



**Gakuru & 2 others (Suing on their behalf and on behalf of JWA Thika Sub-County) v County Government of Kiambu & another; National Land Commission & another (Interested Parties) (Petition E012 of 2024) [2025] KEELC 7571 (KLR) (4 November 2025) (Ruling)**

Neutral citation: [2025] KEELC 7571 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT THIKA  
PETITION E012 OF 2024**

**JA MOGENI, J**

**NOVEMBER 4, 2025**

**IN THE MATTER OF ARTICLES 2, 3, 10, 19, 20, 21, 22, 23, 42, 43, 69, 70, 165(2) (B) AND 258 OF THE CONSTITUTION OF KENYA, 2010**

**AND**

**SECTION 3, 58, 59 OF THE ENVIRONMENTAL  
MANAGEMENT AND CO-ORDINATION ACT NO. 8 OF 1999**

**AND**

**IN THE MATTER OF CLASS ACTION LAWSUIT IN RESPECT OF ENVIRONMENTAL  
RIGHTS OVER ILLEGAL UNLAWFUL AND/OR UNPROCEDURAL CONSTRUCTION  
OF AFFORDABLE HOUSING UNITS ON THIKA MUNICIPALITY BLOCK 11/343**

**AND**

**IN THE MATTER OF CONTRAVENTION ARTICLE 2, 3,10,  
42, 69 AND 70 OF THE CONSTITUTION OF KENYA 2010**

**BETWEEN**

**ROBERT N GAKURU ..... 1<sup>ST</sup> PETITIONER  
EZEKIEL MULANDI ..... 2<sup>ND</sup> PETITIONER  
ROBERT N NAGE ..... 3<sup>RD</sup> PETITIONER  
SUING ON THEIR BEHALF AND ON BEHALF OF JWA THIKA SUB-COUNTY**

**AND**

**COUNTY GOVERNMENT OF KIAMBU ..... 1<sup>ST</sup> RESPONDENT  
THE CABINET SECRETARY MINISTRY OF LANDS HOUSING AND URBAN  
DEVELOPMENT ..... 2<sup>ND</sup> RESPONDENT**



**AND**

**THE NATIONAL LAND COMMISSION ..... INTERESTED PARTY**  
**CHANIA THIKA RESIDENT ASSOCIATION (THROUGH JOHN KAGIRA**  
**NAGE - CHAIRMAN, ANN KAGURE IRARI - SECRETARY & GREGORY**  
**WAMBUI - TREASURER) ..... INTERESTED PARTY**

**RULING**

1. Before me, for determination is the Notice of Motion Application dated 12/06/2025. The Applicant seeks orders that:
  1. Spent.
  2. That this Honorable Court do find the 1<sup>st</sup> and 2<sup>nd</sup> Respondents in contempt of the Order of Hon JA Mogeni sitting at ELC Court at Thika on the 20<sup>th</sup> of May 2025 the same being served upon the Respondents on the 28<sup>th</sup> May 2025 on the said Respondents and on the 30<sup>th</sup> of May 2025 on the 3<sup>rd</sup> Respondent.
  3. That a Notice to Show Cause do issue against the 1<sup>st</sup> and 2<sup>nd</sup> Respondents to show cause why they should not be cited for insubordination and contempt of Court, and that the Principal Secretary (PS) in the Ministry of Lands, Housing and Urban Development as well as the County Executive Committee Member (CECM) Land, Housing, Physical Planning & Urban Development in Kiambu County be personally summoned to appear before this Honorable Court.
  4. That upon granting prayer 2 above, the Court do commit the Principal Secretary (PS) the Ministry of Lands, Housing and Urban Development as well as the County Executive Committee Member (CECM) Land, Housing, Physical Planning & Urban Development in Kiambu County to Civil Jail for a period of six (6) months.
  5. That in the alternative to the order in 4 above, the Court do impose the penalty of a fine in the sum of Kenya Shillings five hundred thousand (Kesh. 500,000) to each of the Respondents in 4 above.
  6. That the costs of this application be paid for by the Respondents.
2. The Application is premised upon the following grounds and supported by the Affidavit sworn by Ezekiel Mulandi sworn on 12/06/2025:
  - a. The 1<sup>st</sup> and 2<sup>nd</sup> Respondent has willfully disobeyed the Court orders dated 27/05/2025 given on 20/05/2025 stopped any further construction on Land Parcel Thika Municipality Block 11/343
  - b. The Order was made in the presence of Counsel for the 1<sup>st</sup> and 2<sup>nd</sup> Respondent and 2<sup>nd</sup> Interested parties and subsequently served upon the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondent as well as the Interest Parties herein.
  - c. Attorney General is mandated to advise his clients to comply with Court Orders and that being a constitutional representative and being the principal legal advisor of Government, he is required to direct any arm of Government he presented to comply with the law.



- d. That notwithstanding, the 1<sup>st</sup> and 2<sup>nd</sup> Respondent has ignored and defied the Court's order which bring the dignity of this Honorable Court into disrepute and undermine its authority.
  - e. The Applicants, represent a sizable number of Residents who feel aggrieved that the defiance is intended to cause irreparable harm by denying them the relief sought in their Petition and the Applicant's right to a fair hearing and expeditious resolution of disputes, as enshrined in Article 50 of the Constitution and Sections 1A and 1B of the Civil Procedure Act
  - f. It is in the interest of justice that this Application is heard on a priority basis to allow the Applicant enjoy the fruits of her Judgment.
3. Neither the 2<sup>nd</sup> Respondent nor Interested Parties filed any response except for the 1<sup>st</sup> Respondent who opposed the application vide a Replying Affidavit sworn 29/07/2025 by John Maingi Acting Secretary of the 1<sup>st</sup> Respondent. In his response, the 1<sup>st</sup> Respondent states that the Application dated 12<sup>th</sup> June 2025 is a non-starter, fatally defective and an abuse of Court process for the reason that it does not provide or specify the actions of 1<sup>st</sup> Respondent and its Officers complained to be in defiance with the Court Order issued on 20<sup>th</sup> May 2025.
  4. That the Orders issued on 20<sup>th</sup> May 2025 and this contempt application was not served upon the County Executive Committee Member (CECM) Land, Housing, Physical Planning & Urban Development of the 1<sup>st</sup> Respondents.
  5. Due to the failure to serve the CECM personally, the application for contempt against the CECM is defective and an abuse of the Court process. Therefore, the allegations of willful disobedience of a Court order dated 20<sup>th</sup> May 2025 are misplaced, misleading and denied in totality, and the 1<sup>st</sup> Respondents have at all material times acted in accordance with the law and with utmost respect to this Honorable Court's directions.
  6. He avers that this Court appreciates that the project in question namely the Affordable Housing Development on Thika Municipality Block 11/343 under the Boma Yangu Programme is a National Government and as much as the 1<sup>st</sup> Respondent owns the property, it is not financing, excavating, erecting buildings, or doing any other activity on the land.
  7. That the 1<sup>st</sup> Respondent having handed over the site prior to the institution of this suit and is not in any way in possession of Thika Municipality Block 11/343. He further avers that the application is frivolous and vexatious for the reason that the Applicant has not produced evidence of the alleged contemptuous actions of the CECM or any Officer of the 1<sup>st</sup> and 2<sup>nd</sup> Respondent.
  8. The 1<sup>st</sup> Respondent urged the Court to find that the Applicant has not discharged its burden of proof and that the Court dismisses the instant application with costs to the Respondents.
  9. At the time of writing this Ruling none of the parties had filed their submissions.

### **Analysis and Determination**

10. Issues for determination:-
  - i. Whether the Respondents are in contempt of Court orders issued on 20/05/2025;
  - ii. Whether the Applicant is entitled to the orders sought.



**Whether the Alleged Contemnors are guilty of contempt of Court Orders issued on 20/05/2025.**

11. The Applicant wants the Court to cite the Principal Secretary (PS) in the Ministry of Lands, Housing and Urban Development as well as the County Executive Committee Member (CECM) Land, Housing, Physical Planning & Urban Development in Kiambu County to be personally summoned to appear before this Honorable Court show cause why they should not be cited for insubordination and contempt of Court.
12. Mativo J. (as he then was) restated the test for establishing contempt in his decision in Samuel M. N. Mweru & Others v National Land Commission & 2 Others [2020] eKLR where he stated:-

“ 40. 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 willfulness and bad faith on the part of the Respondent would normally be inferred, but the Respondent could rebut this inference by contrary proof on a balance of probabilities. 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.”

13. Order 40 Rule 3 of the Civil Procedure Rules prescribes the consequences of breach of injunctive orders as follows:-

“Consequence of breach [Order 40, rule 3.] 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.”



14. Hon Justice Ibrahim (as he then was) in the case of Econet Wireless Kenya Limited v Minister for Information and Communication of Kenya Authority [2005] eKLR stated as follows: -

“It is essential for the maintenance of the rule of law and order that the authority and the dignity of our Courts are upheld at all times. The Court will not condone deliberate disobedience of its orders and will not shy away from its responsibility to deal firmly with proved contemnors. It is the plain and unqualified obligation of every person against whom an order is made by Court of competent jurisdiction, to obey it unless and until the 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 the order believes it to be irregular or void.”

15. With respect to contempt of Court the burden of proof with respect to contempt of Court is higher than on a balance of probabilities. In the case of Refrigerator & Kitchen Utensils Ltd v Gulabchand Popatial Shah & Others Civil Appln. No. 39 Of 1990, the Court of Appeal, while approving the standard of proof in contempt cases as set out in the case of Gatharia Mitika & Others v Bahrain Farm Ltd, Civ. Appln.No.24 of 1995, held that in cases of alleged contempt, the breach for which the contemnor is cited must not only be precisely defined but proven to a standard which is higher than proof on a balance of probabilities but not as high as proof beyond a reasonable doubt. This is because, as already stated, the charge of contempt of Court is an offence of criminal character and a party may lose his liberty if found guilty.

16. In Gatharia K. Mutikika v Baharini Farm Ltd [1985] KLR 227 it was held as follows:-

“...The jurisdiction of committing for contempt being practically arbitrary and unlimited, should be most jealously and carefully watched and exercised with the greatest reluctance and the greatest anxiety on the part of the judge to see whether there is no other mode which is not open to the objection of arbitrariness and which can be brought to bear upon the subject..... applying the test that the standard of proof should be consistent with the gravity of the alleged contempt... it is competent for the Court where contempt is alleged to or has been committed, and or an application to commit, to take the lenient course of granting an injunction instead of making an order for committal or sequestration, whether the offender is a party to the proceedings or not.”

17. The Appellate Court in the case of Shimmers Plaza Limited v National Bank of Kenya (2015) eKLR held that it is sufficient to prove that the Advocate of the alleged Contemnor was present in Court when such orders were made. The Court stated as follows:-

“Would the knowledge of the Judgment or order by the Advocate of the alleged contemnor suffice for contempt proceedings? We hold the view that it does. This is more so in a case such as this one where the Advocate was in Court representing the alleged contemnor and the orders were made in his presence. There is an assumption which is not unfounded, and which in our view is irrefutable to the effect that when an Advocate appears in Court on instructions of a party, then it behooves him/her to report back to the client all that transpired in Court that has a bearing on the client’s case.”

18. In the instant application, there is a Ruling delivered by this Court on 20/05/2025 in favour of the Applicant in which the Court stated as follows:-



- i. That pending the hearing and determination of this application inter-parties, a conservatory order be issued restraining the Respondents by themselves or any other person, body or organ acting under their authority au financing, proceeding with, excavating, erecting buildings or undertaking any other activities on all that land parcel known as Thika Municipality Block 11/343 under the Boma Yangu Housing Project within Thika Sub-County, Kiambu County pending the hearing and determination of this Petition.
  - ii. That; Chania Thika Residents Association, through John Kagira Nage (Chairman), Ann Kagure Irari (Secretary) & Gregory Wambaki (Treasurer) be joined as the 2<sup>nd</sup> Interested Party in this Petition.
  - iii. That the costs of the two applications shall be in the cause.
19. Again in *Basil Criticos v Attorney General and 8 Others* [2012] eKLR Lenaola J. (as he then was) 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.”
20. The Respondents are aware of the Ruling as they have been represented by Counsel in all the proceedings and they filed responses to the Application. The argument by Counsel for the 1<sup>st</sup> Respondents that neither the 1<sup>st</sup> nor the 2<sup>nd</sup> Respondent are liable because they were not personally served with the said order falls flat on its face given the cited cases herein above.
21. The 2<sup>nd</sup> Respondents did not file any Affidavit to contest the averments in the application. There is no Appeal against the Ruling delivered by this Court nor application for review meaning that the Respondents are aware of what is expected of them and have chosen to brazenly test whether the law truly has “teeth”.
22. In *Mahinderjit Singh Bitta v Union of India & Others* 1a No 100 Of 2010 the Supreme Court of India stated as follows: -
- “In exercise of its contempt jurisdiction the Courts are primarily concerned with enquiring whether the contemnor is guilty of intentional and willful violation of the order of the Court, even to constitute a civil contempt. Every party is before the Court and even otherwise, is expected to obey the orders of the Court in its spirit and substance. Every person is required to respect and obey the orders of the Court with due dignity for the institution.”

### **Is the Applicant entitled to the Orders Sought?**

23. The Applicant has a Ruling that has not been reviewed nor appealed against requiring the Respondents to halt the construction and to allow the Petition to conclude first. So, since there is no Appeal against the order issued, the Ruling is valid. The Respondents are aware of the said Ruling.
24. Given the foregoing, this Court makes the following orders:
- i. The Principal Secretary (PS) in the Ministry of Lands, Housing and Urban Development as well as the County Executive Committee Member (CECM) Land, Housing, Physical Planning & Urban Development in Kiambu County are hereby summoned to personally appear before this Court to show cause why they should not be cited and found guilty of Contempt of



Court for disobeying and defying the Order issued by this Honourable Court on 20/05/2025 through Microsoft Teams Virtual Court.

ii. Costs are awarded to the Applicant.

Orders Accordingly.

**DATED, SIGNED AND DELIVERED AT THIKA THROUGH MICROSOFT TEAMS ON THIS 4<sup>TH</sup> DAY OF NOVEMBER, 2025.**

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**MOGENI J**

**JUDGE**

In the presence of:-

1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Petitioners – Absent

1<sup>st</sup> Respondent – Absent

Ms. Noor for the 2<sup>nd</sup> Respondent

1<sup>st</sup> Interested Party – Absent

Mr. Macharia holding brief for Mr. Kariuki for the 2<sup>nd</sup> Interested Party

Mr. Melita – Court Assistant

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**MOGENI J**

**JUDGE**

