

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ELC CASE NO. 1518 OF 2013

**EMCO BILLETS AND STEEL LIMITED.....PLAINTIFF/1ST
RESPONDENT**

-VERSUS-

**KIAMBU DANDORA FARMERS
COMPANY LIMITED.....DEFENDANT/APPLICANT
HON. MWENJE MARK
SAMUEL MURIITHI.....2ND RESPONDENT/CONTEMNOR**

RULING

1. The Defendant has moved this court vide its application dated 17th May 2025 brought under the specified articles of the Constitution. In it, they are seeking to be granted the orders:

(a) Spent.

(b) THAT the corporate veil of the 1st respondent company Emco Billets & Steel Limited be lifted and its directors Shahid Diamond Lalji & Diamondali Hasham Lalji Nurani be held personally liable for the contempt of court committed by the company.

(c) THAT this honorable court be pleased to hold that as a consequence of their acts of contempt, the contemnors shall be held for a period of 6 (six) months or a fine or imprisonment for contempt of court orders issued on the pending the hearing and determination of this suit.

(d) THAT pending the hearing of prayers 2 and 3, the respondents be ordered to purge their contempt by immediately ceasing from any further contemptuous activities on the subject suit property and to remove any contemptuous structures erected thereto.

(e) The Respondent be condemned to pay the costs of this application.

2. The application is supported by the grounds pleaded on its face and on the affidavit sworn by Joseph Mwangi Karanja. In brief, the Applicant pleads that on the 13th December ,2019, in the presence of all parties herein, this honourable Court made an order inter aa that pending further orders, the status quo prevailing as of the 11th of December 2019 be maintained.
3. Subsequently, they filed an application dated 17th August 2023 which was not certified as urgent. That before that application could be heard and determined, the plaintiff/ Respondent directors, employees or agents have instead descended on the suit premises, are destroying houses and structures thereto and are currently putting up a perimeter wall around it. Thus, it is the Applicant's case that the alleged contemnors are in breach of the orders of 13th December, 2019. A copy of the ruling extending the orders until determination of the suit was annexed to the affidavit in support thereof.
4. The actions of contempt are deposed to comprised have unlawfully entered the suit property and are in the process of erecting a perimeter wall and levelling the land using graders. Copies of photographs were annexed to

corroborate the averments. They add that the area Member of Parliament — have descended onto the suit property accompanied by armed, machete-wielding goons, who are erecting structures thereon, claiming the land is public.

5. Further, Mr Mwangi deposes that the 2nd Respondent/ Contemnor has erected a gate, painted a portion of the property, and fenced off part of it with the intent of constructing a public primary school. Photographs of the alleged action were also annexed. That the 2nd Respondent has gone further to erect a temporary container on the suit land, which now serves as his office, and he is already conducting public
6. The application is opposed by the replying affidavit sworn jointly by the alleged contemnors on 5th June 2025. They said that the Applicant has not annexed a copy of the order issued on 13th December, 2019, which is alleged to have been violated. The alleged contemnors also stated that they are not aware of the application dated 17th August 2023 filed by the Defendant/Applicant.
7. The alleged contemnors assert that it is the Defendant and its agent who invaded their property despite the existence of injunctive orders in their favour. They depose that it is false for the Defendant to state that they entered into the suit property pursuant to a court order yet the Plaintiff has

been in actual possession since 2008 when it acquired L. R No 12504 from the previous owner.

8. They referred to the Ruling read on 1st July 2016 which they aver did not alter the Plaintiff's ownership rights as registered owners. That the Ruling restrained the Defendant from trespassing on the suit property and the OCS Buruburu Police Station was to supervise for compliance. The alleged contemnors state that the Plaintiff is at liberty to deal with the suit property as it deems fit and the Defendant cannot dictate how it should deal with it. They urged the court to dismiss the application.
9. The parties filed written submissions which I have read and considered. I will cite relevant parts in my analysis and determination.

Analysis and Determination:

1. The Applicant pleaded that there is an order of statusquo on 24th December 2013, following an application by the Plaintiff/1st Respondent. That these orders were confirmed by a ruling of Hon. Justice Samson Okong'o on 1st July 2016. The Applicant contends that the said order required that the prevailing situation on the suit property be maintained pending determination of the main suit and it is this order which according to them has been disobeyed.
10. In light of the argument put forth by the Defendant/Applicant, it is imperative that the court cites the order as contained in the ruling of 1st July

2016 and analyse whether or not they have been disobeyed. The orders emanating from the ruling were extracted on 20th March 2019 and number 1 and 2 read thus;

(1) That the defendant either by itself, its agents, servants, employees, officials, hirelings or otherwise are hereby restrained from trespassing upon, carrying out unlawful acts of eviction or destruction against the plaintiff, its property, servants, agents and employees, in any manner, whatsoever, and or interfering with the plaintiff's quiet possession and enjoyment of its 3 (three) immovable properties known as Land Reference Number 12034 (Original Number 11344/1, 12504 and 12247 (Original Number 11344/4).

(2) That the Officer Commanding Buruburu Police Station shall ensure compliance with order 1 above.

11. The ruling having determined the application, it implies the orders made became the orders that were to remain in place until the suit was heard and determined. The mention of maintenance of status quo is found at last paragraph of page 5 of the Ruling where the judge stated that even if he was wrong (that the Plaintiff had met the threshold for granting an injunction), that maintaining the status quo would served the interests of justice.

12. However, S. Okong'o J. made clear finding when he dismissed the prayers by the Defendant to have the orders of injunction granted to the Plaintiff

dismissed. He proceeded to grant the Plaintiff's application confirming the injunctive order quoted herein above. The Applicant confirms through his submissions that the orders of 1st July, 2016 have not been reviewed and or set aside.

13. The Plaintiff does not deny that they had the knowledge of the orders in question so it answers the Defendant's submissions on whether the Respondents had knowledge of the orders. On the question of disobedience, the Respondents do not deny engaging in the activities itemised by the Defendant inter alia, erecting a gate, installing a temporary container used as an office and conducting public meetings in the suit premises.

1. The Applicant relied on the case law of Republic versus DPP & Another ex parte Stephen Kipkurgat Mutai [2016] eKLR, the Court emphasized that:
"No person is entitled to disregard court orders merely because they disagree with them or deem them illegal or irregular. "

14. They further submitted that they have demonstrated that the orders were clear, known to the Respondents, and violated by both the 1st and 2nd Respondents. The Applicant does rely on the order of status quo issued pending determination of the two applications but does not however address this court on the import of the final orders which essentially restrained them from trespassing on the suit property.

15. Thus, a plain reading of the final orders of the Court on 1st July, 2016, did not restrain the Plaintiff from dealing on the land. The Plaintiff cannot be

found to disobey an order which did not direct them to do or abstain from doing a thing. I am therefore not persuaded that the Application for contempt can lie.

16. In the circumstances, I hold that there is no merit in the notice of motion dated 14th May 2025 with costs to the Respondent.

Dated, Signed and Delivered at Nairobi this 9th day of October, 2025.

**A. OMOLLO
JUDGE**

ORIGINAL