



REPUBLIC OF KENYA



**Kinga v Ginga & 3 others (Environment and Land Case E005 of 2023)
[2025] KEELC 6164 (KLR) (23 September 2025) (Ruling)**

Neutral citation: [2025] KEELC 6164 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KERUGOYA
ENVIRONMENT AND LAND CASE E005 OF 2023
JM MUTUNGI, J
SEPTEMBER 23, 2025**

BETWEEN

JAMES GACHINGIRI KINGA PLAINTIFF

AND

HENRY GITHUMBI GINGA 1ST DEFENDANT

JANE GATHARE 2ND DEFENDANT

EUNICE WAKUTHII 3RD DEFENDANT

ESTHER NJERI MATERE 4TH DEFENDANT

RULING

1. Before this Court for determination is the Notice of Motion dated 31st January 2025 by the Defendants/Applicants seeking to cite the Plaintiff/Respondent for contempt of Court. The application is premised on the alleged disobedience of orders issued by this Court on 16th November 2024, arising from the application dated 17th October 2024. The Applicants in the application pray for orders:
 1. That James Gachingiri Kinga be cited for contempt of court for disobeying the Orders of this Honourable Court issued on 16th November, 2024.
 2. That James Gachingiri Kinga be arrested and be committed to Civil Jail for a term not exceeding six months or such other punishment this Court may deem just and appropriate for contempt of Court.
2. In the Affidavit sworn by Esther Njeri Matere, the Applicants claim that despite being served with the Court orders on 10th December 2024, the Respondent willfully entered Rice Holding No. 1965 in the Mwea Section Unit M and harvested thirty bags of paddy rice. They further claim that the Respondent has consistently prevented the Applicants from using the rice holding, thereby hindering



their ability to enjoy their rights as protected by the court. The Applicants argue that the Respondent's actions constitute contempt of Court and undermine the authority of this Court. They assert that the Applicants will suffer irreparable harm unless the Respondent is held accountable for this contempt.

3. The Respondent filed a Replying Affidavit sworn on 11th February 2025, opposing the application. The Respondent averred that he was not served with the order, stating that he does not reside at the location specified in the Affidavit of service filed by the Applicants. He stated that as the rightful tenant of the rice holding, the order of status quo operated in his favor. Additionally, he contended that the application constituted an abuse of the Court process, particularly given that a similar dispute is currently pending determination in High Court Civil Appeal No. E006 of 2024. He prayed that the application be dismissed with costs.
4. The application was canvassed through written submissions. The Applicant filed their written submission dated 8th April 2025, and submitted that this Court issued orders on 18th November 2024, which were served on the Respondent by one Moses Maina Muthinji, a Court Process Server, on the same day. The Applicant argued that the Respondent willfully disregarded these orders by entering the riceholding and illegally harvesting the rice there. In contrast, the Respondent filed his written submission dated 12th March 2025 in which he submitted he was the rightful tenant of the riceholding, having acquired the land on 29th September 2024.
5. I have considered the application, the Respondent's Replying Affidavit, and the parties' written submissions. The key issue for determination is whether the Respondent's conduct constituted contempt of Court. The Court order alleged to have been disobeyed by the Respondent was to the effect that the parties were to maintain and observe the status quo that prevailed at the time the application dated 17th October 2024 was filed. The issue for determination was whether the order was clear and unambiguous and whether the Respondent was served with the order and/or had knowledge of the same.
6. Section 5 of the *Judicature Act*, and Section 29 of the *Environment and Land Court Act*, 2011 provide the substantive law in regard to contempt of Court, following the declaration of the *Contempt of Court Act* 2016, as unconstitutional.

Section 5(1) of the *Judicature Act* provides:

The High Court and the Court of Appeal shall have the same power to punish for contempt of Court 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.

7. Section 29 of the *Environment and Land Court 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 twenty million shillings or to imprisonment for a term not exceeding two years, or to both.

8. In the English case of *Steward Robertson v Her Majesty's Advocates* (2007) HCA C63, Lord Justice Clerk stated thus:-

“Contempt of Court is constituted by conduct that denotes willful defiance of or disrespect towards the Court or that willfully challenges or affronts the authority of the Court or the Supremacy of the Law whether in Civil or Criminal proceedings.”



9. Abiding by Court orders is not optional; it is essential for maintaining the dignity, authority, and rule of law. The Court must vigilantly protect these principles by responding firmly to anyone who deliberately disobeys Court orders or seeks to disrupt the judicial process. Individuals who are dissatisfied with a Court's order have legal avenues to challenge it; therefore, defiance of the Court should never be considered an option.
10. The standard of proof for contempt of Court is higher than the standard of proof on a balance of probabilities. In the case of *Ochino & Another v. Okombo & Others* (1989) KECA 65 (KLR), the Court of Appeal established that the necessary elements for proving contempt must be clearly demonstrated. Similarly, in *Samuel M. N. Maweu & Others v. National Land Commission* (2020) eKLR, it was clarified that for a person to be found guilty of contempt of Court, the Applicant must prove the following:-
 1. The terms of the order were clear, unambiguous and binding on the citees.
 2. The citees had knowledge of or proper notice of the terms of the order.
 3. The citees acted in breach of the terms of the order.
 4. The conduct was willful and deliberate.
11. In the case of *North Tetu Farmers Co. Ltd v. Joseph Nderitu Wanjohi* (2016) eKLR, Justice Mativo (as he then was) stated as follows:

“Writing on proving the elements of civil contempt, learned authors of the book *Contempt in Modern New Zealand* have authoritatively stated as follows: -

“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 -

 - (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.”

Whether the Respondent had knowledge or was properly served with the Court order

12. The law regarding the service of Court orders in contempt proceedings is strict. In the case of *Shimmers Plaza Ltd v National Bank of Kenya Ltd* [2015] eKLR, the Court emphasised that it is essential to demonstrate that a party has been served with the order or has knowledge of it. The Court defined a notice as:

“Black's Law Dictionary, 9th Ed defines notice as follows:-

A person has notice of a fact or condition if that person-

1. Has actual knowledge of it;
2. Has received information about it; Has reason to know about it;
3. Knows about a related fact;



4. Is considered as having been able to ascertain it by checking an official filing or recording.”
13. In this case, the Applicants relied on an Affidavit of Service sworn by Moses Maina Muthinji, a licensed Court Process Server. In the affidavit, Moses stated that he personally served the Respondent on 10th December 2024. However, the Respondent disputed this claim, stating that he did not live at the address provided in the Affidavit.
14. It is trite that when personal service is challenged, the Court must carefully examine the Process Server’s Affidavit and any supporting evidence. While the Affidavit of service serves as prima facie evidence of service, it can be countered if it is demonstrated to be unreliable or materially inconsistent.
15. Paragraph two of the Affidavit of Service states that the Process Server was accompanied by “the Applicant” and that he served the order to the Plaintiff after he was pointed out to him by the Applicant and thereafter the Process Server proceeded to effect service of the order on various other offices, though it was unclear why these other offices were being served when the order never directed service upon them.
16. Nonetheless, it is important to note that while actual personal service is desirable, it is not always required if it can be demonstrated that the alleged contemnor was aware of the order. In the case of *Justus Kariuki Mate & Another v. Martin Nyaga Wambora & Another* [2014] eKLR, the Court of Appeal held that:
- “The trial Court was correct in holding that the law as then was in contempt of court had since changed; the law as it stands today is that knowledge of an order is sufficient for purposes of contempt proceedings.”
17. In this case, the Respondent was a party to the proceedings and was served with the application dated 17th October 2024, which resulted in the contested orders. He did not respond to that application; instead, he filed a different application. Most importantly, in his Replying Affidavit dated 11th February 2025, he stated:
- “The orders alleged to be disobeyed had by then been overtaken by events and are rendered futile due to the finalisation of the cause of action concerning rights and interests over Rice Holding 1965B.”
18. This statement clearly acknowledges the existence of the orders. The belief that the orders were futile does not excuse him. A party aware of an existing Court order must either comply with it or seek its discharge, variation, or stay. Therefore, this Court determines that the Respondent was aware of the Court order.

Whether the respondent willfully disobeyed the Court order

19. The next issue to consider is whether the Respondent deliberately violated the Court order. To establish willful disobedience of a Court order, the Applicants must demonstrate three key elements:
- i. the order was clear and unambiguous;
 - ii. the Respondent was aware of the order; and
 - (iii) the Respondent intentionally acted in defiance of it.



20. The order, issued on 16th November 2024, required all parties to maintain the status quo in regard to the Riceholding as prevailed at the time the application dated 17th October 2024 was filed. As of that date the Applicants were in possession and had prepared the rice paddy which had rice to be harvested in a month or so. It is this rice that the contemnor harvested in the face of the Court order and it is my finding that the Respondent having been aware of the order and the order having been clear and unambiguous he intentionally and deliberately chose to ignore it and to act in defiance of the same. It is my determination that the Respondent's act of harvesting the rice that he did not plant was willful and deliberate and in contempt of the Court order.
21. The Respondent's claim that the order had been overtaken by events was not substantiated and in any event whether or not he had been issued a tenant permit for the Riceholding by the National Irrigation Authority, the Interested Party, that could not vest ownership of the rice crop on the rice paddy to him. The essence of the order was to preserve the subject matter pending the determination of the dispute. The Respondent instead of acting in defiance of the Court order could have applied to the Court for its setting aside and/or discharge but he did not have the option to disobey it with impunity as he did.
22. In the premises I allow the Applicants Notice of Motion application dated 31st January, 2025. I hold the Plaintiff/Respondent to be in contempt and direct that he personally attends Court on 6th October 2025 for sentencing.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY AT KERUGOYA THIS 23RD DAY OF SEPTEMBER 2025.

J. M. MUTUNGI

ELC - JUDGE

