



Kariuki v Mukora & 3 others (Environment and Land Case E061 of 2021) [2025] KEELC 5728 (KLR) (31 July 2025) (Ruling)

Neutral citation: [2025] KEELC 5728 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT AND LAND CASE E061 OF 2021**

**MD MWANGI, J
JULY 31, 2025**

BETWEEN

DAVID NGANGA KARIUKI PLAINTIFF

AND

PATRICK MUKORA 1ST DEFENDANT

ROSE WANJIRU MBUGUA 2ND DEFENDANT

INTER ACTIVE WORLD LIMITED 3RD DEFENDANT

LAND REGISTRAR, KAJIADO - NORTH DISTRICT 4TH DEFENDANT

RULING

(In respect of the notice of motion application dated 24th March 2025 for contempt against the 1st Respondent/Plaintiff)

Background

1. The Applicant/ 2nd Defendant initiated the matter at hand by way of a notice of motion application dated 24th March 2025. The Applicant initiated the matter moved by the alleged disregard of a status quo order in respect of the suit property issued on 2nd December 2024. The order was confirmed to be still in place when the matter was mentioned on 27th February 2025 before this court.
2. The Applicant seeks the following orders:
 - a. That the 1st Respondent/Plaintiff be personally summoned to this Court to Show Cause why he should not be punished for contempt of the status quo orders issued on 2nd December, 2024.
 - b. That the 1st Respondent/Plaintiff be punished by the court for contempt of court orders made by the court in the instant case issued on 2nd December, 2024;



- c. That this Honourable Court does find the 1st Respondent/Plaintiff in contempt of Court and consequently commit him to civil jail for a period of six (6) months.
 - d. That the 1st Respondent/Plaintiff be ordered to immediately remedy the contempt and to bring down the structures illegally and unlawfully erected on the Applicant's property Title Number Ngong/Ngong/32156;
 - e. That the Court be pleased to issue a temporary injunction restraining the 1st Respondent/Plaintiff by himself, his agents, employees, assigns or whomsoever is acting through him or under his authority of any nature or otherwise howsoever, from entering into property title number Title Number Ngong/Ngong/32156 or dealing with the property Title Number Ngong/Ngong/32156 in any way pending the hearing and determination of this suit;
 - f. That this Honourable court be pleased to make any other such orders as it may deem just; and
 - g. That the Respondent bears the costs of this Application.
3. In the supporting affidavit sworn by Rose Wanjiru Mbugua, the Applicant affirmed that in willful disregard of the court orders, on 5th March, 2025 the 1st Respondent/Plaintiff in company of a group of strangers acting under his authority and instructions forcefully and unlawfully entered into her property Title Number Ngong/Ngong/32156, interrupting her quiet and peaceful possession of the property and further erected some structures on the said property. The Respondent's claim is corroborated by the annexed exhibit marked "RWM1"; pictures evidencing the 1st Respondent's/Plaintiff's invasion of the property and erection of illegal structures therein.
 4. Alongside the aforementioned exhibit, the Applicant/2nd Defendant filed an exhibit marked "RWM2"; a letter addressed to the OCS of Ngong Police Station. Therein, the Applicant primarily reports the alleged trespass incident in which he claims that police officers were involved. The Applicant also sought the assistance of the Gataka area chief as evidenced by a letter addressed to him. Further the Applicant filed a demand letter addressed to the 1st Respondent/Plaintiff's counsel; in which she demanded that the Respondent duly remedies the alleged contempt of the status quo orders by pulling down the unlawfully erected structures and desist from trespassing on the Applicant's property within 24 hours of receipt of the letter.
 5. The application is opposed by the 1st Respondent/Plaintiff who filed a replying affidavit dated 26th May 2025 in response to the application, terming the Applicant's claim of trespass as malicious. The Respondent maintains that he has never set foot on the suit property since he filed the instant case. Moreover, he claims that he has been made to understand that it is the 2nd Respondent/1st Defendant, one Patrick Mukora, who erected the alleged structures.
 6. In the submissions filed, the 1st Respondent/Plaintiff contends that the photographs relied on by the Applicant as evidence of contempt are inadmissible for failure to comply with Section 106A and 106B of the *Evidence Act*. The Respondent asserts that the Applicant did not attach a certificate authenticating the device used to capture and print the photos, nor were the identities of the individuals in the photographs discernible, thereby undermining the evidentiary value of the images marked "RWM1." The Respondent further submitted that he was away in Matuu, Machakos County, on the material date and denies breaching the status quo orders.

Directions

7. The court directed that the application be canvassed by way of written submissions. I have had the opportunity to read the submissions filed and consider them in writing this ruling.



Issues of Determination

8. By dint of the foregoing analysis, the court finds that the sole issue for determination is whether the orders sought by the Applicant are merited.

Analysis and Determination

9. Before proceeding to the determination of the aforementioned issue, I wish to comment on the Plaintiff's prayer for a temporary injunction. An application for temporary injunction must be mounted in accordance with the provisions of Order 40 Rule 1 of the Civil Procedure Rules, which essentially underscore that such an application can only be made within a suit and not otherwise. Order 40 Rule 1 of the Civil Procedure Rules 2010 provides as follows:

“Cases in which temporary injunction may be granted [Order 40, rule

Where in any suit it is proved by affidavit or otherwise – that any property in dispute in a suit is in danger of being wasted, damaged, or alienated by any party to the suit, or wrongfully sold in execution of a decree; or that the Defendant threatens or intends to remove or dispose of his property in circumstances affording reasonable probability that the Plaintiff will or may be obstructed or delayed in the execution of any decree that may be passed against the Defendant in the suit, the court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal, or disposition of the property as the court thinks fit until the disposal of the suit or until further orders.

10. The Applicant herein is the 1st Defendant who has not filed a counterclaim. Order 40 Rule 1 makes it clear that an application for a temporary injunction should originate from an underlying suit in which a permanent injunction is sought first.
11. That said, the application herein is in essence a contempt proceeding. This court is conscious of the standard of proof in contempt matters. The standard of proof in cases of contempt of court is well established. In the case of *Mutitika v Baharini Farm Limited* [1985] KLR 229, 234, 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...The standard of proof beyond reasonable doubt ought to be left where it belongs, to wit, in criminal cases.”

12. Whereas the Applicant herein alleges contempt, the evidence adduced is inadequate. Contempt proceedings are quasi-criminal in nature, explaining why the standard of proof is much higher than in traditional civil matters. For an individual to be found to be in contempt of court orders the evidence should and ought to be compelling to the court.
13. In this case, the Applicant has presented electronic photographs without compliance with Section 106B of the *Evidence Act*, which requires production of a certificate verifying the integrity of the electronic device used. Section 106A – Admissibility of Electronic Records:

“Notwithstanding anything contained in this Act, any information contained in an electronic record which is printed on paper, stored, recorded or copied in optical or magnetic media produced by a computer shall be deemed to be also a document, if the conditions



mentioned in this section are satisfied in relation to the information and computer in question and shall be admissible in any proceedings without further proof or production of the original, as evidence of any contents of the original or of any fact stated therein of which direct evidence would be admissible.”

Section 106B – Admissibility of Electronic Records:

1. Notwithstanding anything contained in this Act, any information contained in an electronic record shall be deemed to be also a document, if the conditions mentioned in this section are satisfied in relation to the information and computer in question and shall be admissible in any proceedings, without further proof or production of the original, as evidence of any contents of the original or of any fact stated therein of which direct evidence would be admissible.
2. The conditions referred to in subsection (1), in respect of a computer output, shall be the following, namely— (a) the computer output containing the information was produced by the computer during a period over which the computer was used regularly to store or process information for the purposes of any activities regularly carried on over that period by the person having lawful control over the use of the computer; (b) during the said period, information of the kind contained in the electronic record or of the kind from which the information so contained is derived was regularly fed into the computer in the ordinary course of the said activities; (c) throughout the material part of the said period, the computer was operating properly or, if not, then in respect of any period in which it was not operating properly or was out of operation during that part of the period, was not such as to affect the electronic record or the accuracy of its contents; and (d) the information contained in the electronic record reproduces or is derived from such information fed into the computer in the ordinary course of the said activities.
3. Where over any period, the function of storing or processing information for the purposes of any activities regularly carried on over that period as mentioned in paragraph (a) of subsection (2) was regularly performed by computers, whether— (a) by a combination of computers operating over that period; or (b) by different computers operating in succession over that period; or (c) by different combinations of computers operating in succession over that period; or (d) in any other manner involving the successive operation over that period, in whatever order, of one or more computers and one or more combinations of computers, all the computers used in that manner shall be treated for the purposes of this section as constituting a single computer; and references in this section to a computer shall be construed accordingly.
4. In any proceedings where it is desired to give a statement in evidence by virtue of this section, a certificate doing any of the following— (a) identifying the electronic record containing the statement and describing the manner in which it was produced; (b) giving such particulars of any device involved in the production of that electronic record as may be appropriate for the purpose of showing that the electronic record was produced by a computer; (c) dealing with any matters to which the conditions mentioned in subsection (2) relate, and purporting to be signed by a person occupying a responsible position in relation to the operation of the relevant device or the management of the relevant activities (whichever is appropriate), shall be evidence of any matter stated in the certificate; and for the purposes of this subsection, it shall be sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it.
5. For the purposes of this section— (a) information shall be taken to be supplied to a computer if it is supplied thereto in any appropriate form and whether it is so supplied directly or (with or



without human intervention) by means of any appropriate equipment; (b) where, in the course of activities carried on by any individual or body, information is supplied with a view to its being stored or processed for the purposes of those activities by a computer operated otherwise than in the course of those activities, that information, if duly supplied to that computer, shall be taken to be supplied to it in the course of those activities; and (c) a computer output shall be taken to have been produced by a computer whether it was produced by it directly or (with or without human intervention) by means of any appropriate equipment.”

14. The photographs do not even show the faces of the alleged trespassers, and no direct link has been made to the 1st Respondent.
15. Moreover, this court notes the judicial reasoning in *Talam v Chepngeno & 3 others* [2024] KEELC 6050, ELC E001 of 2023 eKLR and *Kamano v Kamano* [2024] KEELC 897, ELC E017 of 2023 eKLR, where the courts reiterated that for a finding of contempt, four elements must be proved with a high standard of clarity and certainty:

“These 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.”
16. The court is not satisfied that the Applicant has met this standard.
17. That being said, the court finds that this application lacks merit and is hereby dismissed with costs to be borne by the Applicant.

DATED SIGNED AND DELIVERED AT KAJIADO VIRTUALLY THIS 31ST DAY OF JULY 2025.

M.D. MWANGI

JUDGE

In the virtual presence of:

Ms. Wasilwa h/b for the Plaintiff

Ms. Njoki Wangui h/b for Mr. Njenga for the 2nd Defendant/Applicant

N/A by the 1st, 3rd and 4th Defendants

Court Assistant: Edwin

M.D. MWANGI

JUDGE

