



**Muturi v Ndumbi & 3 others (Environment and Land Appeal E001 of 2025)
[2025] KEELC 7227 (KLR) (Environment and Land) (23 October 2025) (Ruling)**

Neutral citation: [2025] KEELC 7227 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIVASHA
ENVIRONMENT AND LAND
ENVIRONMENT AND LAND APPEAL E001 OF 2025**

MC OUNDO, J

OCTOBER 23, 2025

BETWEEN

LUCY WANJIRU MUTURI APPELLANT

AND

MARTIN GATHOGO NDUMBI 1ST RESPONDENT

GABRIEL MWENDIA KAMAU 2ND RESPONDENT

**NAKURU TEACHERS HOUSING CO-OPERATIVE SOCIETY 3RD
RESPONDENT**

**NANCIE WAKESHO, JOYCE KIBE & GRACE MAINA (SUING AS OFFICIALS
OF UNIQUE SISTERS WOMEN GROUP) 4TH RESPONDENT**

RULING

1. Vide an application dated 6th March 2025, the Applicant herein sought an order of stay of the trial Magistrate's ruling of 27th January 2025 and/or Judgement of 15th August 2024 and/or any eviction or demolition, pending the hearing and determination of the Application. Lastly the Applicant sought for a review, setting aside and nullification of the trial court's ruling of 27th January 2025, any adverse orders including the Judgement of 15th August 2024 and order the re-opening of the proceedings more so the defence case. In its order of 10th March 2025 this court gave directions to the parties thereby ordering that they meantime the status quo pertaining as at the 6th March 2025. The matter was then slated for mention for compliance and for further directions for the 2nd April 2025.
2. In response the 1st Respondent swore a Relying Affidavit dated then 1st April 2025 wherein he had deponed that the Applicant's Application was frivolous and an abuse of the court process, the same having been overtaken by events as the Applicant had failed to defend her case in the lower court being



- Naivasha CMCELC No. 33 of 2018 and subsequently having also failed to lodge her appeal against the judgement of the said case that had been delivered on the 15th August 2024. That she was guilty of laches.
3. A second application was then filed vide a Notice of Motion Application dated 28th March, 2025 brought under the provisions of Section 3 and 3A, Order 42 Rule 6 of the *Civil Procedure Act* (sic), Section 5 of *Judicature Act* Chapter 8 Laws of Kenya, Article 40 of *the Constitution* and all other enabling provisions of the law, wherein the Appellant/Applicant sought that the 1st and 2nd Respondents be summoned by the court for interrogation, cross-examination and directions pursuant to their acts of illegal violation of the lower court orders of 27th January 2025 that had deterred demolition of the suit properties and this court's order of 10th March 2025 that had also deterred execution, and thereafter convict them to civil jail for six (6) months and/or fine or further directions as the court would deem fair and just.
 4. That the Respondents also be admonished for giving false information to the OCS Gilgil Police Station. The Applicant also sought for costs.
 5. The said application was supported by the grounds therein as well as the supporting Affidavit of an even date, sworn by Lucy Wanjiru Muturi, the Appellant/Applicant herein who deponed that through a ruling delivered on the 27th January 2025 in the presence of all parties, the lower court had expressly warned them against the demolition of the structure on the suit premises pending an appeal due to its colossal value and therefore the acts of demolition were a clear case of contempt and actionable.
 6. That this court's orders of 10th March 2025 had also been served upon the Respondents' advocates and an accompanying letter on maintaining of the status quo sent, thus it was in bad faith that the illegal demolitions had happened under the watch of the said Respondents' advocates wherein suitable legal measures were necessary. That on 27th March 2025, she had desperately called the OCS Gilgil Police Station after she had been informed by the farm staff that the 1st and 2nd Respondents, police from Gilgil Police Station and hired goons had invaded her land, wherein the said OCS had informed her that the Respondents and their agents had provided information alleging that the intended eviction and demolition was legal, hence she got no assistance.
 7. That vide a letter dated 27th March 2025 her advocate on record had protested to the Respondents and the police seeking they stop the demolition which pleas was ignored wherein the Respondents proceeded to illegally proceed with the demolitions wherein she had filed a complaint of trespass and malicious damage against the Respondents with the police.
 8. That the Respondents' attack to her property had been intended to preempt the hearing of 2nd April 2025 as well as to ridicule her in their celebrations and mock her in her social standing as the wife of the former Attorney General and immediate Minister of Public Services Honorable Justin Bedan Muturi whose departure from the Cabinet, the Respondents and their associates were heard maliciously celebrating.
 9. She deponed that she had all along pursued the instant suit in her private capacity and had never involved any office or status in the matter hence she termed the Respondents' retaliation as callous and illegal and an affront to her fundamental rights as a Kenyan, she sought for deterrence of such attitude and disobedience of court orders which was a sure road to anarchy.
 10. In response and in opposition to the Appellant/Applicant's Application, the 1st Respondent filed a Replying Affidavit sworn by himself on 2nd May, 2025 wherein he deponed that the instant Application was misplaced and an abuse of the court process.



11. That the Applicant never served them or his Advocate with the Order that had been issued on 10th March 2025 which ought to have been served upon them or their advocates physically this being a matter touching on land. That in any case, the Applicant had never appealed against the judgement issued on the 15th August 2024 hence the current appeal did not have any chances of success as it was merely meant to deny them the fruits of their judgement.
12. That secondly the failure to endorse the court order of 10th March 2025 with Penal Notice had rendered the application for contempt fatally defective and therefore the same ought to be dismissed as it had been overtaken by events.
13. In response and through her Supplementary Affidavit sworn on 7th June 2025, the Applicant deponed that on 27th March 2025 both the 1st and 2nd Respondents had unlawfully organized goons wherein in the company of some alleged police officers from Gilgil Police Station descended on the suit premises and damaged the same despite the existence of valid court orders. That the damage and loss had been assessed at around Kshs. 24,075,000/=plus other logistical costs to be stated during the hearing.
14. That since the damages occasioned by the Respondents had been a major setback more so in the pendency of an existence of orders from both the lower court and the superior court that had outlawed any demolition, it was only fair that the appeal herein be held in abeyance pending the outcome on the application on contempt to enable her seek compensation. That the 1st and 2nd Respondents deposit the loss amount and costs as appeal security.
15. In response thereto, Counsel for the Respondents vide a Supplementary Affidavit sworn on 18th June 2025 deponed that the Applicant did not come to court with clean hands. That then Applicant's intended Appeal was against a ruling delivered by the lower court on the 27th January, 2025 which ruling had arisen from that court's judgment of 1st August, 2025.
16. That the Applicant's application was misconceived as the Applicant had not satisfied the grounds for seeking review as contained under the provisions of Section 80 of the *Civil Procedure Act*, there having been no new matter or evidence introduced that had not been in her knowledge. That there had been no error established on the face of the record. That the grounds therein raised had been grounds for an appeal.
17. That in any case, the Applicant had brought the instant application three months after the judgement (sic) had been read, after realizing that time to file an appeal had lapsed, hence it was an afterthought. That accordingly, the instant appeal together with the application dated 6th March, 2025, if allowed, would leave the judgment that had been issued on the 15th August, 2024 in darkness.
18. She deponed that the degree of the alleged damages by the Applicant had been exaggerated and particularly the photographs that had been included in the supporting affidavit which differed with the auctioneer's photographs. annexed and marked as exhibit "NKM 1". That the order that had allegedly been served did not bear the Penal Notice hence the applicant's application was incompetent and ought to be dismissed.
19. Directions were taken for the disposal of the Application dated 28th March, 2024 by way of written submissions.

Appellant/Applicant's Submissions.

20. The Applicant, vide her submissions dated 7th June, 2025 submitted that the court's orders of 10th March 2025 had been served upon the Respondents through their lawyers as evidenced by the annexure



marked as LWM-1 which clearly demonstrated service. That not only was there service, but the orders were contained in the case tracking system (CTS) platform for all to access.

21. That on the 27th March 2025, the Respondents knew that there had been an appeal lodged against the lower court proceedings, orders and judgement. They also knew that the lower court and the appeal court had expressly sanctioned them against any act of demolition or evictions wherein on the 27th January 2025, the lower court had expressly warned the Respondents against demolishing any structure on the suit land.
22. The Applicant submitted that the 1st and 2nd Respondents' act of descending on her property and demolishing it had been uncivil, unprocedural and illegal as no orders or notice of eviction had been served her as required by law. Reliance was placed on the decided case of *Satrose Ayuma & 11 others v Registered Trustee of Kenya Railway Retirement Benefit Scheme & 3 others* Petition No. 65 of 2010 to submit that the acts by the 1st and 2nd Respondents were outright criminal for damage of the Applicant's property contrary to the expectations of a valid court order and sanction to maintain status quo.
23. She placed reliance on the provisions of Section 152C of the *Land Act* on the proper procedure of carrying out an eviction, to submit that the 1st and 2nd Respondents had flaunted these procedures. It was her submission that the 1st and 2nd Respondents had also violated the provisions of Article 43 of *the Constitution* of Kenya on dignity of rights to private property, hence she urged the court to find that they were in contempt of court orders.
24. That the dignity of court and matters pending determination must as a matter of obligation, be respected by all and most specifically the litigants. That in any case, there was no law that provided that a court order ought to be served on a party with a Penal Notice to justify respect of court orders. That instead, once a party became aware of the existence of a court order either from the court itself, media, advocates or whatever source, the party ought to respect that order and refrain from adversely acting. That the Respondents herein had been aware of the existence of the status quo orders of court as the same had been served on their lawyer. That they had also been in attendance in both the lower and superior courts and were expressly aware.
25. That obedience of court's order, once its existence was known by a party, was not negotiable for which a penalty notice inserted to it during service was a peripheral issue. She urged the court to find both the 1st and 2nd Respondents to be in contempt and condemn them and their associates accordingly. That her application be allowed with costs.

Respondents Submissions

26. The 1st and 2nd Respondents vide their submissions dated 14th May, 2025 summarized the factual background of the matter before framing their issues for determination as follows:
 - i. Whether the contempt application is competent.
 - ii. Whether the Respondents violated any court order.
 - iii. Whether demolition of structures was unlawful.
 - iv. Whether the application is an abuse of court process.
27. On the first issue for determination as to whether the contempt application is competent, they submitted that it was trite law that for a contempt application to be sustainable, the alleged contemnor must be shown to have:



- i. Been personally served with the order;
 - ii. The order must contain a penal notice;
 - iii. The order must be clear and unambiguous
28. They then placed reliance on the decided case of *Shimmers Plaza Limited v National Bank of Kenya Limited* [2015] 1 KLR where the Court of Appeal had held that it was trite that to sustain committal proceedings, the order alleged to have been disobeyed must be clear and unambiguous and must be personally served with a penal notice. That in the instant case, there had neither been personal service of the order upon the Respondents nor had the order contained the Penal Notice, which was contrary to the provisions of Order 40 Rule 3 of the Civil Procedure Rule and Section 5 of the *Judicature Act*, hence, the contempt proceedings herein were fatally defective and unsustainable in law.
 29. On the second issue for determination as to whether the Respondents had violated any court order, they submitted that whereas the Applicant had alleged demolition of structures contrary to court directions, the execution of the eviction had been conducted in accordance with the trial court's judgment and ruling. They placed reliance on the decided case of *Republic v County Secretary, Nairobi City County & another Ex parte Wachira Nderitu Ngugi & Co Advocates* [2016] eKLR to submit that in the instant case, the Respondents had acted on the strength of a valid and subsisting court order that they were the owners of the land.
 30. As to whether the demolition had been unlawful, they placed reliance on the decided case of *Isaac Gathungu Wanjohi & Another v Attorney General & 6 others* [2012] eKLR, to submit that the eviction, by necessary implication, had involved removal of unlawful structures hence, the demolition was not only lawful but necessary and consequential to effecting possession.
 31. On the fourth issue for determination as to whether the Application was an abuse of the court process, they submitted that after the Applicant had lost the suit on merit, she filed an unsuccessful review, wherein eviction had been lawfully carried out. That by her seeking to criminalize a lawful enforcement of a judgment, her application amounted to an abuse of the court process. They placed reliance in the decided case of *Muchanga Investments Ltd v Safaris Unlimited (Africa) Ltd & 2 others* [2009] eKLR.
 32. That the judgement remained valid and binding unless and until it is stayed, reviewed, or overturned. That subsequently, the Respondents had been well within their rights to enforce the judgement, the Applicant having failed to seek and obtain a stay before eviction. That she had thus waived her right to complain post-execution.
 33. In conclusion, they submitted that the Appellant's Application dated 28th March 2025 was incompetent for failure to meet the legal threshold for contempt, based on an ambiguous and unenforceable order and a reactionary afterthought to lawful execution and an abuse of the court process.
 34. In their Supplementary Written Submissions dated 20th June 2025, the respondents framed one issue for determination to wit; whether the Applicants application and the instant Appeal had triable issues.
 35. They reiterated the contents of their Submissions dated 14th May 2025 verbatim to submit that no appeal had been preferred against the judgement that had been issued on the 15th August 2024. That further, no new and important matter or evidence, which had not been within the Applicant's knowledge even after due diligence, or which she could not produce at the time when the decree was passed, had been brought forth to warrant a review of the judgement/ruling.



Determination.

36. Before proceeding, it must be made clear and it is trite that contempt of court proceedings is made in the court that gave the orders which were flaunted so as to ensure that the court is best placed to manage compliance, assess the breach, and apply appropriate sanctions to enforce adherence to its own decree. Such an application is often part of the original ongoing suit.
37. Having said so, it is clear that this matter stems from an application dated the 6th March 2025 wherein the Applicant had sought an order of stay of the trial Magistrate's ruling of 27th January 2025 and/or Judgement of 15th August 2024 and/or any eviction or demolition, among other prayers, (which are not relevant for the purpose of the present matter,) pending the hearing and determination of her application. In its order of 10th March 2025 this court gave directions to the parties thereby directing them to maintain in the meantime the status quo pertaining as at the 6th March 2025. The matter had then been slated for mention for compliance and for further directions for the 2nd April 2025.
38. Before the Application was dispensed with, the Applicant file a second application, the subject matter herein, dated the 28th March 2025 seeking to have the 1st and 2nd Respondents herein summoned before the Court to Show Cause why they should not be cited for contempt of Court's order of 10th March 2025 and be sanctioned in accordance with the provisions of Section 29 of the [Environment and Land Court Act](#).
39. The Applicant's complaint is that despite there having been an order of status quo issued on the 10th March 2025 in place and despite the same having been served upon the Respondents' Advocate and a cover letter on maintaining of the status quo sent, on the 27th March 2025, the 1st and 2nd Respondents in the company of some police officers from Gilgil Police Station and hired goons on the pretext of having legally obtained orders, invaded the suit land and demolished the properties therein thus evicting her from the premises. That the damage and loss had been assessed at approximately Kshs. 24,075,000/=plus other logistical costs to be stated during the hearing.
40. The said application was opposed by the 1st and 2nd Respondents through a Replying Affidavit sworn by the 1st Respondent to the effect that neither they nor their Counsel had physically been served with the Order that had been issued on 10th March 2025. That secondly, the failure to endorse the court order of 10th March 2025 with Penal Notice had rendered the current application for contempt fatally defective and therefore the same ought to be dismissed as it had been overtaken by events.
41. The Black's Law Dictionary (Ninth Edition) defines contempt of court as:-

“Conduct that defies the authority or dignity of a court. Because such conduct interferes with the administration of justice, it is punishable usually by fine or imprisonment.”
42. The law guiding the present Application is Order 40 Rule 3(1) of the Civil Procedure Rules which stipulates as follows: -

“In cases of disobedience, or of breach of any such terms, the Court granting an injunction may order the property of the person guilty of such disobedience or breach to be attached, and may also order such person to be detained in prison for a term not exceeding six months unless in the meantime the Court directs his release.”



43. Section 29 of the *Environment and Land Court Act* is clear to the effect that;

“Any person who refuses, fails or neglects to obey an order or direction of the Court given under this Act, commits an offence, and shall, on conviction, be liable to a fine not exceeding twenty million shillings or to imprisonment for a term not exceeding two years, or to both.”

44. It was further an established principle of law as was held in the case of *Kristen Carla Burchell vs Barry Grant Burchell*, Eastern Cape Division Case No. 364 of 2005, 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.

45. Having said that, from the application and the response, the sworn affidavits, annexures, submissions by the both Counsel, the applicable law and the decided authorities, the following issues stand out for determination:

- i. Whether there was a valid order of the court of 10th March 2025.
- ii. Whether the 1st and 2nd Respondents were served with or made aware of the orders issued on 10th March 2025.
- iii. Whether the 1st and 2nd Respondents herein deliberately and willfully failed to comply with the terms of the order and are guilty of contempt of Court orders issued on 10th March 2025.

46. On the first issue for determination, it is not in dispute that this court on the 10th March 2025 made the following order;

“I have considered the contents of the application dated 6th March 2025 wherein the Applicant seeks stay orders from the trial court’s ruling dated 27th January 2025 and/or Judgement of 15th August 2024 and or any eviction or demolition, pending the hearing and determination of the Application. The application is not certified as urgent but should be served upon the Respondents within 7 (seven) days who shall then file their respective responses within 14 (fourteen) days upon service. The Applicant is granted corresponding leave of 7 days, upon service, to file their further affidavit in response if need be. The matter shall be mentioned for confirmation of compliance and for further directions on the 2nd April 2025. In the meantime, Parties shall maintain the status quo pertaining as at the 6th March 2025 when this matter was drawn”

47. The Court of Appeal in the case of *Mugah –v- Kunga* [1988] KLR 748, held that in land matters, status quo orders should always be issued for purposes of preserving the subject matter. The court’s practice directions vide Gazette Notice No. 3461/2025 Practice Direction No. 23(l) gives the court the leeway and discretion to make an order for status quo to be maintained until determination of the case. I therefore find that indeed on the 10th March 2025, the court had issued a valid order directing the parties to maintain the status quo.

48. On the second issue for determination as to whether the 1st and 2nd Respondents were served with or made aware of the orders issued on 10th March 2025, whereas the Applicant’s conviction was that they had been served through their Advocates on the 11th March 2025 and an accompanying letter on



maintaining of the status quo sent, that further, the orders were on the case tracking system (CTS) platform for all to take note, the Respondents have vehemently denied having been served physically. They further stated that the order did not bear the Penal Notice.

49. Generally speaking, a Penal Notice is a prominent warning endorsed on a court order which explicitly states that if the person against whom the order is made disobeys or breaches it, they may be found in contempt of court and punished with sanctions like a fine, sequestration of assets, or even imprisonment.
50. The Court of Appeal in the *Shimmers Plaza Limited v National Bank of Kenya Limited* [2015] eKLR made a significant finding that relaxed the strict requirement for the inclusion and personal service of a penal notice in contempt proceedings. The court held that jurisprudence had gradually moved beyond the necessity of personal service of penal notices and orders to focus on whether the alleged contemnor had actual knowledge of the terms of the court order. It held that the absence of a penal notice on a court order will not automatically invalidate proceedings for contempt of court, provided that it can be shown that the person alleged to be in contempt was aware of the terms of the court order and the potential consequences of disobeying it. The primary consideration thus shifted from the technical formality of the penal notice to the substantive issue of awareness and willful disobedience of the court's command.

51. In this specific case, the court had held as follows:

“On the other hand however, this Court has slowly and gradually moved from the position that service of the order along with the penal notice must be personally served on a person before contempt can be proved. This is in line with the dispensations covered under 81.8 (1) (supra).

Kenya's growing jurisprudence right from the High court has reiterated that knowledge of a court order suffices to prove service and dispense with personal service for the purposes of contempt proceedings. For instance, Lenaola J in the case of *Basil Criticos Vs Attorney General and 8 Others* [2012] eKLR pronounced himself as follows:-

“...the law has changed and as it stands today knowledge supersedes personal service.....where a party clearly acts and shows that he had knowledge of a Court Order; the strict requirement that personal service must be proved is rendered unnecessary”

This position has been affirmed by this Court in several other cases including the *Wambora* case (supra).”

52. The Court of Appeal further confirmed that knowledge of the judgment or order by the advocate of the alleged contemnor would suffice for contempt proceedings. From the Respondents and their Counsel's Replying Affidavit, it is clear that they have not denied knowledge and/or being aware of the orders being in place, their point of contention was that they had not been served physically and the order did not contain the penal Notice. Up to this point, and pursuant to the holding in *Shimmers Plaza Limited* (supra) it can safely be said that the 1st and 2nd Respondents having had knowledge of the Court's orders of Status quo, personal service of the order along with the Penal Notice was therefore unnecessary.
53. As to whether the 1st and 2nd Respondents herein brazenly disobeyed the orders of the Court issued on 10th March 2025, I have considered the application and the annexed photographs therein, the 1st and 2nd Respondents having deceitfully provided information to the OCS Gilgil that the intended eviction and demolition was legal, whereby they had, with the help of some police officers and goons, invaded



the suit premises and demolished buildings therein thus evicting the Applicant from the said premises despite an existing court order to maintain the status quo, I find constitutes a serious act of Contempt of Court. A court order to maintain the status quo is a directive to the parties to preserve the current state of affairs and to take no action that would alter the subject matter of the dispute until further directions or until the matter is heard and determined. The act of proceeding with demolition and eviction in the face of such an order is a direct and wilful act of defiance against the court and the rule of law.

54. Romer L.J in *Hadkinson vs. Hadkinson*(1952) ALL ER 567 stated as follows:

“It is the plain and unqualified obligation of every person, against, or in respect of, whom an order is made by a Court of competent jurisdiction to obey it unless and until that order is discharged. The uncompromising nature of this obligation is shown by the fact that it extends even to cases where the person affected by an order believes it to be irregular or even void”

55. It is therefore mandatory unless and until a Court order is discharged, it ought to be obeyed. Indeed, the Court of Appeal in *Central Bank of Kenya & Another vs. Ratilal Automobiles Limited & Others*, Civil Application No. Nairobi 247 of 2006 held that it was a fundamental tenet of the rule of law that Court orders must be obeyed and it is not open to any person or persons to choose whether or not to comply with or to ignore such orders as directed to him or them by a Court of law.

56. In the case of *Awadh vs. Marumbu (No. 2) No. 53 of 2001 (2004) KLR 458*, the Court held that it is the duty of the Court not to condone deliberate disobedience of its orders nor waiver from its responsibility to deal decisively and firmly with the approved contemnors.

57. The Supreme Court of Kenya in *Republic v Ahmad Abolfathi Mohammed & Another [2018] eKLR* held that;

“The power, to commit a person to jail, must be exercised with utmost care, and exercised only as a last resort. It is of utmost importance, therefore, for the Respondents to 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.”

58. It is therefore trite that contempt of Court proceedings and Applications are subtle and criminal in nature and would impose criminal sanctions if a conviction followed. Having found that the 1st and 2nd Respondents had actual knowledge of the status quo order is therefore sufficient that they were in contempt and therefore they cannot hide behind technicalities like an absent penal notice or lack of personal service. The act of demolishing a structure under a status quo order is a clear example of the precise action the court seeks to prevent, and the courts treat such blatant disregard with the utmost seriousness to uphold the dignity and authority of the judicial process.

59. Being mindful that the burden of proof in contempt proceedings is higher than that in a normal civil matter because such proceedings had the potential of impacting the rights of a party who may end up being committed to civil jail, I thus find the Applicant’s application dated the 28th March 2025 merited. The 1st and 2nd Respondents herein Martin Gathogo Ndumbi and Gabriel Mwenda Kamau I find, were in blatant, deliberate and intentional violation of the court’s dignity, repute and authority wherein their conduct substantially adversely interfered with the substratum of the matter thus rendering the subsequent Application dated the 6th March 2025 a mere academic exercise. I thus find them in contempt of the court order of 10th March 2025 and will accordingly proceed to punish them.



**DATED AND DELIVERED VIA MICROSOFT TEAMS AT NAIVASHA THIS 23RD DAY OF
OCTOBER 2025**

M.C. OUNDO

ENVIRONMENT & LAND COURT– JUDGE

