



REPUBLIC OF KENYA



**KENYA LAW**  
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**Mwangi & another v Ngatia & another (Civil Case 2670 of 2019)  
[2025] KEMC 173 (KLR) (17 April 2025) (Ruling)**

Neutral citation: [2025] KEMC 173 (KLR)

**REPUBLIC OF KENYA  
IN THE MILIMANI COMMERCIAL CHIEF MAGISTRATE'S COURTS  
CIVIL CASE 2670 OF 2019  
P ACHIENG, CM  
APRIL 17, 2025**

**BETWEEN**

**JOHN MAINA MWANGI ..... 1<sup>ST</sup> PLAINTIFF**

**JECINTA MUTHONI MWANGI ..... 2<sup>ND</sup> PLAINTIFF**

**AND**

**DEDAN MWANGI NGATIA ..... 1<sup>ST</sup> DEFENDANT**

**GRACE WAMAITHA MWANGI ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

1. The Plaintiffs/Applicants filed the application dated 12<sup>th</sup> November 2024 seeking the following orders:-
  1. That this Honourable Court finds the Defendant/Contemnor Grace Wamaitha Mwangi in contempt of the injunctive orders issued on 15<sup>th</sup> August 2019 by Honourable G.A. Mmasi (Mrs), which restrained her from trespassing on, constructing on, collecting rent from, or renting structures on, or otherwise interfering with Land Parcel No. Nairobi/Block 1XXX/XXXX, pending the hearing and determination of this matter.
  2. That the Defendant/Contemnor, having willfully disobeyed the said orders of the Court, be committed to civil jail for a period the Court may deem fit, or be subject to such other punishment as the court may deem just.
  3. That the Defendant/Contemnor be ordered to purge the contempt by ceasing all actions contrary to the said orders, including vacating the premises, halting any further construction, and ceasing collection of any rent from the property.



4. That the tenants leasing the structures erected on Land Parcel No. Nairobi/Block 1XXX/XXXX being let by the contemnor be ordered to vacate the premises within 30 days from the date of the ruling until hearing and determination of the main suit.
  5. That the costs of this application be borne by the Defendant/Contemnor.
2. The application is premised on the grounds on its face, and is supported by an Affidavit sworn by John Maina Mwangi, the 1<sup>st</sup> Plaintiff/Applicant. In opposing the application, the Defendant/Respondent filed a Replying Affidavit sworn on 14<sup>th</sup> January 2025. The application was canvassed by way of written submissions. I have considered the application, the Replying Affidavit, the Supplementary Affidavit and the written submissions filed.
  3. The Plaintiffs state that the defendant Grace Wamaitha Mwangi is in contempt of the Court order issued on 15<sup>th</sup> August 2019 by Hon. G.A. Mmasi restraining her from trespassing on, constructing, collecting rent from, or renting structures on, or otherwise interfering with the suit property, pending the hearing and determination of the suit. The Plaintiffs state that the said defendant has constructed, rented and collected rent on structures erected on the suit property land parcel No. Nairobi/Block 1XXX/XXXX.
  4. In response to the application, the defendant Grace Wamaitha Mwangi has basically denied being in contempt of the order. She has however proceeded to depone to other issues including asserting that she lacked capacity to be sued.
  5. The order issued by Hon. G.A. Mmasi (SPM) on 15<sup>th</sup> August 2019 is as follows;

“It is hereby ordered

1. That a temporary injunction is hereby issued restraining the Respondents whether by themselves, their agents and/or servants from continued trespass on, construction and collection of rent and/or renting of structures so erected or otherwise interfering or dealing with the Plaintiffs’ property being Nairobi Block 1XXX/XXXX pending the hearing and determination of this matter.
  2. That an injunction is hereby issued restraining the Respondents whether by themselves, their agents and/or servants from trespassing on, wasting, continued construction and renting of illegally erected structures or otherwise interfering or dealing with the Plaintiffs’ property being Nairobi Block 1XXX/XXXX.
  3. That the Officer Commanding station Kasarani is hereby authorized to enforce compliance of the orders.
  4. That costs of the application to be in the cause.”
6. In the case of *Samuel M. N. Mweru & Others v National Land Commission & 2 others* [2020]eKLR, Hon. Justice Mativo highlighted the elements that must be established to prove contempt of court as follows:

“It is an established principle of law that in order to succeed in civil contempt proceedings, the applicant has to prove

- (i) the terms of the order,



- (ii) Knowledge of these terms by the Respondent,
- (iii) Failure by the Respondent to comply with the terms of the order.

Upon proof of these requirements the presence of wilfulness and bad faith on the part of the Respondent would normally be inferred,....”

7. The Hon. Judge also stated as follows;

“The test for when disobedience of a civil order constitutes contempt has come to be stated as whether the breach was committed ‘deliberately and mala fide.’ A deliberate disregard is not enough, since the non-complier may genuinely, albeit mistakenly, believe he/she is entitled to act in the way claimed to constitute the contempt. In such a case good faith avoids the infraction. Even a refusal to comply that is objectively unreasonable may be bona fide (though unreasonableness could evidence lack of good faith).

These requirements – that is the refusal to obey should be both wilful and mala fides, and that unreasonable non-compliance, provided it is bona fide, does not constitute contempt – accord with the broader definition of the crime, of which non-compliance with civil orders is a manifestation. They show that the offence is committed not by mere disregard of a court order, but by the deliberate and intentional violation of the court’s dignity, repute or authority that this evinces. Honest belief that non-compliance is justified or proper is incompatible with that intent.

.....

Perhaps the most comprehensive of the elements of civil contempt was stated by the learned authors of the book *Contempt in Modern New Zealand* who succinctly stated:-

“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) that:-

- (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.

It is the last test in paragraph (d) above that warrants detailed consideration.”

- 8. The terms of the order issued by Hon. G.A. Mmasi are clear and unambiguous, and they were directed at the defendants. The defendant is therefore under an obligation to obey the order whether she agrees with it or not, so long as it is in force. Even if she holds the position that she lacks the capacity to be sued, she is still under an obligation to obey any court order that is in force, as court orders are not issued in vain.
- 9. On whether the defendant is in contempt of the court order, the Plaintiffs state at paragraph 9 of the Supporting Affidavit that she has continued to trespass, construct structures and has rented them out, and is collecting rent. The Plaintiff has annexed copies of photographs marked “JMM-3” as evidence



that the premises are rented. I have had a look at the said photographs which show no ongoing activity within the premises. The doors to the premises are locked and there is no indication that there are people residing in the houses shown. No proof was also presented to show that the defendant collects rent from the premises or that she has trespassed on the premises.

10. In the case of *Gatharia K. Mutikika v Baharini Farm Ltd* [1985] KLR 227 it was held that-

“A contempt of court is an offence of a criminal character. A man may be sent to prison. It must be proved satisfactorily..... it must be higher than proof on a balance of probabilities, almost but not exactly, beyond reasonable doubt. The standard of proof beyond reasonable doubt ought to be left where it belongs, to wit criminal cases. It is not safe to extend it to offences which can be said to be quasi-criminal in nature.”

11. In the case of *Oilfield Movers Ltd v Zahara Oil & Gas Limited* [2020]eKLR the court stated -

“It is important however that the court satisfies itself beyond any shadow of a doubt that the person alleged to be in contempt committed the act complained of with full knowledge or motive of the existence of the order of the court forbidding it. The threshold is quite high as it involves possible deprivation of a person’s liberty.....”

12. Being quasi-criminal in nature, evidence meeting the standard stated in the above decisions ought to be presented to court for one to be held in contempt. In the instant case, the evidence presented does not meet the required threshold to find the defendant in contempt of the order of the court. I find no merit in the present application and proceed to dismiss the same. Costs of the application shall be in the cause.

**DATED DELIVERED AND SIGNED AT NAIROBI THIS 17<sup>TH</sup> DAY OF APRIL 2025**

In the presence of:-

Plaintiffs/Applicants – Ms. Wanjiru Njihia

Defendant/Respondent –Mr. Kimani

Court Assistant - Duncan

**HON. P. ACHIENG**

**CHIEF MAGISTRATE**

