



REPUBLIC OF KENYA



**KENYA LAW**  
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**Umagara Wiyonere Company Limited v Samora & another (Environment and Land Case E142 of 2023) [2025] KEELC 6161 (KLR) (24 September 2025) (Ruling)**

Neutral citation: [2025] KEELC 6161 (KLR)

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT NAIROBI**  
**ENVIRONMENT AND LAND CASE E142 OF 2023**  
**CA OCHIENG, J**  
**SEPTEMBER 24, 2025**

**BETWEEN**

**UMAGARA WIYONERE COMPANY LIMITED ..... PLAINTIFF**

**AND**

**MWAURA SAMORA ..... 1<sup>ST</sup> DEFENDANT**

**NAIROBI CITY COUNTY ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

1. What is before Court for determination are two applications dated the 19<sup>th</sup> January, 2025 and 7<sup>th</sup> March, 2025 respectively. In the application dated the 19<sup>th</sup> January, 2025, the Plaintiff seeks for the following Orders:
  - a. Spent.
  - b. Spent.
  - c. That pending the hearing and determination of the application inter parties, the court be pleased to issue an order of temporary injunction restraining the Respondents whether by themselves, agents, employees or anyone claiming under them from dispossessing, trespassing on, wasting, constructing on, alienating or otherwise dealing in any way or interfering with the Plaintiff's ownership of Plot LR 28395 "the suit plot" and status quo be maintained pending the hearing and determination of the application and suit.
  - d. The officer in charge of Santon Police Station (OCS) do enforce compliance of the orders above.
  - e. Costs of the application.



2. The application is premised on grounds on its face and on the supporting affidavit of John William Kamau, the Plaintiff's director. He avers that about 27<sup>th</sup> January 2025, he received a notice to vacate the suit premises issued by the 2<sup>nd</sup> Defendant. He contends that the same will culminate in demolition of all structures if the injunction is not issued.
3. In the second application dated the 7<sup>th</sup> March 2025, the Plaintiff seeks the following Orders:
  1. Spent.
  2. That this Honourable court do issue an order of committal against both Respondents/Defendants to prison for such period as this honourable court may deem just and fit.
  3. That this Honourable court do issue an order compelling the Defendants/Respondents, their servants or agents or anybody else acting at their request to desist from further construction or carrying out any activities in LR 28395 failure to which the Respondents maybe committed to civil jail.
  4. That this Honourable court do issue an order compelling the Defendants /Respondents, their servants or agents or anybody else acting at their request to desist from any form of activities, dumping building materials or digging or excavation of soil to the detriment of the Plaintiff/Applicant, failure to which the Respondents may be committed to civil Jail.
  5. That the Honourable Court be pleased to order Nairobi Regional Police Commander & OCS Santon Police Station respectively do ensure compliance with orders sought.
  6. That this Honourable court be pleased to make such other further orders as it may deem fit and just.
4. The application is premised on grounds on its face and on the supporting affidavit of John William Kamau, who is the Plaintiff's director. He asserts that on 31<sup>st</sup> January 2025, this Court issued a temporary injunction restraining the Defendants from interfering with LR 28395 pending hearing of the instant application inter partes but they continue to ignore the said orders and have fenced off the suit land as well as commenced construction thereon.
5. Further, that he has approached Santon Police Station to be assisted in enforcing the court orders and has been advised that assistance to ensure compliance can only be granted with a Court order directly urging the police to ensure compliance. He avers that by reason of the Defendants' activities, the Plaintiff continues to suffer.

## Responses

6. The application dated 19<sup>th</sup> January 2025 is opposed by the 1<sup>st</sup> Defendant who is a Member of the County Assembly of Clay City Ward. He avers that the application is an abuse of this Court's time as this Court had already issued a Ruling on 31<sup>st</sup> October 2023 maintaining status quo in L R No. 28395. Further, that he made an inquiry on the status of the suit property from the members of Clay City and he was reliably informed by the County Secretary that there are no ongoing constructions on the said suit land let alone Clay City Ward. Further, that the Notice dated 27<sup>th</sup> January 2025 allegedly posted by the 2<sup>nd</sup> Defendant does not refer to any particular premises.
7. The 1<sup>st</sup> Defendant also opposed the application dated 7<sup>th</sup> March 2025 by way of a replying affidavit. He avers that as a Member of the County Assembly, he executes his roles in accordance with section 9 of the County Governments Act, 2012 and under Part XI of the same statute, County Planning is a function of the County Government which involves both the County Executive and the County Assembly and



not a single member of a particular Ward. He asserts that contrary to averments made in the Affidavit of Service sworn on 4<sup>th</sup> February 2025, he was never personally served with the application dated 29<sup>th</sup> January 2025 nor the Court Order issued on 31<sup>st</sup> January 2025. He asserts that the suit property is public land, held by the 2<sup>nd</sup> Defendant in trust for the citizens of Clay City Ward thus he is wrongly sued in his personal capacity as a Member of County Assembly. He claims that he has not carried out any construction within the suit land and has no personal interest in it. Further, that he reached out to the 2<sup>nd</sup> Defendant's Chief Officer Lands, to confirm whether the 2<sup>nd</sup> Defendant had authorized any construction on the said suit land, of which it confirmed that it was not aware of the construction. He insists that the images annexed by the Plaintiff, do not depict ongoing construction within the suit land.

8. On its part, the 2<sup>nd</sup> Defendant opposed both applications vide the replying affidavit of Godfrey Akumali, its acting Secretary and head of County Public Service. He avers that the suit land is public land and was demarcated as such, since 1983 by the defunct Nairobi City Commission. Further, that he is aware that there is a status quo order issued herein and which the 2<sup>nd</sup> Defendant has maintained as it has not carried out any construction within the said suit land nor has it trespassed thereon as alleged. He insists that the Plaintiff cannot seek orders of committal against the 2<sup>nd</sup> Defendant in the manner done in the application dated 7<sup>th</sup> March 2025.
9. The two applications were canvassed by way of written submissions.

### **Submissions**

10. In its submissions, the Plaintiff reiterates its averments as per the supporting affidavits to the two instant applications and submits that it meets the principles for grant of temporary injunction, since it has been issued with an eviction notice, hence the Defendants have pre-empted the outcome of the suit.
11. To buttress its averments, the Plaintiff relied on the following decisions: Samuel Ongori v Yuvinalis Nyakeboka Ongeru and others, Kisii High Court Civil Case No. 67 of 2010, George Orango Oraro v George Liewa Tagallo and Others, Civil Appeal No. 62 of 2009, Devai Bhadresia and Another Civil Appeal No. 21 of 1971 [1972] EA 22.
12. The 1<sup>st</sup> Defendant in his submissions relies on the case of Katsuri Limited v Kapurch & Depor Shah [2016] eKLR and submits that in order to prove Contempt of Court, the Plaintiff was required to prove that there was failure by the Defendants to comply with the terms of the Court Order. Further, that he cannot be said to be in Contempt of Court orders since he is not aware of any purported construction and in the event that any construction is ongoing, he has no mandate being a member of the County Assembly.
13. On whether the Plaintiff is entitled to an order of interlocutory injunction, he submits that the Notice allegedly served upon the Plaintiff does not refer to LR No. 28395 thus it has failed to establish a prima facie case. Further, that it has not demonstrated to this Court any loss it is likely to suffer in the event that the orders sought are granted. He further submits that the Plaintiff did not demonstrate the inconvenience it would suffer as well as the claim that there is an ongoing construction.
14. To buttress his averments, the 1<sup>st</sup> Defendant relied on the following decisions: Silverse Lisamula Anami vs Justus Kizito Mugali & 2 Others (2017) eKLR, Mibey v Lomson Enterprise & 6 Others; Chief Land Registrar [2024] eKLR, Pius Kipchirchir Kogo v Frank Kimeli Tenai [2018] eKLR, Njau v Gitau & 2 Others (Environment & Land Case) [2024] eKLR.
15. The 2<sup>nd</sup> Defendant reiterates his averments as per his replying affidavit and submits that the Plaintiff has not met the threshold for grant of an injunction as established in the case of Giella v Cassman Brown.



Further, that the Plaintiff has failed to demonstrate that the suit land is in danger of being wasted as the notice alluded to does not refer to the said suit land. It insists that the Plaintiff did not demonstrate the loss it is likely to suffer if the orders sought are not granted.

16. On the application for contempt, it submits that in contempt applications, the threshold is higher than that of a balance of probabilities and the 2<sup>nd</sup> Defendant which is County Government cannot be said to be in contempt of court orders.

### **Analysis and Determination**

17. Upon consideration of the two instant applications including the respective affidavits and rivalling submissions, the following are the issues for determination: Whether the Plaintiff has met the threshold for grant of a temporary injunction. Whether the Defendants are in contempt of this court's orders issued on 31<sup>st</sup> January 2025.

18. The Plaintiff seeks an interlocutory injunction to bar the Defendants from interfering with the suit land until this suit is heard and determined. It cites an eviction notice allegedly issued by the 2<sup>nd</sup> Defendant. It claims that despite an interim injunction being issued herein on 31<sup>st</sup> January 2025, barring the Defendants from interfering with the suit land, the said Defendants have continued to interfere with it and are carrying out construction thereon, thus their actions are a clear contempt and in utter disregard of this Court's orders.

19. From the Court record, I note the Plaintiff sought similar orders vide its application dated the 17<sup>th</sup> April 2023 which was allowed vide this Court's Ruling of 31<sup>st</sup> October 2023 (Mbugua J). I wish to reproduce an excerpt therefrom, here below:

“For avoidance of doubts, the portion of the suit land where there is no activity, which is about half of the whole parcel as per report dated 11.10.2022 should remain as it is with no construction at all until the case is heard and determined.”

20. From the Court record, I note the Court also issued a status quo order on half of the suit land which had no construction at all.

21. The Defendants have vehemently denied being in contempt of this court orders and contended that the Plaintiff did not meet the threshold for grant of an injunction.

22. From the averments in the supporting affidavit noting that the Orders for injunction had previously been issued in respect to application dated the 17<sup>th</sup> April, 2023 and in line with the provisions of section 7 of the *Civil Procedure Act*, I opine that the application dated the 19<sup>th</sup> January, 2025 is hence res judicata and will decline to award the said orders as sought.

23. As to whether the Defendants are in contempt of this Court's orders issued on 31<sup>st</sup> January 2025. The Plaintiff claims that the Defendants are in contempt of the orders of injunction issued on 31<sup>st</sup> January, 2025, which fact is denied by the Defendants. The 1<sup>st</sup> Defendant insists he is a local Member of the County Assembly and has not interfered with the suit land but performed his duties in accordance with the law. Further, the 2<sup>nd</sup> Defendant contends that it has also not interfered with the suit land, which is public land and that it was not served properly.

24. On Contempt of Court, Black's Law Dictionary (Ninth Edition) describes it 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.”



25. On civil contempt, in the case of North Tetu Farmers Co. Ltd v. Joseph Nderitu Wanjohi (2016) eKLR Justice Mativo (as he then was) 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.”

26. In this instance, I note the Plaintiff did not indicate who it served at the 2<sup>nd</sup> Defendant's office with the Court Order dated the 31<sup>st</sup> January 2025. Further, from the Ruling of Justice Mbugua whose excerpt I have reproduced above, it is evident that the Plaintiff was only entitled to half a portion of the suit land. The Plaintiff has not denied that the notice served by Nairobi City County, did not indicate the suit land. On perusal of the photographs annexed to the supporting affidavit in respect to application for contempt, I note the suit land is not developed as claimed although there are materials thereon.

27. Based on the facts before Court while associating myself with the decision cited above, I opine that the Plaintiff has not properly demonstrated how the Defendants are in contempt of the impugned Court Order. Further, there is no demonstration on which official was served at the 2<sup>nd</sup> Defendant's office. It is my considered view that the 2<sup>nd</sup> Defendant, which is a County Government cannot be said to be in contempt of court orders but a proper official therefrom has to be personally served with the said Court Order. From the foregoing, I find that the Plaintiff has not demonstrated how the Defendants are in contempt of the orders of this Court issued on 31<sup>st</sup> January, 2025.

28. It is against the foregoing that I find the Plaintiff's two Notice of Motion applications unmerited and will disallow them.

29. Costs will be in the cause.

30. I however direct the parties to adhere to the Orders issued on 31<sup>st</sup> October 2023 on maintenance of status quo in LR No. 28395 pending the determination of this suit.

**DATED SIGNED AND DELIVERED AT NAIROBI THIS 24<sup>TH</sup> DAY OF SEPTEMBER, 2025**

**CHRISTINE OCHIENG**

**JUDGE**

In the presence of:

Amwama for 1<sup>st</sup> Defendant

Nyakoe for 2<sup>nd</sup> Defendant

Wanyoike for Plaintiff/Applicant

Court Assistant: Joan

