



REPUBLIC OF KENYA



KENYA LAW
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**Ogeto v Morumbwa & 2 others (Environment and Land Appeal
E025 of 2025) [2025] KEELC 7621 (KLR) (4 November 2025) (Ruling)**

Neutral citation: [2025] KEELC 7621 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT AND LAND APPEAL E025 OF 2025
MAO ODENY, J
NOVEMBER 4, 2025**

BETWEEN

PETER ONSONGO OGETO APPELLANT

AND

SHEM OSIAGO MORUMBWA 1ST RESPONDENT

SOSTENAH NYASENDE NYANUMBA 2ND RESPONDENT

EUNICE CHERIA OTUKE 3RD RESPONDENT

RULING

1. This ruling is in respect of two applications filed by the Appellant/Applicant. The first is a Notice of Motion application dated 7th May 2025, which seeks the following orders:
 - a. Spent
 - b. Spent
 - c. That pending the hearing and determination of this appeal this Honourable Court be pleased to issue an order of injunction restraining the respondents either acting by themselves and/or agents from entering, remaining on evicting or interfering with the Applicant's possession of the parcel of land Njoro/ngata Block 2/4636 (kirobon).
 - d. That this Honourable to issue any orders as it may deem just, appropriate and expedient in the interest of justice. (sic)
 - e. That the costs of this application abide by the appeal.
2. The application is supported by the annexed affidavit of Peter Onsongo Ogeto sworn on 7th May, 2025, where he deponed that his case in Nakuru CM ELC E48 of 2019 filed against the Respondents was dismissed on 7th May, 2025, by the lower court. He further deponed that he has been in possession and



- occupation of the suit property, and having improved it since 31st December, 2014, he stands the risk of being evicted pending determination of this appeal which will occasion him irreparable loss, harm and damage that cannot be compensated by damages.
3. It was the Appellant/Applicant's deposition that there has been no inordinate delay in bringing the application and the inconvenience he stands to suffer is greater compared to that of the Respondents.
 4. Eunice Otuke, the 3rd Respondent filed a Replying Affidavit sworn on 24th June, 2025, and deponed that she has been in actual occupation of the disputed parcel of land after purchasing it from Co-operative Bank where she paid Ksh 3,000,000/=. It was her evidence that all agreements the Appellant has been relying upon have been found unlawful and a money decree cannot be rendered nugatory. She further deponed that there is nothing to be stayed and the applicant has not offered any security of costs and urged the court to dismiss the application with costs.
 5. The second application is the Appellant/Applicant's Notice of Motion application dated 23rd May, 2025, which seeks the following orders:
 - a. Spent
 - b. That this Honourable Court be pleased to find that Shem Osiago Morumbwa, Sostenah Nyasende Nyanumba & Eunice Cheria Otuke the respondents herein have disobeyed order 3 of the orders issued on 7th May, 2025.
 - c. That upon grant of prayer b above, the Respondents be punished by this Honourable court by detaining them in prison or payment of a fine in any manner as the court may deem fit.
 - d. That the Respondents be ordered to reinstate the status quo ante issuance and service of the orders.
 - e. That this Honourable Court be pleased to make such further orders as is just in the circumstances.
 - f. That cost of this application be borne by the Respondents herein.
 6. The application is supported by the annexed affidavit of Peter Onsongo Ogeto sworn on 23rd May, 2025, where he deponed that on 7th May, 2024, this court issued orders of status quo on the suit land pending the hearing and determination of his application for an injunction pending appeal.
 7. The Applicant further stated that the said orders were served upon the Respondent's advocates electronically on 8th May, 2025, at 1:30 pm, but on 9th May, 2025, he was informed by his neighbor that some people had invaded the suit land and were uprooting his fence. It was his deposition that a new fence was erected on the land and he collected the uprooted fence and iron sheets and ferried them away.
 8. The Appellant/Applicant deponed that on 20th May, 2025, he visited the suit land and found that the Respondents had cultivated it and planted maize. He further stated that the Respondents are in contempt of the orders issued on 7th May, 2025, and should be punished.
 9. Eunice Otuke, the 3rd Respondent filed a Replying Affidavit sworn on 24th June, 2025, and deponed that immediately the Judgment was read in their favour, they proceeded to plough their land, fenced it and planted maize and beans to sustain their livelihood. It was her deposition that by 8th May, 2025, they were not aware of the orders issued on 7th May, 2025.
 10. It was her deposition that based on the Affidavit of service by Ochiel Fredrick Awich, commissioned on 9th May, 2025, the person referred to as the 2nd Defendant in the annexed photograph is not known



to them and the photographs attached are not clear and it is not known when they were taken. She deponed that there were no structures in the disputed parcel of land as alleged and urged the court to dismiss the application with costs.

Appellant/applicant's Submissions

11. Mr. Mwangi, counsel for the Appellant/Applicant filed submissions dated 4th July, 2025, and identified the following issues for determination:
 - a. Whether there exists a clear and unambiguous court order?
 - b. Whether the Respondents have knowledge of the court order?
 - c. Whether the Respondents have acted in breach of the terms of the order?
 - d. Whether the Respondent's conduct was deliberate?
12. On the first issue, counsel submitted that there exists a clear and unambiguous order and that contempt of court is quasi criminal in nature whereby the standard of proof required is slightly higher than in civil cases but lower than in criminal cases. Counsel relied on the cases of Mutitika vs Baharini Farm Ltd (1985) KLR 229, Katsuri Limited vs Kapurch and Depar Shar (2016) eKLR and Kenya Airline Pilots Association (KALPA) vs Co-operative Bank of Kenya Limited & another [2020] eKLR.
13. On the second issue, counsel submitted that the application and orders were served upon the Respondent's advocates on 8th May, 2025, at 1:30pm vide their email addresses and an affidavit of service dated 8th May, 2025, by Elvis Oure was filed.
14. Mr. Mwangi, further submitted that Ochiel Fredrick Awich, filed another affidavit of service dated 9th May, 2025 indicating a second service done physically on 9th May, 2025, at 11: 27 am upon the Respondents. Counsel relied on the case of Shimmers Plaza Limited vs National Bank of Kenya Limited [2015] eKLR.
15. On the third issue, counsel submitted that the actions of the Respondents disturbed the status quo and thus there was blatant disobedience of the orders of this court and relied on the case of Republic vs National Environment Tribunal, Ex-parte Palm Homes Limited & Another [2013] eKLR.
16. On the fourth issue, counsel relied on Section 152B & E of the Land Act, Articles 10 and 159 (1) of the Constitution of Kenya and the cases of Sospeter Kithumbi Murangiri (Suing on his own behalf and on behalf of Ikandu clan) vs Albert Njeru & 8 others [2019] eKLR and Miguna Miguna vs Fred Matiang'I C.S Ministry of Interior and Coordination of National Government and 8 others [2018] eKLR, and submitted that the Respondents' conduct was deliberate, hence they should be punished.

Analysis And Determination

17. The issues for determination are whether the Applicant is entitled to the injunctive orders sought and whether the respondents disobeyed the orders of this court. This court has discretionary power under Order 42 Rule 6(6) to grant orders of temporary injunction pending hearing and determination of an appeal on such terms as it deems fit as long as the procedure for filing an appeal from subordinate court has been complied with.
18. Order 42 Rule 6(6) provides as follows:

“Notwithstanding anything contained in sub rule (1) of this rule the High Court shall have power in the exercise of its appellate jurisdiction to grant a temporary injunction on such



terms as it thinks just provided the procedure for instituting an appeal from a subordinate court or tribunal has been complied with”

19. The principles for the grant of a temporary injunction pending appeal are well settled. In the case of *Patricia Njeri & 3 Others vs. National Museum of Kenya* [2004] eKLR, the Learned Judge held that the principles applicable in considering an application for grant of orders of temporary injunction pending appeal are as follows:
 - a. “An order of injunction pending Appeal is a discretionary which will be exercised against an Applicant whose Appeal is frivolous.
 - b. The discretion should be refused where it would inflict great hardship than it would avoid.
 - c. The Applicant must show that to refuse the injunction would render the appeal nugatory.
 - d. The court should also be guided by the principles in *Giella Vs. Cassman Brown* [1973] EA 358.”
20. The Applicant has told the court that on 9th May, 2025, he was informed by his neighbor that some people had invaded the suit land, uprooted his fence, erected a new fence and on 20th May, 2025, he visited that land and found that the Respondents had cultivated and planted maize.
21. The 3rd Respondent on the other hand informed the court that immediately the Judgment was read in their favour, they proceeded to plough their land, fenced it and planted maize and beans to sustain their livelihood. She stated that by 8th May, 2025, they were not aware of the orders issued on 7th May, 2025.
22. This is a case where the Applicant and the Respondents claim to be in possession of the suit land. The Applicant informed the court that after the judgment the Respondents went to the suit land and uprooted his fence and planted maize. The Respondents admitted that they did so for their livelihoods but denied being served with an order of maintenance of the status quo pending the hearing of this application inter partes.
23. In the case of *Madhupaper International Ltd vs Kerr* (1985) eKLR the Court of Appeal held that where a Judge dismisses an application for interlocutory injunction, he has jurisdiction to grant an applicant an injunction pending appeal to prevent the appeal being rendered nugatory in the event the appeal is successful.
24. The Applicant has not demonstrated that he has a prima facie case with a probability of success and that the Appeal will be rendered nugatory if the order of injunction is not granted. The Applicant has also not demonstrated that the injury he is likely to suffer is irreparable and cannot be compensated by way of damages. The lower court dismissed the Appellant’s case and ordered the 1st Respondent to compensate the Applicant. The application for injunction is therefore dismissed with the costs to abide by the outcome of the Appeal.
25. On the 2nd Application for contempt of court, the Respondents swore a replying affidavit and explained that after the pronouncement of the Judgment they went ahead and ploughed the suit land and planted crops for their livelihood. They stated that they were not aware of the order issued by the court for the maintenance of status quo. They did not deny that they planted the crops as they claimed that they are in possession of the suit parcel of land.



26. Section 29 of the Environment and Land Court further provides 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.”

27. In the Court of Appeal case of Micheal Sistu Mwaura Kamau v Director of Public Prosecutions & 4 others [2018] eKLR the court held as follows:

“It is trite that to commit a person for contempt of court, the court must be satisfied that he has wilfully and deliberately disobeyed a court order that he was aware of...secondly, as this Court emphasized in Jihan Freighters Ltd v Hardware & General Stores Ltd and in AB & another v R B [2016] eKLR, to sustain committal for contempt of court, the order of the court that is alleged to have been deliberately disobeyed must be clear and precise so as to leave no doubt as to what a party was supposed to do or to refrain from doing. Lastly, the standard of proof in committal proceedings is higher than proof on a balance of probabilities, though not as high as proof beyond reasonable doubt.”

28. The court finds the Respondents' explanation plausible, hence cannot be held in contempt of the court order. If the Respondents took action immediately after the pronouncement of the judgment, then the order must have been served after the fact.

29. The solution to the issue is to fast track the hearing of the Appeal and the status quo obtaining at the time of the delivery of this ruling be maintained.

DATED, SIGNED AND DELIVERED AT NAKURU THIS 4TH DAY OF NOVEMBER 2025.

M. A. ODENY

JUDGE

