

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT KISUMU**  
**ELCLA NO. E010 O 2025.**

THOMAS AKOMO MWARE ..... APPELLANT

VERSUS

SCHOLASTICA ROSE AJODE ..... RESPONDENT

***(An appeal against the judgement and decree of the Honourable V. M. Ogutu SRM at Kisumu in Kisumu CMCEL CASE NO 37 OF 2020)***

**RULING**

This ruling is in respect of the Notice of Motion application dated 28<sup>th</sup> October 2025, brought by the appellant/applicant. The application seeks for orders: -

- i) For purposes of the record, the application be certified urgent and be heard forthwith ex parte in the first instance.
- ii) Leave be granted to cite the contemnor for contempt of this court's order issued on 10<sup>th</sup> July 2025 pending the hearing and determination of this application.
- iii) The respondent be held in contempt of this court's order issued on the 10<sup>th</sup> July 2025 which contempt has caused great prejudice to the applicant.
- iv) Upon the grant of prayer 3 above, the contemnor herein be penalized by committal to civil jail for a period not exceeding six (6) months and/or be imposed a fine as the

honourable court may in its discretion decide for disobedience of this court's order issued on the 10<sup>th</sup> of July 2025.

v) The costs of this application be borne by the contemnor.

The application was supported by the averments in the Supporting Affidavit sworn on 28<sup>th</sup> October 2025 by THOMAS AKOMO MWARE the applicant.

The application was opposed vide the grounds of opposition dated 10<sup>th</sup> November 2025.

The application was heard orally on 19<sup>th</sup> November 2025.

The substantive relief sought is to have the respondent cited and punished for being in contempt of court. The grounds upon which the application is brought are that on 10<sup>th</sup> July 2025 the court issued an order of stay of execution of the judgement in Kisumu MCELC No. E037 of 2020 which order was duly served upon the respondent and her advocate. That despite being in receipt of the order the respondent proceeded to interfere with the applicant's occupation of land parcel KISUMU/KONYA/6615 by gaining forceful entry into the land, destroying the applicant's structures and starting construction thereon by digging a toilet with a view to evict the applicant before the appeal is heard.

That the respondent's actions are malicious and calculated towards defeating justice in this matter. That court orders are not issued in vain and that the same are supposed to be obeyed.

That the respondent's actions are in contempt of court and should be penalized and/or punished by the court to respect due process of the law and obey court orders so as to deter lawlessness.

To the Supporting Affidavit the applicant annexed a copy of the court order dated 10<sup>th</sup> July 2025 and copies of photographs showing the activities complained of.

The Respondent's case is that the application is incompetent, bad in law and lacks merit and should be dismissed with costs to the respondent. That the application is a sham, frivolous and scandalous since the applicant has already lodged an appeal that is bound to be admitted for hearing. That the application affronts the provisions of Order 5 Rules 22 Civil Procedure Rules and is therefore devoid of merit.

I have considered the application the grounds of opposition thereto and the submissions made. In Johari School Limited -vs- Rosemary Wamburu t/a Johari School [2021] eKLR the elements of contempt of court were stated to be;

- (a) the existence of valid court order whose terms are clear and unambiguous and binding on the respondent.
- (b) proof that the respondent had knowledge or proper notice of the terms of the order.
- (c) proof that the respondent acted in breach of the terms of the order; and

(d) that the conduct or action of the respondent was deliberate or willful.

In the present case there is no doubt that there is a court order issued on 10<sup>th</sup> July 2025 staying execution of the judgment dated 7<sup>th</sup> February 2025 in KSM CMC ELC No. E037 of 2020 pending hearing and determination of the appeal herein.

The applicant's case is that the order was served upon the respondent and the respondent's Advocates. No Affidavit of service was filed to demonstrate service. The record shows that the order was issued in the absence of the respondent. The applicant however contends that the respondent was notified of the order and in response provided the details that were required for opening of the joint account for deposit of the security as directed in the order. Service or knowledge of the order has not been denied by the respondent. In the case of *Basil Criticos -vs- Attorney General & 8 Others (2012)eKLR* where it was held that knowledge supersedes personal service - that where a party acts and shows that he had knowledge of a court order, the strict requirement that personal service must be proved is rendered unnecessary. I find that the respondent had knowledge of the order hence the requirement for personal service was superseded.

Whether the respondent acted in breach of the court order of stay of execution of the judgement, the record shows that the judgment whose execution was stayed granted an order of

permanent injunction restraining the appellant by himself or his agents from alienating, encroaching, erecting fence onto, creating a road, ploughing, cultivating or using part of the whole parcel or acting in any manner which is inconsistent with the respondent's rights over parcel of land number KISUMU/KONYA/2208. The order also directed for eviction of the appellant from the portion of KISUMU/KONYA/2208 where the access road was extended without consent of the respondent after expiry of 90 days from the date of the judgement.

The applicant's complaint is that the respondent entered the land forcefully, deposited materials and dug a toilet in a bid to evict the applicant. To demonstrate this the applicant exhibited 3 copies of photographs. It was submitted on behalf of the applicant that contempt of court is an act that defies the authority of the court and that the respondent has defied the court order as demonstrated in the photographs. The photographs are however faint copies which do not show the images thereon with clarity. Further, there is no evidence to connect the images on the photographs to the suit land.

On behalf of the respondent it was submitted that there was no personal service of the order upon the respondent. That the photographs attached to the Supporting Affidavit were the same photos relied on in an application for injunction before the trial court. That the stay order only applied to the disputed area of the suit land; that the respondent is at liberty to use the rest of the

land. That the application does not meet the threshold of the standard of proof for contempt of court case which is proof above balance of probabilities.

I have noted that there are no dates to the photographs. It was not denied that the photographs exhibited had been in existence before the court order dated 10<sup>th</sup> July 2025 was made and were used as exhibit in an application for injunction before the trial court.

The standard of prove for contempt proceedings is higher than proof on a balance of probabilities. In Mutitika vs Baharini Farm Limited [1985] KLR 227, it was held that “contempt of court is an offence of a criminal character. A man may be sent to prison. It must be proved satisfactorily...It must be higher than proof on a balance of probabilities, almost but not exactly, beyond reasonable doubt....the guilt has to be proved with such strictness of proof as is consistent with the gravity of the charge...”

The court finds that in the present case the standard of proof has not been met that contempt of court has not been proved. The application is dismissed. Each party to bear own costs of the application.

Orders accordingly.

**Ruling dated and signed at Kisumu , delivered virtually  
this 20<sup>th</sup> day of January 2026 .**

**E. ASATI,  
JUDGE.**

**In the presence of:**

Maureen Court Assistant.

Wagumba for the Appellant

N/A for the Respondent