



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ELCEPCC CASE NO. E004 OF 2025

**NJUNU FARMERS CO-OPERATIVE
SOCIETY.....PLAINTIFF/APPLICANT**

VERSUS

**CKK ESTATES (1973) LIMITED.....1ST
DEFENDANT/RESPONDENT**

**DAVID GICHIA KINYITTA.....2ND
DEFENDANT/RESPONDENT**

**KIFARU PROPERTIES LIMITED.....3RD
DEFENDANT/RESPONDENT DIRECTOR OF SURVEY
NAIROBI.....4TH DEFENDANT/RESPONDENT**

**CHIEF LAND REGISTRAR.....5TH
DEFENDANT/RESPONDENT**

RULING

- 1) This Ruling is in respect of Applicant's Notice of Motion dated 23/09/2025 The following orders are sought in the application:
 1. Spent.
 2. THAT the 2nd Defendant and the Directors of 3rd and 4th Defendants herein be cited for contempt of Court for breach and disobedience of the Court orders made and issued by this Honorable Court on 24th March 2025 and 27th April 2025 and 15th July 2025.

3. THAT upon being cited for such breach and disobedience the 2nd, 3rd and 4th Defendants/Respondents' properties be attached and sold by public auction and also they be detained in prison and/or committed to civil jail for a term not exceeding six (6) months pursuant to the provisions of Order 40 Rule 3 of the Civil Procedure Rules.
4. THAT the OCS Kiambu Police Station and the OCS Karuri Police Station and OCS Kanunga Police Station be summoned before this Court to explain why they have failed and or refused to oversee the implementation of the orders made and issued on 24th March 2025 and 27th April 2025 and 15th July respectively by this Honorable Court.
5. THAT order 4 issued by this Honorable Court on the 27th of April 2025 be amended to include that the 2nd and 3rd Respondent be restrained from encroaching, subdividing, cultivating and or trespassing on the suit land LR No. 134/8 and LR No. 245/4 until the hearing and determination of the main suit.
6. THAT the 2nd and 3rd Respondent be restrained from harassing and threatening and intimidating the Plaintiff/Applicant until the hearing & determination of this suit.
7. THAT the management of the suit land LR No. 134/8 and LR No. 245/4 be put under the management of Wazee wa Nyumba Kumi (Njunu) for security purposes until the hearing and determination of this suit.

8. THAT costs of this application be costs in the cause.
- 2)The application is supported by an Affidavit sworn by George Kimani Mwai the Applicant. He deposed that he is the Chairman, Shareholder and Member of the Plaintiff/Applicant's Company. That the Company owns LR 134/8 and LR No. 245/4 the suit properties.
 - 3)That the Court issued orders on 24/03/2025 and 7/03/2025 respectively stopping any dealings of any nature on or with the suit land. However, despite having served the 2nd and 3rd Defendant's Directors agents of 2nd and 3rd Defendant/Respondent have in breach and disobedience trespassed and/or encroached. That they also felled and destroyed coffee trees.
 - 4)That the Respondents brought surveyors and are now carrying out process of subdivision with aim of selling to unscrupulous customers as evidence via annexure '**GMK-2**'.
 - 5)That the OCS of Kiambu, Kanunga and Karuri Police Station be summoned to explain why they did not oversee implementation of the two orders. That in the interest of justice the management of the suit property be put under strict management of Wazee wa Nyumba Kumi.
 - 6) In response, the 3rd Respondent filed a Replying Affidavit and Grounds of Opposition. The Replying Affidavit was sworn by Antony Wachira Njoroge, a Director of the Respondent Company.
 - 7)According to the 3rd Respondent, the import of the order by Justice Mogeni dated 24/03/2025 which is alleged to have been

violated by the 3rd Defendant/Respondent particularly order No. 4 which reads:

“In the meantime, there shall be NO DEALINGS of any nature on or with the suit L.R. No. 134/8 and L.R. No. 254, meaning no alienation by way of transfer, charging, selling, leasing or any form of exchange of land pending the hearing and determination of the Applicant’s application inter partes on 24th April, 2025.”

8) It is the 3rd Defendant/Respondent’s position that the order of Hon. Justice Mogeni precluded the suit property from selling, offering for sale, charging or exchanging the suit property. It is the 3rd Defendant’s contention that whereas the Applicant herein seeks to have this Court cite the 3rd Defendant/Respondent for contempt, the Applicant has not demonstrated that the 3rd Defendant/ Respondent has attempted to transfer, sell, offer for sale or even exchange the suit properties and so the claim for contempt cannot succeed.

9) According to the 3rd Defendant/Respondent, an application for contempt being an act that is quasi-criminal in nature must be directed at a particular person or cite one specific person or individual who is named in the Court Order and who is alleged to have disobeyed the said Court Order.

10) Therefore the 3rd Respondent contends the contempt proceedings herein are erroneous because they only cite specific

offices in the Respondent Company (being the Directors of the Respondent Company) instead of specific individuals and this being the case the proceedings cannot stand the test of competent application for contempt proceedings.

11) That contempt proceedings being criminal in nature, ought to mention specific individuals who are guilty of disobeying Court orders and where such persons are not mentioned with specificity the Court is at risk of giving the Applicant herein a blank cheque with which they can pursue any person they have little liking for. Thus, the instant application is fatally defective.

12) With regard to the Grounds of Opposition dated 26/10/2025 the 3rd Defendant stated that the Application for contempt proceedings by the Applicant is erroneous as it cites specific offices in the Defendant/Respondent Company instead of specific individuals who allegedly have breached the said Court Order.

13) It is the position of the 3rd Defendant that the Applicant has failed to establish that the Respondent is in contempt of the Court's Orders to warrant granting of the orders sought.

14) The 1st Defendant filed a Replying Affidavit which is undated, sworn by Samuel Karuga Koinange referring to the Defence and Counter-Claim and also the Replying Affidavit supported by 4 volumes of documents.

15) That it is contempt of Court for a party to destroy or interfere with the subject matter of a suit and that an order made which might have been made in error is not a reason for a party against whom it is made to disobey it.

16) That as the 1st Defendant stated in his Replying Affidavit sworn on 19/04/2025, the 1st Defendant is the owner of the suit property having bought it from those who owned it as of 1973 namely, Emma Krag, Jan Groos Helmer and Rikke Augusta Berg-Jensen. That the indenture identifies the 1st Defendant as the Transferee.

17) At the same time the 1st Defendant referred to the Plaint herein dated 19/03/2025 where at paragraph 7 the Plaintiff bases his claim partly on an alleged colonial and post-Kenyan independence-era ownership of the suit property by Mzee Njunu s/o Kiarie and partly on alleged trust.

18) The 1st Defendant averred that the Court through Lady Justice Kemei had issued an injunction on 9th November 2023 but which Lady Justice Mogeni purported to review through the orders issued.

19) According to the 1st Defendant, the 2nd and 3rd Defendants disobeyed the orders issued forcing the 1st Defendant to apply for Committal to jail of the 2nd Defendant and the Directors of the 3rd Defendant namely Antony Wachira Njoroge and Mercy Wamugo Njoroge. The 1st Defendant admits that the actions of 2nd and 3rd Defendants are captured by the photographs annexed to the application dated 23/09/2025.

20) The Application was canvassed through written submissions. The Applicant's argument is that although the Court issued orders to stop dealings in the suit property the 2nd Defendant and Directors of the 3rd Defendant have disobeyed the said Court

Orders dated 24th March 2025 and 27th April 2025 and they should be cited for contempt and should be sent to civil jail and their property auctioned.

21) The 1st Defendant argues also on their part that the 2nd and 3rd Defendants disobeyed the orders issued forcing the 1st Defendant to apply for Committal to jail of the 2nd Defendant and the Directors of the 3rd Defendant namely Antony Wachira Njoroge and Mercy Wamugo Njoroge. The 1st Defendant therefore supports the application.

22) In response, the 2nd Defendant and Directors of the 3rd Defendants/Respondents argue that the Applicant has not discharged the higher burden of proof required in contempt proceedings and has not demonstrated any interference with the suit property by the Respondents either showing any sale agreement, or any alienation activity. Further they argue that proceedings of contempt of Court are specific yet the application is generalized not naming who exactly disobeyed the Court order. They have urged the Court to dismiss the application.

23) I have carefully considered the application, the Affidavits and pleadings.

24) The authority of Courts to impose sanctions for contempt extends beyond merely enforcing compliance with Court orders. This jurisdiction serves a broader and more fundamental purpose: safeguarding the integrity and effectiveness of the judicial system itself.

25) Lord Diplock in the case of **The AG v Times Newspaper Limited (1973) 3 ALL ER 54** had this to say on the same subject matter before this Court.

“In any civilized society it is the function of the government to maintain Courts of law to which its citizens can have access for the impartial decision of disputes as to their legal rights and obligation towards one another individually and towards the state as representing the society as a whole. The provision of such a system for the administration of justice by Courts of law and the maintenance of public confidence in it are essential if citizens are to live together in peaceful association with one another. Contempt of Court is a generic term descript of conduct in relation to particular proceedings in a Court of law which tends to undermine that system of to inhibit citizens from availing themselves of it for the settlement of their disputes. Contempt of Court may thus take many forms.”

26) It is a cardinal requirement of the rule of law that every person against whom an order is made by Court of competent jurisdiction must obey it unless and until it is discharged. Any other course of conduct would lead to a breakdown of law and order, and result in a way of life which is anything but civilized. Court orders are not issued in vain and are not suggestions or pleas to the persons at whom they are directed. See **Fred**

Matiang’i the Cabinet Secretary, Ministry of Interior and Co-ordination of National Government v Miguna Miguna & 4 Others [2018] eKLR.

27) It follows therefore that an allegation of contempt of Court is a serious matter since if proven, the liberty and or property of the contemnor are at risk. Consequently, the standard of proof in contempt proceedings is higher than the usual one in civil proceedings of proof on a balance of probabilities. See **Mutitika vs. Baharini Farm Limited [1985] KLR 229**. Every Court has inherent powers to make sure its process is not abused and its authority and dignity is upheld at all times. See **Woburn Estate Limited v Margaret Bashforth [2016] eKLR** and **Kiru Tea Factory Company Ltd v Stephen Maina Githiga & 14 Others [2019] eKLR**.

28) For an application seeking to cite and punish a litigant for contempt to succeed, the Applicant must demonstrate wilful disobedience of the subject order. The order itself must be clear enough as to leave no doubt as what is to be done or refrained from and by whom. The Court of Appeal reiterated these requirements in **Micheal Sistu Mwaura Kamau v Director of Public Prosecutions & 4 Others [2018] eKLR** thus:

“... It is trite that to commit a person for contempt of Court, the Court must be satisfied that he has willfully and deliberately disobeyed a Court order that he was aware of. That is made absolutely clear by section 4 of the Contempt of Court Act and the Ruling of the

Supreme Court in Republic v. Ahmad Abolfathi Mohammed & Another ... Secondly, as this Court emphasized in Jihan Freighters Ltd v. Hardware & General Stores Ltd and in A.B. & 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”

29) The Ruling issued by Lady Justice Mogeni read in part as follows:

“In the meantime, there shall be NO DEALINGS of any nature on or with the suit L.R. No. 134/8 and L.R. No. 254, meaning no alienation by way of transfer, charging, selling, leasing or any form of exchange of land pending the hearing and determination of the Applicant’s application inter partes on 24th April, 2025.”

30) This means that all parties are under an obligation to adhere to the imposition placed on them by the Court. The Ruling is very clear and there is no ambiguity and where one does not understand the Court order, they are always at liberty to approach the Court to seek clarification.

- 31) I note that under prayer 4 the Applicant is seeking to have the OCS of Kiambu, Karuri and Kanunga Police Stations to be summoned to Court to explain why they have not overseen the implementation of the Court Order.
- 32) However, as a general rule in our legal system no order of the Court requiring a person to do or abstain from doing any act may be enforced unless a copy of the order has been served personally on the person required to do or abstain from the act in question. In the case at bar, the law requires that the orders so made against the Defendant bank.
- 33) The position of the law regarding service of documents of a Company or a legal entity demands or requires such service to be effected on an officer of the Company intended to be served with the order and against whom committal proceedings for contempt of Court will be instituted. It is impossible to commence contempt proceedings against Directors of a Defendant/Respondent Company as prayed by the Applicant without cogent evidence of such service having been effected. It is worth noting that the Applicant is referring to holders of an office without possible identification of the person and human body being the holder of that office. The so intended proceedings do not comply with the provisions of the Civil Procedure Act and the Rules for this Court to exercise discretion to grant the orders.
- 34) The Applicant apart from not mentioning who disobeyed the Court Order, who is subdividing the land and

the proof of the ongoing subdivision by an unnamed Surveyor, the Applicant has also not shown and proved to the Court that the order was served upon the three OCS's commanding the three Police Stations and they willfully failed to oversee the implementation of the said Order.

35) It is very clear that Contempt of Court is conduct or action that defies or disrespects authority of Court. Black's Law Dictionary 9th Edition, defines contempt as:

“The act or state of despising; the conduct of being despised. Conduct that defies the authority or dignity of a Court or legislature. Because such conduct interferes with the administration of justice.”

36) In **Peter K. Yego & Others vs Pauline Nekesa KodeNakuru HCCC No No. 194 of 2004** the Court recognizing that contempt of Court is criminal, held that it must be proved that one has actually disobeyed the Court order before one is cited for contempt. The Applicant in an application for contempt must prove beyond peradventure that the Respondent is guilty of contempt.

37) Although the proceedings are civil in nature, it is well established that an Applicant must prove the elements beyond reasonable doubt, at least higher than the standard in civil cases, the fact that the liberty of the Defendant could be affected means that the standard of prove is higher than

the standard in civil cases. It is incumbent on the Applicant to prove that the Defendant's conduct was deliberate.

38) A foundational requirement in contempt proceedings is that the alleged contemnor must be properly identified and personally served with the order they are accused of breaching. Where the contempt is alleged against a Corporate Officer, the application must specifically name the individual sought to be cited for contempt. This requirement ensures that the person against whom sanctions are sought has proper notice and an opportunity to comply or explain their non-compliance.

39) In examining the present application, a significant procedural deficiency becomes apparent. While the Applicants have demonstrated the existence of the orders in question, they have not shown that these orders were properly extracted and personally served upon the 2nd Defendant and Directors of the 3rd Respondent in their personal capacity. More crucially, as already stated above the application seeks to cite the office holder for contempt without specifically identifying the particular individual alleged to be in contempt.

40) Service to the individual contemnor or proof that the individual contemnor had knowledge of the Court Order in contempt proceedings serves multiple purposes. It ensures that the alleged contemnor has actual notice of both the order and the consequences of non-compliance. It also

establishes a clear record of when and to whom the order was communicated, thereby enabling the Court to assess whether any subsequent non-compliance was indeed willful.

41) While the Court acknowledges the Applicants' legitimate frustration with the non-compliance of its orders, the procedural safeguards in contempt proceedings cannot be bypassed. These requirements are not mere technicalities but essential protections that ensure fairness and due process. The application as presently framed falls short of meeting these fundamental requirements.

42) However, this determination does not leave the Applicants without remedy. The proper course is to allow the Applicant to extract the relevant orders, ensure they are properly served upon the specifically named Defendants, and return to Court if non-compliance persists.

43) Given the foregoing, I will strike out the application and direct as follows:

a) The Applicant shall extract the relevant orders and ensure personal service and or knowledge of the Court Order by the 2nd Defendant and the Directors of the 3rd Defendant specifically naming the individual Directors sought to be cited for contempt.

b) Upon effecting such service, the Applicant(s) shall be at liberty to pursue the contempt

proceedings afresh if non-compliance continues.

c) Each party shall bear their own costs.

Orders accordingly.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA THIS
8TH DAY OF DECEMBER, 2025 VIA MICROSOFT TEAMS.**

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**MOGENI J
JUDGE**

In the presence of:

Ms. Ng'ang'a for the Plaintiff

Dr. Kuria, SC for the 1st Defendant

Mr. Owang for the 2nd Defendant

Mr. Barack for the 3rd Defendant

4th and 5th Defendants - Absent

Mr. Melita - Court Assistant

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**MOGENI J
JUDGE**