



**Nduati v Maseenke & another (Environment and Land Case  
E081 of 2024) [2025] KEELC 7362 (KLR) (28 October 2025) (Ruling)**

Neutral citation: [2025] KEELC 7362 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO  
ENVIRONMENT AND LAND CASE E081 OF 2024  
LC KOMINGOI, J  
OCTOBER 28, 2025**

**BETWEEN**

**JOHN THINDI NDUATI ..... PLAINTIFF**

**AND**

**STANLEY KONANA OLE MASEENKE ..... 1<sup>ST</sup> DEFENDANT**

**DISTRICT LAND REGISTRAR, NGONG ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

1. This Ruling is in respect of the Notice of Motion application dated 18<sup>th</sup> February 2025 and the Preliminary Objection dated 14<sup>th</sup> February 2025.
2. The same dated 18<sup>th</sup> February 2025 is brought pursuant to Order 40 Rule 1, Order 51 Rule 1 and 13 of the Civil Procedure Rules; Section 1A, 1B and 3A of the [Civil Procedure Act](#) 2010; and other enabling provisions of the law. It seeks orders that;
  - i. This Court be pleased to issue a declaratory order declaring that the 1<sup>st</sup> Respondent has no locus to own the suit property or sustain the suit herein.
  - ii. This Court be pleased to issue a mandatory injunction restraining the 1<sup>st</sup> Respondent whether by himself and/or through his servants and /or agents or any person howsoever from entering into, remaining upon, cutting down trees, carrying out any form of construction or dealing in any manner whatsoever with all that property known as Land Title No. Ngong/Ngong /7495.
  - iii. This Court be pleased to hold the 1<sup>st</sup> Respondent in contempt of the Order dated 16<sup>th</sup> October 2024.
  - iv. The OCS Ongata Rongai Police Station be directed to enforce and ensure compliance of the Orders which this Honourable Court is pleased to grant.



- v. Any other relief that may be just to meet the ends of justice in this case be granted.
- vi. Costs of this application be in the cause.
3. The grounds are on the face of the application as set out in paragraphs 1 to 11. The same is supported by the sworn Affidavit of John Thindi Nduati.
4. He avers that he is the registered proprietor of Land Title Number Ngong/Ngong/7495, situated in Ngong, Kajiado County. That he has been in continuous, peaceful and exclusive possession of the said property from 15<sup>th</sup> October 1985, when it was registered in his name.
5. He avers that on or about 1<sup>st</sup> August 2024, the 1<sup>st</sup> Defendant/Respondent, unlawfully entered the suit property without any legal justification, commenced acts of destruction including cutting down trees, excavating the land and erecting structures, thereby interfering with his quiet possession.
6. In response to this intrusion, the Plaintiff filed an application dated 3<sup>rd</sup> September 2024, upon which the Court issued temporary injunction orders restraining the 1<sup>st</sup> Defendant/Respondent, or anyone acting on his instructions from in any way dealing with the suit property. He claims that despite being duly served, the 1<sup>st</sup> Defendant/Respondent disobeyed the Court Order and continued his acts of trespass and interference, leading the Plaintiff to file contempt of the Court and orders issued on 16<sup>th</sup> October 2024.
7. The Plaintiff further contends that while the 1<sup>st</sup> Defendant/ Respondent relies on the Grant of Letters of Administration intestate but failed to annex any proof of such grant. It is his case that any such grant previously issued to him was revoked and annulled by the Senior Principal Magistrate's Court at Ngong in Succession Cause No. 63 of 2018, thus stripping him of any locus standi to deal with or claim any interest on the suit property.
8. The Plaintiff maintains that he is the absolute registered and beneficial owner of the land as confirmed by the records at the Lands Registry, and that the 1<sup>st</sup> Defendant/Respondent's continued occupation amounts to illegal trespass.
9. The 1<sup>st</sup> Defendant/Respondent in his Replying Affidavit dated 7<sup>th</sup> April 2025 deponed that he had filed a Preliminary Objection dated 14<sup>th</sup> February 2025, which ought to be heard and determined first.
10. He acknowledged that he was aware of this Court's orders issued on 16<sup>th</sup> October 2024, but denied having entered, cut down trees, or in any way interfered with the Plaintiff's property Ngong/Ngong/7495. The Defendant claimed that he only became aware of the ruling delivered on 19<sup>th</sup> August 2021, which revoked the Grant of Letters of Administration confirmed on 3<sup>rd</sup> December 2020, from the current proceedings. He stated that, it was clear that the plaintiff was aware of the long standing dispute concerning the suit property and its mother title, Ngong/Ngong/1421
11. He further stated that, in the spirit of promoting judicial efficiency and avoiding unnecessary delay, he had elected to withdraw his counterclaim dated 14<sup>th</sup> February 2025. He further deponed that the grandchildren of the deceased, Noi Ole Pemba, should be joined as parties to this suit, as recommended in the ruling of Hon. P. Achieng in Succession Cause No. 63 of 2018 (Ngong Law Courts), to prevent inconsistent findings or embarrassment to the Court. It is his position that a limited grant of letters of administration ad litem was issued on 15<sup>th</sup> November 2024 in the same succession cause.
12. Finally, the Defendant maintains that he was neither an Administrator nor a beneficiary of the estate in question and therefore contends that he has been wrongly enjoined in these proceedings.



13. The Plaintiff in his Further Affidavit reiterated that the 1<sup>st</sup> Defendant/ Respondent in his Defence and Counterclaim had indicated that he was a personal representative and a beneficiary of the estate of Nooi Ole Pemba, who he claims was the registered owner of Ngong/Ngong/1421. It was only after carrying out due diligence that the Plaintiff's Advocate discovered that the Grant of Letters of Administration that had been issued to the 1<sup>st</sup> Defendant/Respondent in relation to Ngong/Ngong/1421 had been revoked in Succession Cause No 63 of 2018 vide a Ruling dated 19<sup>th</sup> August 2021. This fact was known by the 1<sup>st</sup> Defendant/Respondent but he had failed to disclose it to this Court. The Plaintiff maintained that the claim against the 1<sup>st</sup> Defendant was one for trespass against the 1<sup>st</sup> Defendant/Respondent and therefore enjoining other parties was unnecessary. It is his contention that since the 1<sup>st</sup> Defendant/Respondent had confirmed that he was neither an administrator nor a beneficiary of the estate Ngong/Ngong/1421 meant that any action on the suit property was indeed unlawful.
14. He also contested that the 1<sup>st</sup> defendant's preliminary objection relied on repealed statutes and ought to be dismissed.
15. The 1<sup>st</sup> Defendant raised a Preliminary Objection on the grounds that:
  - i. The application and suit contravenes the repealed Registered Land Act Sections 28,29,30,31,32,33, 34, 119 (1), 119 (2), 119 (3) and 112.
  - ii. The application and suit filed herein contravenes Law of Succession Act Sections 45 (1) and 45 (2).
  - iii. The application and suit filed herein contravenes the Land Act Section 51 (1) and 51 (2).
16. The Preliminary Objection and the Notice of Motions were canvassed by way of written submissions.

### **Submissions of the Plaintiff**

17. On whether the 1<sup>st</sup> Defendant had met the threshold for upholding the Preliminary Objection, it was submitted that an objection should raise a pure point of law as held in *Mukisa Biscuit Manufacturing Co. Ltd vs West End Distributors Ltd* [1969]EA. The objection was unmerited due to its reliance on repealed laws and since the suit was on trespass, the court could not determine the objection without reviewing the evidence tendered. The following cases were referenced in support *Quick Enterprises Ltd Vs Kenya Railways Corporation*, *Avtar Singh Bhamra & Another Vs Oriental Commercial Bank* and *Oraro vs Mbaja* (2005) 1KLR 141.
18. On whether the Application dated 3<sup>rd</sup> September 2024 and suit should be dismissed, it was submitted that whether the 1<sup>st</sup> defendant had an interest in the suit whether as a beneficiary or an administrator was not the question in the Plaint but the issue of trespass. As such, the suit objection should be dismissed and suit determined on merit.
19. For the application dated 18<sup>th</sup> February 2025, counsel submitted on the following issues:
20. On whether the 1<sup>st</sup> Respondent had locus to own the suit property or sustain the suit herein, it was submitted that the 1<sup>st</sup> defendant in his defence and counterclaim claimed to be the personal representative and beneficiary of the Estate of the late Noi. However, the grant of letters of administration in relation to property Ngong/Ngong/1421 which he claimed to be a representative had since been revoked. As such, he lacked locus to dispute ownership of the suit property in any way deal with the property Ngong/Ngong/7495 and had clearly trespassed onto the Plaintiff's property.
21. On whether the Applicant had met the threshold for grant of a mandatory injunction, it was submitted that despite an injunction against the 1<sup>st</sup> defendant, he continued to invade and trespass on the suit



property and it was imperative that a mandatory injunction be issued in lieu of an interlocutory injunction as held in *Kenya Breweries Limited vs. Washington Okeyo* (2002) EA 109. It was also submitted that in his replying affidavit, he swore that he had no interest in the suit property and as such should be estopped from interfering with it.

22. On whether the 1<sup>st</sup> Respondent was in contempt of court, it was submitted that as per the standard set in *Samuel M. N. Mweru & Others v National Land Commission & 2 others* [2020] eKLR to prove contempt of Court, the orders issued on 16<sup>th</sup> October 2024 were clear and unambiguous. The 1<sup>st</sup> Respondent had been ordered to vacate the suit property and cease carrying out any activities, destructive or otherwise, on the suit property pending the hearing and determination of the suit. The 1<sup>st</sup> defendant was also aware of the orders since he had been served with the order and an affidavit of service filed as proof and he had affirmed being aware of the order although he contested not being in possession of the property. It was also submitted that when this application was filed, he was still in possession of the suit property and should be punished for demeaning the Court's integrity as held by the Supreme Court in *Republic v Ahmad Abolfathi Mohammed & Another* [2018] eKLR.
23. Therefore, the application was merited and should be allowed.

### **Submissions of the 1<sup>st</sup> Defendant**

24. On whether the objection raises points of law and has been proven, it was submitted that the late Noi Ole Pemba died in the year 1977 intestate. That the suit property parcel Ngong/Ngong/7495 was a subdivision of parcel Ngong/Ngong/1421 registered in favour of the late Noi and the transfers effected in 1982 and 1985 while succession proceedings are yet to be finalised. This suit is therefore in contravention of Section 45 of the *Law of Succession Act* and should be dismissed lest this Court embarrasses itself by issuing any adverse orders. Reference was made to In the matter of the estate of Veronica Njoki Wakagoto (deceased).

### **Analysis and Determination**

25. I have considered the Preliminary Objection, the Notice of Motion, the affidavit in support, the response thereto, the rival submissions and the authorities cited. I find that the issues for determination are:
  - i. Whether the Preliminary Objection dated 14<sup>th</sup> February 2025 is merited;
  - ii. Whether the 1<sup>st</sup> defendant should be cited for contempt of court orders;
  - iii. Whether an order for mandatory injunction should be issued against the 1<sup>st</sup> defendant;
  - iv. Who should bear costs of the applications?
26. The 1<sup>st</sup> defendant raised an objection to this suit on grounds that it contravenes certain grounds of the repealed Registered *Land Act*. The grounds brought under the repealed laws are bad in law because once a Law is repealed, it is no longer enforceable. Reference can be made on such a law, but it cannot be used to enforce any claim or obligation. As such, ground 1 and 2 of the preliminary objection are dismissed in limine.
27. The other grounds for the preliminary objection is that the suit offends Section 45(1) and (2) of the *Law of Succession Act* and Section 51(1) and (2) of the *Land Act*. The 1<sup>st</sup> defendant claims that he is neither a beneficiary nor an administrator of the Estate of the late Noi Ole Pemba hence it is the representatives of the said Estate who should be sued.



28. The Plaintiff contested these grounds arguing that the dispute was based on the act of trespass which had been caused by the 1<sup>st</sup> defendant and therefore the objection ought to be dismissed since the issue of legal representation and beneficial interest was not the issue for determination.
29. A Preliminary objection should be raised on a pure point of law and not facts. This was held in the case of Mukisa Biscuits Manufacturing Co Ltd v West End Distributors [1969] EA 696 and quoted with approval by the Supreme Court in John Florence Maritime Services Limited & another v Cabinet Secretary Transport & Infrastructure & 3 others (Petition 17 of 2015) [2021] KESC 39 (KLR):

“A preliminary objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact had to be ascertained or if what is sought is the exercise of judicial discretion...”
30. I am of the view that, the questions raised such as intermeddling and issue of transmission are issues of facts and not pure points of law. On the face of the Plaint, the late Noi Ole Pemba does not appear. It then means, that this Court will have to delve into the evidence to determine who the late Noi is and his place in the suit.
31. The preliminary objection is hereby dismissed.
32. The next issue for determination herein is whether the 1<sup>st</sup> defendant should be cited for contempt of court orders and whether the order for mandatory injunction should be issued against the 1<sup>st</sup> defendant.
33. In the Plaint dated 3<sup>rd</sup> September 2024 the plaintiff claimed that he had been in possession of the suit property; Ngong/Ngong/7495 from 15<sup>th</sup> October 1985 until August 2024 when the 1<sup>st</sup> defendant invaded it and started undertaking activities averse to his ownership and continues to be in possession of the suit property. In the Notice of Motion, he sought a temporary injunction against the 1<sup>st</sup> defendant and an eviction order amongst other prayers. When hearing of the Application came up on 16<sup>th</sup> October 2024, the Court issued a temporary injunction restraining the 1<sup>st</sup> defendant or any person instructed by him from interfering in any way with the suit property; Ngong/Ngong/7495 pending the hearing and determination of the suit. This Order still stands as it has not been set aside.
34. In the application dated 8<sup>th</sup> November 2024, the Plaintiff sought an order issued to the Sub County Police Commander Ngong to assist in enforcing the order issued on 16<sup>th</sup> October 2024 on grounds that the 1<sup>st</sup> defendant was still trespassing on the suit property and had put up structures.
35. The Plaintiff then filed the Notice of Motion dated 18<sup>th</sup> February 2025 seeking an order directing the Officer Commanding Station Ongata Rongai to ensure compliance of the orders of 16<sup>th</sup> October 2024; the 1<sup>st</sup> defendant be held in contempt; a mandatory injunction be issued against the 1<sup>st</sup> defendant and a declaration that the 1<sup>st</sup> defendant did not have locus to sustain the suit.
36. The 1<sup>st</sup> defendant denied the trespass claims adding that he had intentions of withdrawing the counterclaim to expedite the determination of the suit.
37. The plaintiff seeks to have the 1<sup>st</sup> defendant cited for contempt on grounds that while he was aware of the orders of 16<sup>th</sup> October 2024, but still continued to be with the acts of trespass.
38. Section 5(1) of the *Judicature Act* provides: The High Court and the Court of Appeal shall have the same power to punish for contempt of court as is for the time being possessed by the High Court of



Justice in England and that power shall extend to upholding the authority and dignity of subordinate courts.

39. Due to the quasi-criminal nature of contempt proceedings and the gravity of the consequences that flow from contempt proceedings, courts are required to adhere to the principles of natural justice, procedural fairness, and the right to a fair hearing. On the issue of contempt and parameters to establish the same were set out in the Supreme Court in *Githiga & 5 others v Kiru Tea Factory Company Ltd* (Petition 13 of 2019) [2023] KESC 41 (KLR) held:

“...In enforcing compliance with lawful court orders, the procedures adopted by the court must be fair and reasonable in which full opportunity is given to an alleged contemnor to defend himself or herself. This is because contempt proceedings being quasi-criminal, require a higher standard of proof than in normal civil cases, and one can only be committed to civil jail or penalized on the basis of evidence that leaves no doubt as to the contemnor’s culpability... 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. It is not safe to extend it to an offence which can be said to be quasi-criminal in nature.”

40. Court orders are not issued in vain and should be obeyed, an authority that Courts should guard jealously. It is not in contention that the 1<sup>st</sup> defendant was aware of the Court orders issued on 16<sup>th</sup> October 2024. The 1<sup>st</sup> Defendant has not explained as to why he continues to disobey the said orders.

41. In the case of *Hadkinson Vs. Hadkinson* (1952) A11 ER 567; it was stated thus;

“It is 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 into 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.”

42. I rely on the above authority in finding that the 1<sup>st</sup> Defendant/Respondent was aware of the orders granted by this Honourable Court. Despite the knowledge, he has persisted in continuing with the acts complained of.

43. I find that he has wilfully disobeyed the orders granted by this court on the 16<sup>th</sup> October 2024. He has not sought for the said orders to be varied and or discharged.

44. The upshot of the matter is that I find merit on the Notice of Motion dated 18<sup>th</sup> February 2025.

45. Accordingly I make the following disposal orders;

- a. That the Preliminary Objection dated 14<sup>th</sup> February is hereby dismissed.
- b. That the 1<sup>st</sup> Defendant do appear in this court to show cause as to why he should not be punished for disobeying the court orders issued on 16<sup>th</sup> October 2024 on the 26<sup>th</sup> November 2025.
- c. That the costs of the Application be borne by the 1<sup>st</sup> Defendant.



d. In the meantime, the Officer Commanding Station Ngong Police Station do ensure compliance of the orders issued on 16<sup>th</sup> October 2024.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 28<sup>TH</sup> DAY OF OCTOBER 2025.**

**L.KOMINGOI**

**JUDGE.**

