



**Muthaiga Heights Management PLC v View Point Homes Limited & 2 others;  
Kenya Urban Roads Authority (Interested Party) (Environment and Land  
Petition E029 of 2024) [2025] KEELC 7891 (KLR) (6 November 2025) (Ruling)**

Neutral citation: [2025] KEELC 7891 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT AND LAND PETITION E029 OF 2024  
AA OMOLLO, J  
NOVEMBER 6, 2025**

**BETWEEN**

**MUTHAIGA HEIGHTS MANAGEMENT PLC ..... PETITIONER**

**AND**

**VIEW POINT HOMES LIMITED ..... 1<sup>ST</sup> RESPONDENT**

**COUNTY GOVERNMENT OF NAIROBI ..... 2<sup>ND</sup> RESPONDENT**

**NEMA ..... 3<sup>RD</sup> RESPONDENT**

**AND**

**KENYA URBAN ROADS AUTHORITY ..... INTERESTED PARTY**

**RULING**

1. The Petitioner filed a notice of motion dated 11<sup>th</sup> April 2025, supported by an affidavit sworn on the same date by Fredrick Ballah, seeking the following orders;
  1. Spent
  2. Spent
  3. That this Honourable Court be pleased to find View Point Homes Limited and its officer Zamzam Hussein in contempt of court for willfully disobeying the Ruling issued on 7<sup>th</sup> October 2024.
  4. That this Honourable Court be pleased to purge the contempt by ordering the immediate halt to construction activities on the property known as L.R. No.209/9943.



5. That this Honourable Court be pleased to further purge the contempt by ordering the 1<sup>st</sup> Respondent to pay the Petitioner compensation for lost rental income to the tune of KES. 675,000/=.
  6. That this Honourable Court be pleased to commit Zamzam Hussein to civil jail for such period as this court shall deem necessary for being in disobedience of the orders of this Honourable Court.
  7. That this Honourable Court be pleased to issue any further or other orders in the interest of justice.
  8. That the costs of this application be provided for.
2. The motion is based on, among other grounds, the fact that on 7th October 2024, this Court issued an order directing the 1st Respondent to comply with the terms of its development licence, including implementing measures to reduce dust pollution and limiting construction activities to hours suitable for a residential area. Despite this clear directive, the 1<sup>st</sup> Respondent has failed to comply with the court's order, with Nairobi City County officials marking its boundary wall as non-compliant with construction laws and regulations.
  3. They state that the 1<sup>st</sup> Respondent has continued construction outside the permitted working hours and failing to control dust emissions, resulting in significant dust accumulation on the balconies of the Petitioner's property. The Petitioner stated that these breaches have caused them ongoing loss and damage, which has been documented. They annexed the photographs, showing evidence of dust accumulation, and proof of the financial and or material impact suffered.
  4. The Petitioner contends that the 1<sup>st</sup> Respondent's conduct amounts to deliberate and willful disobedience of the orders, thereby undermining the authority and dignity of the court. That despite several written attempts by the Petitioner to resolve the matter amicably, the 1<sup>st</sup> Respondent has remained defiant.
  5. The 1<sup>st</sup> Respondent opposed the motion vide replying affidavit sworn on 10<sup>th</sup> June 2025 by Zamzam Hussein, denying all allegations of contempt, asserting that the claims made by the Petitioner are false, misleading, and made in bad faith. He stated that following the Ruling delivered on 7<sup>th</sup> October 2024, all construction activities have been conducted lawfully, within permitted working hours, and in compliance with the development license and approvals issued by Nairobi City County.
  6. Further, measures such as the installation of scaffolding nets have been implemented to minimise dust and debris. The 1<sup>st</sup> Respondent asserts that any dust observed on the Petitioner's balconies results from the Petitioner's own failure to comply with building code setbacks, leaving only minimal space between the two properties.
  7. The 1<sup>st</sup> Respondent further argues that the photographs submitted by the Petitioner are unreliable, lack timestamps, clarity and verifiable location data. That the alleged "non-compliance" markings by Nairobi City County were made in error during an unrelated inspection involving another construction site, and the County later confirmed through a site report that the Respondent's development was compliant and authorised to proceed.
  8. The 1<sup>st</sup> Respondent emphasises that it has fully adhered to all aspects of the court's ruling, including the limit on construction floors, and has not engaged in any conduct amounting to contempt or disobedience of court orders. The 1<sup>st</sup> Respondent contends that the application is frivolous, an attempt to frustrate their development and delay the substantive hearing of the petition. They argue that the



Petitioner has not identified any specific breach of order nor proven any deliberate non-compliance, and should therefore be dismissed with costs.

**Submissions:**

9. The Applicant filed submissions dated 10<sup>th</sup> June 2025 in support of their application, while the 1<sup>st</sup> Respondent filed submissions dated 25<sup>th</sup> July 2025 in opposition thereof.
10. The Petitioner/Applicant submits that the applicable test for contempt restated in *Samuel M. N. Mweru & Others v National Land Commission & 2 Others* [2020] eKLR requires proof of three elements: the existence of clear court orders, the Respondent's knowledge of those orders, and deliberate non-compliance.
11. That the order in question, issued vide the Ruling of 7<sup>th</sup> October 2024, directed the 1<sup>st</sup> Respondent to adhere strictly to the conditions of its development license, specifically, to minimise dust pollution and restrict construction to hours that are conducive to the neighbourhood, given that the Petitioner's property is already occupied. The 1<sup>st</sup> Respondent was fully aware of this order, as its advocate was present in court when the ruling was delivered.
12. The Petitioner contends that despite this, the 1<sup>st</sup> Respondent has breached the order by allowing dust from its construction site to accumulate on the Petitioner's balconies, they engage in construction activities outside the permitted working hours including as early as 5:41 a.m.
13. The Applicant avers that the Nairobi City County officials also marked the impugned building as non-compliant with relevant building regulations. For non-compliance of the order by the 1<sup>st</sup> Respondent, the Petitioner claims to have suffered loss and damage, including tenancy terminations and related costs, and asserts that efforts to resolve the matter amicably through correspondence were ignored.
14. The 1<sup>st</sup> Respondent submits that the contempt application lacks any legal or factual basis and is intended to frustrate lawful construction activities that have already been sanctioned by the Court. They submit that they have fully complied with the Ruling of 7<sup>th</sup> October 2024 by adhering to its development license, observing lawful working hours, and taking environmental control measures such as installing scaffolding nets to minimize dust.
15. Also relying on the case of *Samuel Mweru & Others* (supra) and *Mutitika v Baharini Farm Ltd* [1985] KLR 229, the 1<sup>st</sup> Respondent stresses that contempt is quasi-criminal in nature and must be proved beyond reasonable doubt, the order must be clear, unambiguous, knowledge of that order, and deliberate non-compliance, none of which the Petitioner has demonstrated.
16. The Respondent further argues that there is no valid or enforceable order capable of being breached, since the Court's Ruling of 7<sup>th</sup> October 2024 did not issue any injunction or cessation directive but merely urged compliance with existing regulatory and environmental frameworks.
17. That the allegations of non-compliance including claims of construction beyond the permitted floors and violations of working hours are unsubstantiated. They added that the Nairobi City County has confirmed through an inspection report annexed as ZH-1 that the development complies with all the statutory requirements.
18. The 1<sup>st</sup> Respondent also contends that the Petitioner's reliance on unauthenticated, blurry photographs lacking timestamps renders their evidence inadmissible. Citing the case of *Oilfield Movers Ltd v Zahara Oil & Gas Ltd* [2020] eKLR and *Gatharia K. Mutikika v Baharini Farm Ltd* [1985] KLR 227, the 1<sup>st</sup> Respondent contended that the high threshold for proof in contempt cases has not been met.



19. The Respondent maintains that the contempt proceedings constitute an abuse of the court process, amounting to a disguised attempt to re-litigate issues already settled in the earlier injunction application, contrary to the doctrines of res judicata and finality of litigation as underscored in *M/S Portreitz Maternity v James Karanga Kabia*, Civil Appeal No. 63 of 1997. The Respondent invokes its Constitutional right to property under Article 40 and its corresponding obligations under Articles 42 and 70 of *the Constitution* of Kenya to develop land responsibly and lawfully.

**Analysis and Determination:**

20. I have read the Applicant's application together with the supporting affidavit, the 1<sup>st</sup> Respondent's replying affidavit, and considered the annexures attached thereto as well as the respective submissions filed. The issue for determination before this court is whether the Applicant has proved the allegations of contempt pleaded.

21. In the case of *Econet Wireless Kenya Ltd vs Minister for Information & Communication of Kenya & Another* {2005} 1KLR 828 Ibrahim J (as he then was) on the importance of obeying court orders 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 or in respect of whom, an order is made by 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 void."

22. Contempt proceedings are quasi-criminal in nature and since the liberty of a person is at stake, the standard of proof required is higher than in civil cases. This principle was reiterated in the case of *Gatharia K. Mutikika vs Baharini Farm Ltd* {1985} KLR 227 where it was held as follows:-

"The Courts take the view that where the liberty of the subject is, or might be involved, the breach for which the alleged contemnor is cited must be precisely defined. A contempt of court is an offence of a criminal character. A man may be sent to prison. It must be satisfactorily proved... It must be higher than proof on a 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 offence, which can be said to be quasi-criminal in nature. However, the guilt has to be proved with such strictness of proof as is consistent with the gravity of the charge... Recourse ought not be had to process of contempt of court in aid of a civil remedy where there is any other method of doing justice. 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 judges 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."

23. In this case, the Applicant stated that in the ruling of 7<sup>th</sup> October 2024, this court issued orders which they allege the 1<sup>st</sup> Respondent has disobeyed. The final orders made in the ruling rendered on 7<sup>th</sup> October, 2024 read as follows:



- a. ....
  - b. The construction will go on but up to the 13-level floors not disputed pending determination of the Petition.
  - c. The application by the 1<sup>st</sup> Respondent is also allowed on terms that the orders are varied for construction to go on but subject to the limitation imposed on the 13-levels.
24. Before making the final orders, this court while considering the then application under the heading of balance of convenience in paragraph 28 of the ruling I stated “that the 1<sup>st</sup> Respondent was allowed to continue with construction while adhering to the conditions set out in the development licenses including taking steps to minimize the dust pollution and the working hours be conducive to the neighbours.”
  25. It is this order directing the 1<sup>st</sup> Respondent to comply with the conditions contained in the development licenses, which the Applicant avers has been disobeyed. To prove the 1<sup>st</sup> Respondent’s disobedience, the Applicant presented several photographs to this Court. The first set of photos (pages 31-32) has writing that “the construction site is marked as closed.” The 1<sup>st</sup> Respondent responded to the writings of the 2<sup>nd</sup> Respondent, explaining that they were made in error, and annexed a report pursuant to a site visit done on the 7<sup>th</sup> April 2025 by the 2<sup>nd</sup> Respondent, allowing the construction to proceed.
  26. The second set of photographs on pages 33-35 of the application appears to depict activities at night and is probably intended to show ongoing construction works. The 1<sup>st</sup> Respondent averred that they do not bear any time stamp or nature of the activities alleged to be undertaken.
  27. However, the images depicted on pages 33-35 are very dark, and it is not possible to see any activity going on in the impugned premises. The Applicant deposed that the photos were taken showing on going works at 5.41am on 21<sup>st</sup> February, 2025. As stated by the 1<sup>st</sup> Respondent, they do not bear a time stamp. Due to the photos not being clear and lacking a timestamp, on the face of it, this court cannot determine with certainty that there were ongoing works outside the time stated in the development licenses.
  28. The third set of photographs are found on pages 36-40 of the application which photographs also donot bear any date or time stamp. The Applicant deposes that dust residues continues to accumulate on the balconies of the Petitioner’s building, and their efforts to amicable resolve the issue has bore nil fruits.
  29. There are visible particles of dust/debris (evident in the pictures produced on pages 36 and 38) of the balcony or veranda of the Petitioner’s building. In a rejoinder, the 1<sup>st</sup> Respondent states that it has installed scaffolding nets to contain dust and debris from its site and to protect neighbouring premises, including the Applicant’s property, to the best of its ability and in accordance with construction safety guidelines.
  30. As held in the case of *Gatharia K. Mutikika v Baharini Farm Ltd supra*, an applicant must prove that the act of alleged disobedience was deliberate. In the photographs relied upon by the applicant, there is evidence of scaffolding nets installed at the construction site. The applicant, in the email dated 8th April 2025, stated that the scaffolding nets were poorly installed based on the images shared. This statement needed to be supported by references to the conditions and or regulations if any that set the standards for the scaffold, not just pictures or photographs.



31. Although the 1<sup>st</sup> Respondent denies any attempt at amicable resolution, there is evidence by the email to them dated 28th February, 2025. In the email, the Applicant proposed installing iron sheets as required to prevent the debris from falling on their property. The Applicant's suggestion that the 1<sup>st</sup> Respondent ought to have installed iron sheets was well-founded, as an addition to the scaffolding nets to prevent debris from falling onto the balcony.
32. The conditions in the development permissions annexed did not speak on the model of scaffolding. The closest regulation I found in the pleadings before the court speaking to scaffolding is an excerpt of by-law number 238 (3)(c) annexed by the 1<sup>st</sup> Respondent in the affidavit sworn on 15<sup>th</sup> August 2024 in support of their application of even date that spoke to this issue. Paragraph (c) states thus, "contain all materials, debris and building plant inside the hoarding."
33. Therefore, the failure by the 1<sup>st</sup> Respondent to act on this proposal does not constitute deliberate disobedience as it is not one of the conditions in the approvals granted. At least the Applicant did not point the court to any. Also, the assertion that the scaffolds were poorly installed without supporting evidence of the expected standard falls below the threshold of proof on a standard beyond the balance of probabilities. Allegations of deliberate disobedience of a court order cannot be inferred from the pictures in the circumstances of this application.
34. Consequently, I find that the alleged contempt has not been proven to the required standard, and therefore I decline to hold the 1<sup>st</sup> Respondent guilty of contempt. Regarding the loss of rental income, the Petitioner is free to pursue the claim in the main petition.
35. Despite this finding of no guilt, the court, under prayer 7 of the motion, makes an order that the 1<sup>st</sup> Respondent install an additional canopy (whether iron sheets or any material) to prevent any falling debris onto the Applicant's premises forthwith. The Applicant is to grant access, if necessary, to facilitate the installation of such canopies. In the event the 1<sup>st</sup> Respondent does not comply, the Applicant is at liberty to apply.
36. In conclusion, I find that the prayers 3, 4 and 6 of the application are devoid of merit and are hereby dismissed. Prayer number 5 is struck out with leave to the Applicant to pursue in the main suit. Prayer no 7 is allowed as directed in para 35 above. Each party to meet their costs of the application.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 6<sup>TH</sup> DAY OF NOVEMBER, 2025**

**A. OMOLLO**

**JUDGE**

