

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS

ELCL CASE NO. E069 OF 2025

NELSON KYALO MWIKYA:.....1ST

PLAINTIFF/APPLICANT

MASEKA NGULI KINYANGU:.....2ND

PLAINTIFF/APPLICANT

VERSUS

PATRICK KITHURE MBOYA:.....DEFENDANT/RESPONDENT

RULING

The application is dated 22nd July 2025 and brought under Article 40(1), Article 64 of the Constitution for Kenya, Order 51 Rule 1 of the Civil Procedure Rules seeking the following orders;

1. That the Application be certified as urgent and be fixed for hearing on priority basis.
2. That pending the hearing and determination for this application, this Honourable Court do direct the Respondent to purge the contempt of Honourable Justice Nelly A. Matheka's Court Orders issued on 26th June, 2025.

3. That pending the hearing and determination for this application, this Honourable Court do direct that the Respondent shall not have any audience before this Honourable Court unless they purge the said contempt.
4. That this Honourable Court summons the Respondent before this Honourable Court to show cause why he should not be cited for contempt and committed to civil jail for being in contempt of the Orders of the Court issued on 26th June, 2025.
5. That this Honourable Court be at liberty to impose any other sanction against the Respondent which it may deem fit and just.
6. That the Respondent be condemned to pay the costs of this Application.

It is based on the grounds that the 1st Applicant is the legal owner of Land Registration Number Mlolongo Plot Number 284 under Mavoko Municipal Council. To which extent, the 1st Applicant has leased the parcel of land to the 2nd Applicant herein. On several occasions, being the 4th May, 2025 and on 25th May, 2025 the Respondent, Mr. Patrick Kithure Mboya accompanied by a group of unidentified individuals, seemingly goons armed with machetes and metal rods unlawfully and forcefully made entry in the 1st Applicant's land L.R. No. Mlolongo 284 without any lawful court order and or legal entitlement to the property.

The 2nd Applicant has reported the incidents severally to Mlolongo Police Station and regrettably despite numerous reports and correspondences, no action has been taken by the said police station to address the matter or deter further acts of

intimidation and illegality. Further, on the 20th of June, 2025 the Applicants herein filed an application under a Certificate of Urgency for orders that a temporary injunction be issued restraining the Respondent, his agents, employees and or anyone under his instructions from further trespassing, entering, demolishing, harassing and or interfering with the Applicant's quiet possession of land parcel LR. No. Mlolongo 284. The Honourable Lady Justice Nelly A. Matheka on the 26th of June, 2025 issued an order that *status quo* be maintained till the matter is mentioned on 28th October, 2025 for parties to file submissions and responses. Despite the Respondent being made aware of the order and the same having been served upon him, the Respondent in flagrant disobedience of the said orders, the Respondent on the 14th of July, 2025 at around 3:26pm, the Respondent in company of a group of unidentified individuals, seemingly goons armed with machetes and steel rods unlawfully and forcefully made entry into the 1st Applicant's land LR. No. Mlolongo 284 and set the place ablaze. The fire burnt down containers, tiles, metal sheets and all that had been left from the last time the Respondent in company of the unidentified individuals had forcefully made entry in the 1st Applicant's land and demolished the perimeter structures, broke into containers, demolished the main gate carted away the 2nd Applicant's tools of trade and injured the watchman on duty.

Thereafter the Respondent set parcel of land L.R. No. Mlolongo 284 ablaze, the 2nd Applicant reported the incident to OCS Mlolongo. Additionally, no action has

been taken by the said police station to address the matter or deter the Respondent from setting the pace ablaze. The 1st Applicant is the legal owner of the land L.R. No. Mlolongo 284 and the Respondent has constantly frustrated his efforts to peacefully enjoy the possession of his land and he will suffer irreparable loss of the title that legally belongs to them. The Applicants are apprehensive that unless the application filed herewith is urgently heard and determined forthwith, the contempt will continue to clear affront to the authority and dignity of this Honourable Court. The Applicants are greatly prejudiced and will continue to suffer injustice for the Respondent's blatant disregard of this Honourable Court's orders.

This court has considered the application and submissions therein. The Black's Law Dictionary (Ninth Edition) defines contempt of court as;

“Conduct that defies the authority or dignity of a court. Because such conduct interferes with the administration of justice, it is punishable usually by fine or imprisonment.”

This application is anchored on section 63 (c) of the Civil Procedure Act which provides that;

“63) In order to prevent the ends of justice from being defeated, the court may, if it is so prescribed:-

(c) Grant a temporary injunction and in case of disobedience commit the person guilty thereof to prison and order that his property be attached and sold”

Pursuant to section 63(c) aforesaid, it is provided under order 40 Rule 3(1) of the Civil Procedure Rules that;

“3(1) in case of disobedient breach of any such terms, the court granting an injunction may order the property of the person guilty of such disobedience or breach to be attached and may also order such person to be detained in prison for a term not exceeding six months unless in the meantime the court directs his release”

In the case of Teachers Service Commission vs Kenya National Union of Teachers & 2 others (2013) eKLR the court stated as follows;

“The reason why courts will punish for contempt of court then is to safeguard the rule of law which is fundamental in the administration of justice. It has nothing to do with the integrity of the judiciary or the court or even the personal ego of the presiding judge. Neither is it about placating the Applicant who moves the court by taking out contempt proceedings. It is about preserving and safeguarding the rule of law.”

Contempt of court is a grave matter as it concerns the dignity of the court when law and order is threatened and the fact that liberty and fundamental rights and freedoms of the alleged contemnor are at stake. The standard of proof is higher than proof on a balance of probabilities but not as high as proof beyond reasonable doubt. In the case of Republic vs Ahmad Abolfathi Mohammed & Another (2018) eKLR, the Supreme Court stated as follows:

“We are also conscious of the standard of proof in contempt matters. The standard of proof in cases of contempt of Court is well established. In the case of Mutitika v. Baharini Farm Limited [1985] KLR 229, 234 the Court of Appeal held that:

‘in our view, the standard of proof in contempt proceedings must be higher than proof on the 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 an offence which can be said to be quasi-criminal in nature.’

The rationale for this standard is that if cited for contempt, and the prayer sought is for committal to jail, the liberty of the contemnor will be affected. As such, the standard of proof is higher than the standard in civil cases. This power, to commit a person to jail, must be exercised with utmost care, and

exercised only as a last resort. It is of utmost importance, therefore, for the respondents to establish that the alleged contemnor's conduct"

In the instant case it is on record that the Court on the 26th of June, 2025 issued an order that *status quo* be maintained till the matter is mentioned on 28th October, 2025 for parties to file submissions and responses. That despite the Respondent being made aware of the order and the same having been served upon him, the Respondent in flagrant disobedience of the said orders, the Respondent on the 14th of July, 2025 at around 3:26 pm, the Respondent in company of a group of unidentified individuals, seemingly goons armed with machetes and steel rods unlawfully and forcefully made entry into the 1st Applicant's land LR. No. Mlolongo 284 and set the place ablaze. From the evidence on record it is not clear when the said containers were erected or evidence of the said place being set ablaze. I find that arson if at all it occurred is a criminal matter and out to be reported to the police. It is not clear what the status quo was on the 26th of June, 2025 when the court issued the orders. I find that this application is not merited and is dismissed. Parties are advised to comply with order 11 and set the matter down for hearing. Costs of this application to be in the cause.

It is so ordered.

**DELIVERED, DATED AND SIGNED AT MACHAKOS THIS 28TH DAY OF
JANUARY 2026.**

N.A. MATHEKA

JUDGE

ORIGINAL