 (IR No. 18475) Nandi Hills.



- g. That this Honourable court be pleased to grant leave to the applicants to further amend their plaint.
- h. That costs of this application be provided for.
2. The application is premised upon the grounds set out on the face of the same as well as the affidavit sworn on even date by the 2nd plaintiffs/applicants duly authorised and the supporting documents inclusive of a copy of amended plaint dated 27th February 2025, a copy of certificate of official search issued on 13th February 2025 and a copy of the Honourable court's orders issued on 6th December 2023 to the effect that status quo be maintained on the ground to mean, inter alia, that the applicants to remain in possession and occupation of the suit property. That the orders be reviewed to include the full parcel number of the suit property. That the respondent being aware of the order, has proceeded to transmit the suit land to the third parties. That the conduct of the respondent constitutes blatant disobedience of the orders and undermines the authority and dignity of the court. That the prayers captured in the application be granted to prevent any further fraudulent transactions to meet the ends of justice.
3. The application is opposed. By the replying affidavit sworn on 28th April 2025, the defendant through Wann Law Advocates, averred, inter alia, that the burden of proof in this contempt application is on the plaintiffs and ought not be shifted to the alleged contemnor, the respondent/defendant. That the standard of proof as regards contempt is higher than on a balance of probabilities and almost beyond reasonable doubt which the plaintiffs have failed to discharge herein. That the court order stated at paragraph 2 of the supporting affidavit does not specify the land reference number. That as at 6th December 2023 when the court issued the status quo order, the suit land as per the plaint, was LR No. 14281/3 Nandi Hills while the transmitted parcel of land was LR No. 10214/1 IR No. 18475 Nandi Hills.
4. Also, the defendant averred that the applicants have not established that the defendant breached the order deliberately and male fides. That the applicants made mere sweeping allegations against the defendant and have not availed any sufficient reason to warrant the grant of orders sought in the application. That therefore, the application be dismissed with costs to him save for the prayer to further amend the plaint.
5. Hearing of the application was by way of written submissions pursuant to orders of the court given on 5th May 2025.
6. By the applicants' submissions dated 22nd May 2025, issues including contempt of court, are delineated therein. Counsel submitted in part that the order of 6th December 2023 relates to land reference No. 10214/1 (IR NO. 18475) issued by consent of the parties through their respective counsel. That the respondent had knowledge of subsisting status quo orders as held in *Nzioka-vs-Muli & 2 others; Land Registrar, Machakos County {2024} KEELC 327 (KLR)* and the yet proceeded to procure a provisional title to the land parcel LR No. 10214/1 (IR No. 18475) and transmitted to third parties. That the wording of the order is very clear including that the property to remain in the name of the current registered owner John Kipkemoi Kemei pending the hearing and determination of the suit. That unless the defendant proves that he is also the administrator of the estate of another John Kipkemoi Kemei other than the current registered proprietor of the suit land, he is liable for contempt of the court's order.
7. Learned counsel for the applicants further submitted that review order is available to the applicants due to discovery of new and important matter or evidence, mistake or error as there is an omission of the full parcel number constituting an apparent error on the face of the record to include (ing) the



land reference number. That the information was not within the knowledge of the applicants at the time of filing the suit in order to remove subdivisions and retain the original number LR No, 10214/1 (IR No. 18475) in line with Order 8 Rule 3 (1) of the Civil Procedure Rules 2010. That the defendant admitted that he participated in registration of illegal entries contrary to a valid court order aimed at evading responsibility and defeating this suit hence, allow the application with costs.

8. In the submissions dated 9th June 2025, Wann Law Advocates learned counsel for the respondent referred to the application and the eight orders sought therein as well as the replying affidavit and delineated six issues for determination including whether entries 9, 10 and 10 on the certificate of title No. LR 18475 should be cancelled, whether the defendant is in contempt of court and whether the orders of 6th December 2023 should be reviewed and leave should be granted to the plaintiffs to further amend the plaint. Counsel submitted, inter alia, that cancellation order is a final order sought at the interlocutory stage of the suit and remedy lies in amendment of plaint. That the breach alleged must be deliberate as well as male fide for discharge of the burden of proof in contempt proceedings which is quasi criminal in nature is higher than in normal civil cases.
9. Also, counsel submitted that the order of 6th December 2023 did not specify the land reference number hence, an ambiguous order as held by the Court of Appeal in the case of Jihan Freighters Limited-vs-Hardware & General Stores {2015} KECA 285 (KLR). That the order must be clear, precise and easy to understand by a party. That deposit of provisional title in court is subject to hearing of the suit as the same will be tested through cross examination. That the threshold for review of orders of 6th December 2023 is not met. Counsel urged the court to dismiss the application save for leave to further amend plaint which is affirmative with costs of the defended application to the defendant being guided by the case of Jasbir Singh Rai & 3 others-vs-Tarlochan Singh Rai & others (2014) eKLR.
10. In the foregone, are the applicants entitled to the orders inclusive of cancellation, contempt of court, review of orders of 6th December 2023 and further amendment of plaint as sought in the application?
11. Concerning cancellation of entries in the certificate of title to the suit property, I am conscious of section 80 of the *Land Registration Act* 2016 (2012) that the court may review its decision, inter alia, on account of some mistake or error apparent on the face of the record or for some other sufficient cause; see also Paul Mwaniki-vs-National Hospital Insurance Fund Board of Management (2020) eKLR.
12. It is worth to note that cancellation of entries in the certificate of title is a final order which cannot be granted at this stage of the suit. It may be prejudicial to the parties and deny them the unlimited right to fair hearing as enshrined in Articles 50 (1) and 25 (c) of *the Constitution* of Kenya 2010 and as held in Philip Chemwolo and another-vs-Augustine Kubende (1986) eKLR and James Kanyiita Nderitu and another-vs Marios Philotas Ghikas and another (2016) eKLR.
13. As regards contempt of court, section 5 of the *Judicature Act* Chapter 8 Laws of Kenya provides;
‘(1) The High Court (Read this court under Article 162 (20 9b) of *the Constitution* of Kenya 2010) and the Court of Appeal shall have the same power to punish for contempt as is for the time being possessed by the High Court of Justice in England and that power shall extend to upholding the authority and dignity of subordinate courts.’ (Emphasis added)
14. In Hadkinson-vs-Adkinson (1952) P 285 at 288 that 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 the order is discharged.



15. Indeed, there is existence of the court order of 6th December 2023 which reads;

‘The application dated 19th October is compromised by an order of maintenance of status quo on the ground to mean the applicants to remain possession and occupation of the portion of the suit property they currently are occupation and, on the register, to mean the property to remain in the name of the current registered owner John Kipkemboi Kemei pending hearing and determination of the suit.’
16. Therefore, is the order clear or there is an ambiguity therein? The respondent submitted that the order was unclear. Indeed, the applicants admit even in submissions that there was no full land reference number of the suit property in the order thus, ambiguous as held in Jihan case (supra).
17. In the case of Stewart Robertson-vs-Her Majesty’s Advocate, 2007 HCAC 63, it was held that in contempt of court there must be wilful defiance of a court order. In light of the applicants’ admission of some ambiguity in the order, there is no deliberate disobedience of the orders of 6th December 2023 on part of the respondent.
18. So, contempt of court cannot arise in light of the order which is ambiguous and it is borne in mind that the penalty for contempt is applicable to all types of contempt of court and is not limited to any one type of contempt; see also Africa Management Communication International Ltd-vs-Joseph Mathenge and another (2013) eKLR.
19. On prayer for deposit of provisional title, the order begs for hearing of the suit on merit as held in Chemwolo and Nderitu cases (supra). It calls for an opportunity to be given to the parties to argue on the issue before determination by the court.
20. As regards review, Order 45 of the Civil Procedure Rules 2010 is quite instructive. The applicant admitted that there is no full parcel number of the suit property disclosed in the order of 6th December 2023. The review order sought in the application is subject to the uncontested proposed further amendment of the plaint in the circumstances.
21. Notably, the amendment of the plaint is not opposed. Its purpose is the determination of the real question in controversy between the parties in consonant with Order 8 Rule 5 of the Civil Procedure Rules 2010.
22. Furthermore, the court has the broad discretion to allow amendment; see General Manager, E.A. R & H A & Thierstein 1968 1 EA 354 HCK.
23. To that end, the application is partially unmeritorious. The same is hereby disallowed save for the 7th prayer for leave to further amend the plaint which is allowed accordingly.
24. On costs, the same follows the event within the discretion of the court as held in Jasbir Singh Rai case (supra) and in line with the proviso to section 27 of the *Civil Procedure Act* Chapter 21 Laws of Kenya. Given the nature of the application and the circumstances, costs of the same be in the cause.
25. It is so ordered.

DATED AND DELIVERED AT KAPSABET THIS 23RD DAY OF SEPTEMBER 2025

G M A ONGONDO

JUDGE

Present;



Mr W. Maranga alongside Mr M Ndubi learned counsel for the defendant/applicant

MS Oduor learned counsel for the plaintiffs

Walter, court assistant

