

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT KITALE**  
**ELC CASE NO. E004 OF 2023**

**JOSEPH KAMAU KAHUNGU-----**  
**PLAINTIFF/APPLICANT**

**VERSUS**

**ISAIAH WANYONYI-----1<sup>ST</sup>**  
**DEFENDANT/RESPONDENT**

**LAND REGISTRAR,**  
**TRANS NZOIA-----2<sup>ND</sup>**  
**DEFENDANT/RESPONDENT**

**LAND ADJUDICATION OFFICER,**  
**TRANS NZOIA COUNTY-----3<sup>RD</sup>**  
**DEFENDANT/RESPONDENT**

**RULING**

1. On **13/10/2025**, this court dismissed an application for stay of execution dated **17/6/2025**, brought under **Order 42 Rule 6** of the Civil Procedure Rules.
2. By an application dated **12/9/2025**, the court is asked to grant the following orders:-
  - i. ...spent.*
  - ii. A temporary order of injunction restraining the 1<sup>st</sup> defendant/respondent, his agents, servants employees, and/or any person acting under his authority from further trespassing onto, constructing on, cultivating, cutting down crops,*

wasting, damaging, alienating, or in any other manner whatsoever interfering with the plaintiff/applicant's maize plantation on the suit property known as Zea Settlement Scheme Plot No. 343 (also known as Trans-Nzoia/Zea/343 measuring approximately 5 acres), pending the application.

- iii. **Summons to the 1<sup>st</sup> respondent to appear before this court to show cause why he should not be cited and punished for contempt of court for the blatant violation and disregard of the interim orders of this court issued on 18/06/2025 and extended on 24/07/2025.**
- iv. **The court to find the 1<sup>st</sup> respondent guilty of contempt of court and commit him to civil jail or impose such other punitive sanctions.**
- v. **The 1<sup>st</sup> respondent be ordered and compelled to personally and at his own cost, restore the suit land to its condition before his unlawful acts of contempt, specifically by compensating the applicant for the destroyed one (1) acre of maize crop at its full mature value.**
- vi. **Officer Commanding Station of the nearest Police Station, do ensure compliance with the court orders.**
- vii. **The Deputy Registrar of this court and the Senior Court Administrator to expedite the typing and certification of the typed proceedings, including the decree, in ELC No.004 of 2023, to**

***enable the applicant to prepare a record of appeal, lodge and timely appeal to the Court of Appeal against this court's decision.***

- 3.** The grounds in support of the application appear on the face of the application and in the affidavit sworn by the applicant on even date. The applicant avers that interim orders were issued on **18/06/2025**, staying execution of the judgment delivered on **16/06/2025** and or restraining any interference with the plaintiff's maize crop, which order was extended on **24/07/2025**, pending the hearing of the application for stay of execution.
- 4.** The applicant also avers that, against the said orders, the 1<sup>st</sup> respondent has unlawfully and forcibly entered the suit land, destroyed the maize plantation on about **1** acre. The 1<sup>st</sup> respondent, in an effort to assert control of the suit land, has begun construction of a perimeter wall.
- 5.** The applicant avers that he stands to suffer substantial and irreparable financial loss from the destruction of the maize that was drying up, having invested heavily in seeds, fertilizer, and labour, that cannot be adequately compensated by damages if the 1<sup>st</sup> respondent is not restrained.

6. According to the applicant, the overriding interest of justice is that the sanctity of court orders should be upheld and that a party is not allowed to benefit from his own unlawful and contemptuous acts, since orders are neither issued in vain nor are they issued to be negotiated. Therefore, the 1<sup>st</sup> respondent should be found in contempt of the orders.
7. The applicant avers that he filed a notice of appeal, requested typed proceedings, and the judgment, which were yet to be availed and would prejudice his right of appeal. The documents are annexed as **JKK**.
8. On **9/10/2025**, the respondents were granted leave to file and serve their responses, and all parties were to file written submissions; they have yet to comply.
9. The court record shows that, following the judgment of this court delivered on **16/6/2025**, which dismissed the plaintiff's suit and allowed the 1<sup>st</sup> defendant's counterclaim, the applicant filed an application dated **17/6/2025**, seeking a stay of the judgment. The court on **18/6/2025** certified the application urgent and ordered the status quo to be maintained, in terms of the maize that was growing on the suit land, until the interpartes hearing on **24/7/2025**.

- 10.** On **24/7/2025**, the record shows that no interim orders were granted. Pending the ruling, the applicant filed an application dated **12/9/2025**, the subject of this ruling. Come **13/10/2025**, the court dismissed the application dated **17/6/2025**.
- 11.** In this application, the applicant is seeking orders for the respondent to show cause why he should not be cited for contempt of the orders issued on **18/6/2025** and extended on **24/7/2025**. As clearly stated above, the orders of status quo issued on **18/6/2025** were to last until the application was heard interpartes. During the interpartes hearing, no orders were granted or extended. Therefore, it appears that the applicant is out to mislead the court to cite the respondent for contempt of court on non-existent orders.
- 12.** In **Samuel M. N. Mweru & Others -vs- National Land Commission & 2 others [2020] eKLR**, the court held that contempt of court is not merely a mechanism for the enforcement of court orders, but also that the court acts as a guardian of the public interest.
- 13.** Further, the court held that as an established principle of law, 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.*

- 14.** Contempt of court proceedings are quasi-criminal in nature; therefore, they require a high degree of proof. In **Justus Kariuki Mate & Another -vs- Martin Nyaga Wambora & another C.A No. 24 of 2014**, the court held that a court must satisfy itself beyond any shadow of a doubt that the person alleged to be in contempt committed the acts complained of with full knowledge or notice of the existence of the order of the court, forbidding it since the threshold involves possible deprivation of a person's liberty.
- 15.** From the court record, at no point did this court issue orders to stay the execution of the judgment. Orders to maintain the *status quo* subsisting for a certain period of time did not amount to a stay of judgment. After the application for stay was dismissed, the applicant is now trying a second bite of the cherry in the instant application by seeking a temporary injunction pending appeal.
- 16.** The provisions of **Order 42 Rule 6** of the Civil Procedure Rules provide for the conditions under

which orders of temporary injunction can be granted by the court.

**17.** An injunction pending appeal is aimed at preserving the *status quo* pending appeal. Although the jurisdiction of the court is discretionary, it would, however, be wrong to grant an injunction pending appeal where the intended appeal is frivolous or where the refusal of an order of injunction would not render the intended appeal nugatory or where the order of injunction could inflict greater hardship than it would avoid. See **Madhupaper International Limited -vs- Kerr [1985] KLR 840** and **J.K Industries -vs- Kenya Commercial Bank & Another [1987] KLR 506.**

**18.** In **Patricia Njeri & others -vs- National Museum of Kenya (2004) eKLR**, the court held that an order of injunction pending appeal is discretionary and is exercised against an applicant whose appeal is frivolous, and if it would inflict more hardship than it would avoid. Stay of execution pending appeal is a discretionary power as held in **Butt -vs- Rent Restriction Tribunal (1982) KLR 417.**

**19.** The applicant should satisfy the following conditions to the court to justify the grant of an order

for stay of execution pending appeal that is establish sufficient cause; demonstrate that he will suffer substantial loss unless a stay is granted; offer security and apply for the stay order without unreasonable delay.

- 20.** In this case, the applicant had previously sought for stay of execution, which this court denied. In the instant application, the applicant has alleged destruction of his crop and construction of a perimeter wall. He also seeks compensation for the loss. Blanket allegations do not suffice as a substantial loss. There is no valuation report to warrant compensation. In sum, the applicant has not met the threshold set in the case law cited above to warrant the grant of the orders sought.
- 21.** The court, however, ordered proceedings to be typed on **13/10/2025**.
- 22.** The upshot is, this court finds no merit in the application dated **12/9/2025**, and it is therefore dismissed with costs.
- 23.** Orders accordingly.

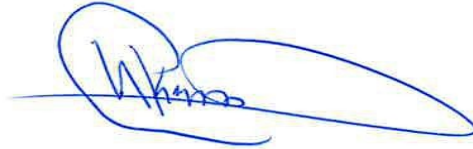
**Ruling dated, signed, and delivered** via **Microsoft Teams/Open Court** at **Kitale** on this **19<sup>th</sup>** day of **November 2025**.

**In the presence of:**

Court Assistant - Dennis

Teti for defendant/respondent

Mr. Mugo for the plaintiff/applicant absent



**HON. C.K. NZILI  
JUDGE, ELC KITALE.**

ORIGINAL