



**Ssempasa v Canaan Developers Limited (Environment and Land Case E149 of 2024) [2025] KEELC 6190 (KLR) (25 September 2025) (Ruling)**

Neutral citation: [2025] KEELC 6190 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT AND LAND CASE E149 OF 2024  
CA OCHIENG, J  
SEPTEMBER 25, 2025**

**BETWEEN**

**DEBORAH KISAKYE SSEMPASA ..... PLAINTIFF**

**AND**

**CANAAN DEVELOPERS LIMITED ..... DEFENDANT**

**RULING**

1. What is before the Court for determination is the Plaintiff's Notice of Motion application dated the 5<sup>th</sup> June, 2024 where she seeks the following Orders:
  - a. Spent.
  - b. That there be issued an order citing Canaan Developers Limited, the Defendant/Respondent herein for contempt of the order of this Honourable court issued on the 17<sup>th</sup> April 2024, directing that status quo be maintained.
  - c. That upon citation for contempt of court, the directors of the said Canaan Developers Limited be sanctioned by committal to civil jail, attachment of property, payment of a fine and/or any further orders.
  - d. That this Honourable court make any further or other orders to restore its reputation and dignity.
  - e. That the costs of this application be borne by the Respondent.
2. The application is premised on grounds on its face and on the Plaintiff's supporting affidavit. She avers that on 17<sup>th</sup> April 2024, this Court issued orders that status quo be maintained. Further, that in blatant disregard of the said orders, the Defendant instructed Allan Samuel Otieno T/A Nextgen Auctioneers to file Misc. Application No. E714 of 2024 in the Chief Magistrate's Court, Milimani to attach her property. She contends that the said Court then issued Proclamation Orders, which were then served



on Pangani Police Station. She annexed the said orders and a letter from Gigiri Police Station, addressed to the OCS, Parklands seeking to verify the aforementioned orders.

3. The application is opposed by the Defendant vide the replying affidavit of its Managing Director, Medhanie Ghebrebrhan. He avers that the Plaintiff entered into a Sale Agreement dated 7<sup>th</sup> April 2021 with the Defendant, for the purchase of Apartment No. A802, Block A, together with two (2) parking spaces erected on LR No. 1870/111/608. Further, that subsequently, she entered into a Tenancy Agreement dated 1<sup>st</sup> September 2021 for the possession of the said premises pending completion of payment of the purchase price. He explains that she was to pay rent of ksh. 50,000/= monthly but she is currently in arrears of ksh. 420,000/=.
4. He admits that the Defendant instructed Nextgen Auctioneers on 25<sup>th</sup> April 2024 to help recover rent due and owed by defaulting tenants, of which the Plaintiff was inadvertently included. He claims that specific instructions were given to the auctioneer not to interfere with the suit premises due to this Court's status quo orders issued on 17<sup>th</sup> April 2024 thus the auctioneers did not attach or interfere with the Plaintiff's premises. He also contends that the Plaintiff is using the Court to shield herself from her obligation to pay rent.
5. The instant application was canvassed by way of written submissions.

### **Submissions**

6. The Plaintiff relies on the case of Samuel M. N. Mweru & Others v National Land Commission & 2 Others [2020] eKLR to submit that Court Orders are not issued in vain and ought to be obeyed and respected. Further, that it is essential for the maintenance of the Rule of Law and order that the authority and the dignity of courts is upheld at all times. She urges the Court not to condone deliberate disobedience of its orders and deal decisively and firmly with the Defendant.
7. On its part, the Defendant submits that while the Plaintiff is required to prove that its actions amount to contempt, she has failed to provide evidence of the Defendant attaching, dealing, charting or interfering in any way with her possession of the premises. To buttress its averments, it relied on the following decisions: Mutitika v Baharini Farm Limited [1985] eKLR and Gatirau Peter Munya vs Dickson Mwenda Kithinji & 3 Others (2014) eKLR.

### **Analysis and Determination**

8. Upon consideration of the instant Notice of Motion application including the respective affidavits and rivalling submissions, the only issue for determination is whether the Defendant has acted in contempt of the status quo orders issued on 17<sup>th</sup> April 2024.
9. The Plaintiff claims the Defendant is in contempt of the Court orders issued on the 17<sup>th</sup> April, 2024 on maintenance of status quo, which the Defendant has denied. The Defendant has however acknowledged existence of the said Order but denies willfully disobeying it. It also contends that the Plaintiff has not provided proof of attachment or interference with the suit premises.
10. In Mutitika v Baharini Farm Ltd [1985] eKLR, 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. We envisage no difficulty in courts determining the suggested standard of proof. The standard of proof beyond reasonable doubt ought to be left where it belongs, to wit, in criminal cases.”



11. Further, in *Teachers Service Commission vs. Kenya National Union of Teachers & 2 Others* [2013] eKLR, it was stated that:

“... A court order is not a mere suggestion or an opinion or a point of view. It is a directive that is issued after much thought and with circumspection. It must therefore be complied with and it is in the interest of every person that this remains the case. To see it any other way is to open the door to chaos and anarchy and this Court will not be the one to open that door. If one is dissatisfied with an order of the court, the avenues for challenging it are also set out in the law. Defiance is not an option.”

12. I note the fulcrum of the dispute herein revolves around a premise which the tenant (Plaintiff) claims to have purchased. I note the Plaintiff had come to court seeking permanent injunctive orders to restrain the Defendant from interfering with Apartment Number A 802, Block A, together with two (2) parking spaces erected on property land reference number 1870/III/608, Matundu Lane Nairobi. Further, the Plaintiff had filed the Plaint contemporaneously with a Notice of Motion application dated the 11<sup>th</sup> April, 2024 seeking injunctive orders pending outcome of this suit. The Court on the 17<sup>th</sup> April, 2024 proceeded to issue orders of status quo and directed that the aforementioned application be heard on the 4<sup>th</sup> June, 2024. On perusal of the Court record, I note the said application was never heard nor Status Quo Orders extended. The Plaintiff has now sought for the Defendant to be cited for contempt and except for indicating that the Defendant filed the aforementioned miscellaneous cause and obtained orders for eviction, there is no proof that her properties were indeed scuttled away.

13. Black’s Law Dictionary (Ninth Edition) describes contempt of court as follows:

“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.”

14. On ingredients to prove civil contempt, in the case of *North Tetu Farmers Co. Ltd v. Joseph Nderitu Wanjohi* (2016) eKLR, Justice Mativo (as he then was) stated inter alia:

“..... 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.”

15. In the current scenario, on a keen reading of the impugned Orders which I have highlighted above, I note the Status Quo Orders were not qualified. Further, I note the Defendant explained that it obtained orders in the Miscellaneous Cause in respect to all tenants in its premises, who had defaulted on rent and denied interfering or taking away the Plaintiff’s property. The Plaintiff in her annexures to the instant application did not provide proof of the goods proclaimed nor taken away.

16. Based on the facts before Court while associating myself with the decisions cited above, I opine that there seems to be an ambiguity as it is not clear nor indicated if the Orders issued on 17<sup>th</sup> April, 2024 were to subsist pending outcome of the suit as there is no indication of their extension. Further, the said Status Quo Orders were not qualified. Since there seems to have been an ambiguity of the orders issued, I do not find that the Defendant acted in breach of the terms of the said Orders of Status Quo in filing the aforementioned Miscellaneous Cause. I opine that the burden of proof was upon the Plaintiff to provide proof that her goods were indeed attached which she has failed to discharge.



17. It is against the foregoing that I find the Plaintiff's Notice of Motion application dated the 5<sup>th</sup> June, 2024 unmerited and will disallow it.

18. Costs will be in the cause.

**DATED SIGNED AND DELIVERED AT NAIROBI THIS 25<sup>TH</sup> DAY OF SEPTEMBER, 2025**

**CHRISTINE OCHIENG**

**JUDGE**

In the presence of:

Ms Cherop for Mosota for Defendant

Court Assistant: Joan

