



Makau t/a Great Grace Agencies v Hinga (Environment and Land Case E271 of 2018) [2026] KEELC 314 (KLR) (22 January 2026) (Ruling)

Neutral citation: [2026] KEELC 314 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND CASE E271 OF 2018**

**AA OMOLLO, J
JANUARY 22, 2026**

BETWEEN

JANE MWIKALI MAKAU T/A GREAT GRACE AGENCIES PLAINTIFF

AND

ANNE MUMBI HINGA DEFENDANT

RULING

1. The Defendant has moved this court vide her application dated 26th September, 2025 and brought under the provisions of Order 51 (1), Order 1, 8 Rule 3(3) of the Civil Procedure Rules and Section 5 of the *Judicature Act* Cap 8 Laws of Kenya, Section 1A, 3A, and 63 of the *Civil Procedure Act* Cap 21. She is praying to be granted the following orders:
 1. Spent
 2. That the Summons do issue to Jane Mwikali Makau to appear personally in court and Show cause why she should not be Committed to Civil Jail for contempt of court.
 3. That the Honourable Court be pleased to find that Jane Mwikali Makau is in contempt of court orders given on the 30th July 2018, and those issued on 31st July 2018.
 4. That the Honorable Court be pleased to grant leave to order for the arrest and detention of Jane Mwikali Makau cited above in prison for a term not exceeding six months for contempt of court.
 5. That Jane Mwikali Makau be committed to Civil Jail for a period of Six Months for contempt of court.
 6. That in the alternative the Honourable Court be pleased to order Jane Mwikali Makau to purge all the actions of contempt by removing all structures/ developments made on the suit



property and restore the status quo as at 30th July 2018 when the court orders were given/ issued.

7. That this honorable court do impose any other such punishment that it may deem fit against the said Respondent(s), for contempt of court.
 8. That the Defendant be granted leave to amend his defence and raise a counterclaim due to the contempt of court developments.
 9. That the original title of Land Reference No. 37/167 in the names of Anne Mumbi Hinga be placed in court for safe custody pending hearing and determination of the suit.
 10. That the Honourable Court be pleased to strike out the proceedings of 17-02-2025 and recall the plaintiff for cross-examination.
 11. The cost of this application be provided for
2. The application is premised on the grounds listed on the face of it and on the supporting affidavit sworn on 26th September 2025 and the further affidavit sworn on 16th October, 2025. Inter alia,
- i. That the Respondent has defied/ breached the courts orders given on the 30th July 2018, issued on 31st July 2018 and therefore in contempt of court.
 - ii. That the Respondent has over time embarked on changing the status quo of the suit land by constructing on the property despite being warned by the Applicant to stop making developments on her property.
 - iii. The plaintiff having developed the property has been collecting rent and mesne profit from the property contrary to the court order.
 - iv. The lawyer ms Manegene Lilian that was instructed to act for both parties during the conveyance released the original land title to the plaintiff/Respondent before relocating to USA against her duty of care to both parties in the transaction.
 - v. The Applicant has since discovered that Simon Wangombe is not an advocate but is a court clerk based at ruiru law courts who demanded for legal fees of kshs.3,810,000/- which was paid to him but at all times the suit is coming up he sends a representative.
 - vi. The Applicant seeks to be represented by a qualified advocate thus, seek to strike out all the proceedings in this matter from 17th February 2025.
3. The Applicant deposes that she has told the Plaintiff/Respondent to stop construction but she has declined and boldly told her that it's her land notwithstanding the court case. That the acts of the Respondent amounts to flagrant disobedience and gross violation of the orders.
4. She further states that issuance of a title to the alleged purchaser is in toto breach of the advocate client professional duty more so when the total purchase price was not made to me.
5. The Plaintiff opposed the application via her replying affidavit sworn on 6th October, 2025. She deposes that the application ought to be struck out as it is omnibus for seeking multiple prayers. She avers that the timing of the application is inappropriate, the same having been filed way after I have testified, closed my case, been recalled for cross examination, and closed my case again, without any proper reasons being supplied to explain the delay in filing the same.
6. The Plaintiff asserts the application lacks merit for reasons inter alia; that there is no court orders barring or prohibiting or restraining me from utilizing the suit property. She deposes that she is in



possession of the suit property by virtue of clause 8 of the sale agreement dated 31.07.2017 and the consent order dated 6th November, 2018. Hence, she has not committed contempt.

7. It is also her contention that to the extent that the prayer for leave to amend Defence and introduce a Counterclaim is founded on the alleged contempt, I verily believe that the same automatically collapses with the fall of the alleged contempt. THAT it is an absurdity for the Defendant to, on the one hand, contractually consent to her occupation of the property, and on the other purport to seek damages for her use thereof.
8. On the prayer for her to be recalled for cross-examination, the Plaintiff stated that the Defendant already made several such applications one of which was granted and she was recalled. THAT it is incomprehensible that the Defendant would allege not to have known of the status of a litigation filed more than 7 years ago relating to a property which she now alleges to have fetched more than Kshs. 8 million in rental income.
9. In responses to the issues raised in the replying affidavit, the Defendant/Applicant swears that her application is brought within the precepts of the law and no indication of any law provision that has been broken/ breached that has been indicated and that no provision of law bars any litigant from filing an application seeking various orders under the same application.
10. She further deposes that the law does not describe timelines for filing contempt of court applications but only at the bequest of discovering the contempt. She contends that possession does not mean developing the property more so that there was an order of maintaining the status quo
11. The recall of the plaintiff to testify is to give me an opportunity to be present as my matter is being heard/ executed. That this suit has been brought to her full knowledge there is no more time wasting and she has lost a lot (economically) on her property due to this case expressing willingness to refund the deposit paid to her. Further, that her presence when the plaintiff is being cross examined is key more so with an advocate she has duly instructed.
12. The parties also filed their respective submissions (16th October, 2025 and 28th October 2025 respectively) which I have read and considered in this determination. There are three questions which I frame for purposes of deciding this application:
 - a. whether it is omnibus hence it should be struck out
 - b. Whether the application is guilty of delay
 - c. whether there is merit in the orders sought
 - d. Who bears the costs.
13. The Plaintiff urged the court to strike out the application because it is omnibus and it was brought after undue delay without any reasons. The Plaintiff quoted Emukule J in Rajput vs. Barclays Bank of Kenya & Others who held thus;

“There is no doubt the application is an all-cure, omnibus application. It is a wide net cast over a large body of water, and out of all the lake or sea, creatures caught in it, there will be one or two edible crabs or fish. It is not quite so. An omnibus application is incapable of proper adjudication by the court for each of the reliefs sought apart from being governed by different rules, is also subject to long-established and different judicial principles which counsel need to bring to the attention of, and the court needs to consider before granting the entire relief sought.”



14. A plain reading of the orders sought clearly demonstrate that there are three distinct orders sought to wit, an order to declare the Plaintiff is in contempt, an order for leave to amend the defence and counter-claim and an order seeking to recall the Plaintiff for cross-exam. It is without a doubt that the principles to be considered for granting each of these prayers are not dependent on each other.
15. For instance, the standard of proof in contempt is on a scale beyond the balance of probabilities while the granting of leave to amend is at the discretion of the court as long the Applicant demonstrates she is deserving of such discretion. In defence, the Applicant deposed that there is no law prohibiting her from raising all the issues in one application.
16. I associate myself with the finding in the case of Rajput vs. Barclays Bank of Kenya supra that an omnibus application makes its adjudication difficult. However, I am hesitant to strike out the application on this account only because the Respondent/Plaintiff got the opportunity to file a response to it.
17. The second argument raised was that the application was brought after undue delay. This suit was filed on 14th June 2018. The consent order the applicant states has been disobeyed was recorded on 6th November 2018. She avers that she discovered the Plaintiff had made developments on the suit property when her present advocate provided her with typed proceedings. Before the typed proceedings were supplied (which date is not disclosed) the Defendant/Applicant asked the court for leave to amend her defence and introduce a counter-claim on 24th April 2024 and 31st July 2024.
18. The application was allowed by consent on the 9th October, 2024 which effected the amendment in the year 2024. All this time, the Applicant wants the court to believe she was not aware on the status quo of the suit property to commence the contempt proceedings. She does not speak about the instructions given to CK Advocates who applied to re-open the case and amend the defence and counter-claim. The Applicant is only challenging representation of learned counsel Ms Kimanga who came on board on or about 14th February 2025.
19. Thus, the delay in bringing both the application for contempt and leave to amend has not been explained. Additionally, the Applicant has not produced evidence of payment of legal fees to Simon Wangombe to justify why she is also making another application for recall several months after cross-examining the Plaintiff/respondent. It is my considered view that in the absence for the explanation for the delay, the application does fail.
20. The third limb of the question is whether the application is merited. The Applicant wants the Plaintiff condemned for being disobedient of a court order. The Applicant reproduced the impugned order which read thus;
 1. That
 2. That
 3. That
 4. That until further orders by the court, the status quo relating to the title use and possession of all that parcel of land known as LR.No. 37/167 (Original No.37/54/28) shall be maintained by the parties pending the hearing and determination of this suit and/or further orders of this court.
21. As at the time the order was made, the Plaintiff was in possession. The Plaintiff said that besides the order, clause 8 of the agreement allowed her to take possession upon payment of the deposit. The



- Applicant argues that the Plaintiff proceeded to develop the land contrary to the order which required both parties to maintain status quo.
22. First, it is not clear what the status quo was as the order did not describe it. The order does not state what constituted use, having allowed the person in possession to continue use, does it include development? These are questions which raise ambiguity which unless supported with additional evidence cannot sustain a conviction for contempt. Second, the Applicant has annexed a picture of what she described as representing the status quo when the order was made. However, she did not mention whether this picture formed part of the evidence in the application that generated the impugned order. This court cannot take into consideration new evidence being used to prove the contempt.
23. In light of the foregoing evidence, I make a finding that the allegations of contempt have not been proved to the standards required in law.
24. The Applicant also sought for leave to amend the defence and counter-claim. Order 8 rule 3 of the Civil Procedure Rules states thus:
- (1) Subject to Order 1, rules 9 and 10, Order 24, rules 3, 4, 5 and 6 and the following provisions of this rule, the court may at any stage of the proceedings, on such terms as to costs or otherwise as may be just and in such manner as it may direct, allow any party to amend his pleadings.
 - (5) An amendment may be allowed under subrule (2) notwithstanding that its effect will be to add or substitute a new cause of action if the new cause of action arises out of the same facts or substantially the same facts as a cause of action in respect of which relief has already been claimed in the suit by the party applying for leave to make the amendment.
25. Although the application to amend has been brought after undue delay, the matter is yet to be concluded. I acknowledge that the Plaintiff has already closed her case, but the interests of justice require that the amendment be permitted before judgement. Any prejudice likely to be suffered can be remedied by granting her leave to file a defence to the counterclaim or amend her case and awarding her costs. Consequently, the leave to amend the defence is granted.
26. The Defendant also wishes to have the Plaintiff re-called for cross-examination in her presence by her current advocate. This prayer is dismissed as an abuse of the court process. She already made a similar prayer which was granted. If she felt the advocate who appeared on her behalf did not do a good work, she is responsible and so must bear the consequences.
27. Lastly, the Applicant wants an order compelling the Plaintiff to deposit the title in Court. She gave the reasons why the title was passed on to the Plaintiff. Whether or not the advocate breached the advocate/client relationship is not a matter that can be determined through an interlocutory application.
27. Further, the Defendant/Applicant deposed that an order of court had already been registered on the suit title at the Ministry of Lands. The inference is that there is no transaction the Plaintiff can register on the title unless the existing order is removed. Neither has the Applicant demonstrated that the Plaintiff is in the process of interfering with the title deed while it is in her custody. No grounds has been made to warrant the grant of this order. It is also dismissed.
28. In conclusion, I hold that there is no merit in prayers 2-7 and 9-10 of the application dated 26th September, 2025. They are dismissed with costs to the Plaintiff/Respondent. Prayer no. 8 is granted with compliance set for a limited time of 15 days for effecting the amendment. In default, the leave granted expires automatically. Upon service with the amended defence and counter-claim, the Plaintiff to reply within 21 days of such service.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 22ND DAY OF JANUARY, 2026.



A. OMOLLO
JUDGE

