



Khayundi & 2 others v Asembo & 6 others; Khayundi (Interested Party) (Environment and Land Case E010 of 2024) [2025] KEELC 8643 (KLR) (11 December 2025) (Ruling)

Neutral citation: [2025] KEELC 8643 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT VIHIGA
ENVIRONMENT AND LAND CASE E010 OF 2024**

E ASATI, J

DECEMBER 11, 2025

BETWEEN

**LUKE AMBOYE KHAYUNDI 1ST PLAINTIFF
NABOTH ONIANG'O 2ND PLAINTIFF
WILLIAM PLEMBO KHAYUNDI (ESTATE OF DANIEL OLEMBO
KHAYUNDI) 3RD PLAINTIFF**

AND

**JOEL ASEMBO 1ST DEFENDANT
TITO ALI 2ND DEFENDANT
WASHINGTON ANJICHI OKANGA 3RD DEFENDANT
TOKAA NAMAN CLIFTON 4TH DEFENDANT
EBWIRANYI STAGE PIKIPIKI SELF HELP GROUP 5TH DEFENDANT
THE LAND REGISTRAR, VIHIGA 6TH DEFENDANT
THE HONOURABLE ATTORNEY GENERAL 7TH DEFENDANT**

AND

MARGARET AYIRO KHAYUNDI INTERESTED PARTY

RULING

1. This ruling is in respect of two applications namely; the Notice of Motion dated 7th July 2025 filed on behalf of the plaintiffs and the Notice of Motion dated 16th July 2025 filed on behalf of the defendants.



2. On 18th September 2025 directions were taken that the applications be heard together by way of written submissions.
3. The application dated 7th July 2025 expressed to be brought pursuant to the provisions of sections 1A,1B, 3 & 3A of the Civil Procedure Act and Order 8 of the Civil Procedure Act seeks for leave to amend the plaint and for an order that the draft amended plaint annexed to the application be deemed to be properly filed upon payment of the requisite court fees.
4. The grounds upon which the application was brought are that pleadings have since closed, that there is a mistake apparent on record, that it is necessary for determining the real question in controversy.
5. The application was supported by the contents of the Supporting Affidavit sworn by the 1st plaintiff on the 7th July 2025 and the annexures thereto. To the Supporting Affidavit was annexed a draft amended plaint showing the proposed amendments.
6. Although timelines were taken by consent for filing reply to the application, no reply was filed by the Respondents.
7. I have perused the application and the Supporting Affidavit and the draft amended plaint. The proposed amendment is the correction of the description of the suit land from W. Bunyore/Ebwiranyi to West Bunyore/Ebutanyi. I have seen a copy of the title deed annexed to the Supporting Affidavit. It describes the suit land as W/Bunyore/Ebutanyi/577. It was submitted on behalf of the applicant that the amendment will assist the court to determine the real question in controversy.
8. I find that the application has merit.
9. The second application is the defendants' Notice of Motion dated 16th July 2025. It is expressed to be brought pursuant to the provisions of Orders 3, 6, and 28 of the Contempt of Court Act No. 46 of 2016. It seeks for orders that Luke Amboye Khayundi, Naboth Oniang'o and William Olemba Khayundi be found to be contemptuous of the process of the court and subsequently be ordered to pay ksh 200,000/= or be committed to Civil Jail for six months or both. It also seeks for an order that costs of the application be borne by the Respondents.
10. The application was supported by the averments in the Supporting Affidavit sworn by Tokaa Naman Clifton on 14th July 2025.
11. The application was opposed vide the Replying Affidavit of Naboth Oniang'o on 15th October 2025.
12. The grounds upon which the application was brought are that the honourable court granted orders that the status quo in respect of the suit land be maintained, that the plaintiffs were aware of the orders as their advocate together with themselves were present when the same were being pronounced, that the plaintiffs had gone against the orders of this honourable court, that the dignity, authority and repute of the court has been put to test, that court orders must be respected always as they are not issued in vain, that the respondents must be made to purge their contempt and that interest of justice dictates that the respondents be used as example to stamp court's authority.
13. The substantive relief sought is for punishment of the respondents for contempt of court. The grounds for citing or punishing a party for contempt of court are that firstly the applicant must prove the existence of a valid court order in clear and unambiguous terms which are binding upon the respondents.
14. In this case, the plaintiffs claim that the court had issued an order for maintaining of status quo. The date of the order of status quo was not stated.



15. I have however, seen the court ruling dated 15th May 2025 vide which the plaintiffs' application dated 13th January 2025 seeking to restrain the defendants from interfering with the suit land was dismissed. The court found that the circumstances of the case tilted in favour of maintaining the obtaining status quo. The status quo was not defined. Further, the ultimate decision or order in the ruling was the dismissal of the application.
16. The applicants' complaint in the present case is that the plaintiff had gone against the orders of the court and created some road on the land which is against the orders of the court.
17. There is no evidence that it is the plaintiffs who have created a road of access. There is no evidence that the photographs attached to the Supporting Affidavit are of the suit land and that the activities thereon are willful activities done by the plaintiff in breach of a court order.
18. The degree of proof in case of contempt of court is higher than proof on a balance of probabilities. While the court will act swiftly and sternly on parties who willfully breach court orders, the degree of proof must be met as the sanctions resultant from a finding that a party is in contempt include imprisonment.
19. Further the Contempt of Court Act upon which the application was brought was declared unconstitutional vide Kenya Human Rights Commission vs Attorney General & another [2018]eKLR
20. I find that the grounds for contempt of court have not been proved and that the application lacks merit.
21. In conclusion the court hereby finds that;
 1. The application dated 7th July 2025 which was unopposed has merit and is hereby allowed as follows:
 - i. Leave is granted to the plaintiffs to amend the plaint.
 - ii. Draft amended plaint annexed to the application be deemed as the amended plaint upon payment of the requisite court fees.
 - iii. The requisite court fees be paid and the amended plaint be served upon the Defendants within 15 days hereof failing which the leave granted hereby shall lapse.
 - iv. No order as to costs as the application was not opposed.
 2. The application dated 16th July 2025 lacks merit and is hereby dismissed. No order as to costs.Orders accordingly.

RULING DATED AND SIGNED AT VIHIGA AND DELIVERED VIRTUALLY THIS 11TH DAY OF DECEMBER 2025.

**E. ASATI,
JUDGE.**

In the Presence of;-

Patricia- Court Assistant.

Chitwah Advocate for the 1st, 2nd, and 3rd Defendants.

