

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KISUMU

ELC LAND APPEAL NO.E105 OF 2021

JOEL ONGONG'A APPELLANT/APPLICANT

VERSUS

TERESA ANYANGO OTIENO RESPONDENT

R U L I N G

The Notice of Motion application dated 30th April, 2025 seeks for orders that;

- 1) Leave does issue to cite the contemnors for contempt of court order
- 2) Upon prayer 1 being allowed, the Contemnor herein be committed to a civil jail for a period not exceeding six (6) months and/or be imposed a fine as this honourable court may in its discretion decide for disobedience of a court order given on the 1st April, 2025.
- 3) The costs of this application be borne by the Contemnors.

The application was supported by the contents of the Supporting Affidavit of one Joel Midigo Ndeda and the Statement of Facts both attached to the application and the annexures thereto.

The application was opposed vide the grounds contained in the Replying Affidavit of Teresa Anyango Otieno, the respondent, sworn on 25th June, 2025 and the annexures thereto.

The substantive relief sought in the application is for an order to punish the Contemnor for contempt of court.

For an application for contempt of court to succeed, the Applicant must demonstrate the existence of a valid court order, that the Contemnor had notice of the contents of the order, that the Contemnor acted in breach of the court order and that the actions was wilful. As was held in Johari School Limited -vs- Rosemary Wamburu t/a Johari School [2021]eKLR that the elements of contempt of court are;

- a) the existence of a valid court order whose terms are clear, unambiguous and binding on the Respondent,
- b) proof that the Respondent had knowledge or proper notice of the terms of the order,
- c) proof that the Respondent acted in breach of the terms of the order and
- d) that the conduct of the Respondent was deliberate or wilful.

The grounds upon which the present application is brought are that the court issued an order of stay of execution on 1st April, 2025 restraining the Respondent from entering, evicting, trespassing,

cultivating, developing, constructing structures or selling land parcel No. KISUMU/KADERO/GOT NYABONDO/1158 pending hearing and determination of the appeal.

That the order was served upon the Respondent and their agents being Teresa Anyango Otieno. That despite being served, the said Teresa Anyango Otieno went ahead and ploughed part of the suit parcel using a tractor on 19th April, 2025. That it is in the interest of justice that the Contemnor be punished by the honourable court for her to respect due process of the law and obey orders so as to deter lawlessness.

The Respondent on her part contended that she has never been served with the court order. That the order granted by the court was an order of stay of execution of the judgement in Winam PM ELC E088 of 2024 pending hearing of the appeal herein. That there has been full compliance with the court's orders as she has not threatened to evict the Applicant from the suit land and has no intention of doing so before conclusion of the appeal.

That injunctive orders were sought in a different file namely; KISUMU ELC (OS) E033 OF 2024 which was pending ruling before Hon. Justice Okong'o on 17th July, 2025.

To the Affidavit in support of the application was annexed a court order dated 12th March, 2025 issued by Hon. Justice Okong'o.

The order read: -

1. " That a stay of execution of judgement delivered on 13th December, 2024 in Winam PMC ELC NO.E008 OF 2024, Teresa Anyango Otieno -vs- Joel Ngonga is hereby issued pending the hearing and determination of the appeal herein.
2. That the costs of the application to be in the cause.
3. That the matter shall be mentioned before the Deputy Registrar on 26th June, 2025 to confirm filing of the record of appeal and the availability of the court file.

Dated this 12th day of March, 2025."

The court order no doubt is not an injunctive order. It did not restrain the Respondent in the manner claimed by the Appellant in the application.

There is no evidence has been presented that the Respondent had proceeded to execute the judgement of the trial court.

It appears that the Applicant mixed up the particulars of this case with another case. The court notes that the deponent of the

Supporting Affidavit to the application is one Joel Midigo Ndeda who is not a party in this matter.

Further, while the application accuses the Respondent of breaching a court order issued on 1st April, 2025, the Supporting Affidavit refers to a court order issued on 12th March, 2025, a copy of which was annexed to the Affidavit.

The court finds that the ingredients of contempt of court have not been proved to the required standard or at all. The application is dismissed. Costs to the Respondent.

Orders accordingly.

Ruling, dated and signed at Kisumu, read virtually this 9th day of October, 2025 through Microsoft Teams Online Application.

**E. ASATI,
JUDGE.**

In the presence of:

Maureen: Court Assistant.

N/A for the appellant/applicant.

Okoth Odero for the Respondent.

