



**Greatwall Apartments Phase 1 Residents Association v Oteki t/
a Just Truckaz & 3 others (Environment and Land Petition
E007 of 2024) [2025] KEELC 7321 (KLR) (28 October 2025) (Ruling)**

Neutral citation: [2025] KEELC 7321 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS
ENVIRONMENT AND LAND PETITION E007 OF 2024**

AY KOROSS, J

OCTOBER 28, 2025

BETWEEN

**GREATWALL APARTMENTS PHASE 1 RESIDENTS
ASSOCIATION PETITIONER**

AND

GEOFFREY MOSOTI OTEKI T/A JUST TRUCKAZ 1ST RESPONDENT

MACHAKOS COUNTY GOVERNMENT 2ND RESPONDENT

**NATIONAL ENVIRONMENT MANAGEMENT AUTHORITY 3RD
RESPONDENT**

**MACHAKOS COUNTY DIRECTORATE OF LIQUOR CONTROL 4TH
RESPONDENT**

RULING

1. This is a ruling in respect of a notice of motion filed by the petitioner dated 15/11/2024 against the 1st respondent, whereby it seeks the following reliefs from this court: -
 - a. Spent.
 - b. Geoffrey Mosoti Oteki has disobeyed the court order issued on 24/09/2024, stopping him from playing or allowing any music between 6 pm and 6 am at JT’s Pitstop Bar and Restaurant, Beijing Road, Syokimau, or emitting noise beyond 35 decibels thereat.
 - c. The 1st respondent, Geoffrey Mosoti Oteki, be and is hereby cited and punished for contempt of the court order issued on 24/09/2024 through imprisonment for six months and an appropriate fine be meted against him.



2. The motion is premised on the grounds listed on the face thereof and the supporting affidavit of John Masiwe, sworn on 15/11/2024. In brief, the grounds in support of the motion are: a) In July and on 24/09/2024, this court issued orders barring the respondents from playing or allowing music between 6 pm and 6 am at JT's Pitstop Bar and Restaurant, Beijing Road, Syokimau; b) The court further prohibited the respondents from emitting noise exceeding 35 decibels from the establishment, c) The court issued those orders in the presence of the 1st respondent through his counsel which was unambiguous, understandable, and easy to comply with yet the 1st respondent has disobeyed; and
3. D) Given the reluctance, unwillingness, and refusal by the 1st respondent to obey the rule of law, the petitioner has no way of enforcing the orders issued on 24/09/2024, besides pursuing contempt proceedings and lastly, E) the contempt undermines the rule of law and the authority of this court. In further support of the grounds, the petitioner also availed the report of Douglas Kathuuri, Manager, Bureau Veritas, dated 4/10/2024. Pointedly, the motion is unopposed.
4. As directed by the court, the petitioner's arguments were adequately canvassed by written submissions filed by the law firm of Ms Bond Advocates LLP, dated 10/02/2025, and this court is grateful to counsel for the enlightening submissions.

Issues for determination, Analysis and Determination

5. Accordingly, having carefully considered the motion, grounds, affidavit and petitioner's submissions, the single issue that arises for determination is whether the contempt proceedings have met the legal threshold.
6. Now, concerning the legal framework for contempt proceedings, it must be noted that Section 5 of the *Judicature Act* is bereft of the procedure for instituting contempt proceedings, and consequently, this court has to seek recourse in the practice applicable in the High Court of Justice in England and Wales. These procedures were well considered in the Court of Appeal decision of *Christine Wangari Gachege v Elizabeth Wanjiru Evans & 11 others* [2014] eKLR. Hence, it is prudent for this court to stipulate the relevant law. Rule 81.4 of the England and Wales Civil Procedure Rules, which deals with the ingredients of contempt applications, provides thus: -

- “(1) Unless and to the extent that the court directs otherwise, every contempt application must be supported by written evidence given by affidavit or affirmation.
- (2) A contempt application must include statements of all the following, unless (in the case of (b) to (g)) wholly inapplicable—
 - (a) the nature of the alleged contempt (for example, breach of an order or undertaking or contempt in the face of the court);
 - (b) the date and terms of any order allegedly breached or disobeyed;
 - (c) confirmation that any such order was personally served, and the date it was served, unless the court or the parties dispensed with personal service;
 - (d) if the court dispensed with personal service, the terms and date of the court's order dispensing with personal service;
 - (e) whether a penal notice had been added to the front of any order allegedly breached or disobeyed included a penal notice;



- (f) the date and terms of any undertaking allegedly breached;
- (g) confirmation of the claimant's belief that the person who gave any undertaking understood its terms and the consequences of failure to comply with it;
- (h) a brief summary of the facts alleged to constitute the contempt, set out numerically in chronological order;
- (i) that the defendant has the right to be legally represented in the contempt proceedings;
- (j) that the defendant is entitled to a reasonable opportunity to obtain legal representation and to apply for legal aid which may be available without any means test;
- (k) that the defendant may be entitled to the services of an interpreter;
- (l) that the defendant is entitled to a reasonable time to prepare for the hearing;
- (m) that the defendant is entitled but not obliged to give written and oral evidence in their defence;
- (n) that the defendant has the right to remain silent and to decline to answer any question the answer to which may incriminate the defendant;
- (o) that the court may proceed in the defendant's absence if they do not attend but (whether or not they attend) will only find the defendant in contempt if satisfied beyond reasonable doubt of the facts constituting contempt and that they do constitute contempt;
- (p) that if the court is satisfied that the defendant has committed a contempt, the court may punish the defendant by a fine, imprisonment, confiscation of assets or other punishment under the law;
- (q) that if the defendant admits the contempt and wishes to apologise to the court, that is likely to reduce the seriousness of any punishment by the court;
- (r) that the court's findings will be provided in writing as soon as practicable after the hearing; and
- (s) that the court will sit in public, unless and to the extent that the court orders otherwise, and that its findings will be made public."

7. Moreover, with respect to this court's jurisdiction to entertain contempt proceedings, the same is derived from Section 29 of the *Environment and Land Court Act*. Having laid down the relevant law, it is now necessary to consider the prevailing jurisprudence on contempt proceedings as pronounced in our various courts. In this regard, as held in the Supreme Court of Kenya decision of *Republic v Ahmad*



Abolfathi Mohammed & Sayeed Mansour Mousavi [2018] KESC 51 (KLR), contempt proceedings are quasi-criminal and they must be exercised with utmost care and only as a last resort; an applicant must establish that the alleged contemnor's conduct was deliberate, in the sense that he or she willfully acted in a manner that flouted the court order.

8. Further, as stated in the decision of Aaron Gitonga Ringera & 3 Others vs. P. K. Muite & Others, Nairobi HCCC No. 1330 of 1991, which was cited with approval and summarized in KAR v JR [2023] KEHC 18588 (KLR), the ingredients in contempt proceedings are that:
 - (a) there must be an existing court order capable of being disobeyed;
 - (b) the alleged contemnor must have been made aware of the existence of the court order; and
 - (c) there must be shown to be a breach (disobedience) of the said court order.
9. Usually, and as stated in the decision of Mutitika v. Baharini Farm Limited [1985] KLR 229, 234, which was cited with approval in Republic v Ahmad (Supra), the standard of proof in contempt proceedings is higher than proof on the balance of probabilities, almost but not exactly, beyond a reasonable doubt. Therefore, this is the measurement that will be meted against the motion.
10. The 1st step in contempt proceedings is proof of service. In this case, and having perused the record, on the date of issuance of the orders of 24/09/2024, Mr Karuga, counsel for the 1st respondent, was present in court. Hence, having been so represented by his counsel, who is his agent, it follows therefore that the 1st respondent was aware of the orders of this court. Therefore, this court finds the petitioner has met the 1st test.
11. Regarding the next test, after proof of notice of the order, the petitioner, who is the applicant, now bears an evidential burden to prove willfulness and mala fides disobedience of the order as stated in the Court of Appeal decision of Shimmers Plaza Limited v National Bank of Kenya Limited [2015] KECA 945 (KLR). To prove so, the petitioner has tendered to this court a report by Douglas Kathuuri, which shows that tests were carried out during the nights of 26/09/2024 to 28/09/2024, which were conducted after the orders of this court had been issued. The exercise was undertaken allegedly using a duly certified and calibrated noise meter, described as Testo 816-1.
12. In this report, it is stated that the obtained field measurements were compared against maximum permissible levels as stipulated in the First Schedule of the Environmental Management and Coordination (Noise and Excessive Vibration Pollution) Regulations, 2009. This report reveals the lowest recording of decibels allegedly emitted by the 1st respondent's music and or noise as 48.4 decibels, and the highest as 74.9 decibels. Yet, the court order had directed explicitly as follows: -

“Pending the hearing and determination of this petition, a conservatory order is issued stopping the Respondents or their agents from playing or allowing any music between 6 pm and 6 am at JT's Pitstop Bar and Restaurant, Beijing Road, Syokimau. In any event, the respondents are prohibited from emitting noise exceeding 35 decibels at JT's Pitstop Bar and Restaurant, Beijing Road, Syokimau.” Emphasis added.
13. Notwithstanding, the report reveals that the noise being emitted by the 1st respondent allegedly exceeds that which the court permitted, and the exercise was conducted post the court order; this court finds this report is not satisfactory. This is because we are not informed of Douglas Kathuuri's professional qualifications, copies of his certifications have not been tendered, and, worse still, this report is unsigned. Concurrence on this is drawn from the persuasive decision of Tumaz & Tumaz



Enterprises Limited v Oliver Chapa Chonga & another [2022] KEHC 13763 (KLR), where the learned judge stated:-

“An unsigned document cannot possibly be of any probative value, for what authenticates a document and gives it legitimacy is the signature. Execution of the document means that the person uttering it gives it ownership and reliability.”

14. For the above-stated reasons, this court finds the notice of motion dated 15/11/2024 is not merited and, in the end, it is hereby dismissed with costs being in the cause. A mention date shall be given for purposes of further directions on the hearing of this matter.

Orders accordingly.

DELIVERED AND DATED AT MACHAKOS THIS 28TH DAY OF OCTOBER, 2025.

HON. A. Y. KOROSS

JUDGE

28.10.2025

Ruling delivered virtually through Microsoft Teams Video Conferencing Platform

In the presence of;

Ms Kanja Court Assistant.

Mr. Karuga for the 1st respondent.

N/A for the other parties.

