

REPUBLIC OF KENYA
IN THE ENVIRONMENT & LAND COURT AT NAIROBI
ELCA NO. E006 OF 2025

TITUS MUTHUI NGULI

-APPELLANT/APPLICANT

VS

THE INSPECTOR GENERAL OF POLICE

- 1ST RESPONDENT

THE HON ATTORNEY GENERAL

- 2ND RESPONDENT

RULING

(In respect of the Appellant's Notice of Motion dated 22/6/25)

1. The motion before the court is dated the 22/6/25 filed by the Appellant against the Respondents seeking the following orders;
 - a. That the court issues orders citing the Respondents for contempt of court by their disobedience of the court orders issued on 6/3/25.
 - b. The court to commit the Respondents to civil jail for a period of 6 months and /or until they purge their contempt by reopening the Applicants place of work as ordered by the Honourable Court.
 - c. In the alternative to prayer no. b) above the court to issue an order citing the Respondents for contempt of court and fine them the sum of Kshs 500,000/- for such contempt.
 - d. Costs for the Application
2. The application is premised on the grounds annexed thereto and the Applicant's supporting affidavit, sworn on 20/6/25. It is the Applicant's case that the Respondents have disobeyed the orders of the court issued on 6/3/25, directing the Respondents to maintain the status quo of the property and restraining the 1st Respondent from forcibly evicting, closing down, harassing, demolishing, and interfering with the suit land. That the Respondents had knowledge of the said orders, the same having been rendered in the presence of their counsel and

subsequently served. That the orders were clear and free from any ambiguity.

3. That despite the stay of execution orders, the Applicant was evicted by the Respondents and the Administrative Secretary of the 1st Respondent in a bid to undermine the authority of the court.
4. In opposing the Application, Chief Inspector Tusca Opondo deponed that the Applicant previously managed the police canteen at Capitol Hill Premises. However, he lost the tender for the premises. Upon being notified to vacate the premises vide notices dated 10/1/22, 15/2/22 and 5/4/22, the Applicant moved the Magistrate Court vide CMELC No E148 of 2018, challenging the said notices on the ground that they were unfair, irregular, unprocedural and unlawful. Upon hearing the case, the subordinate court rendered its decision on 20/12/24, dismissing the Applicant's suit and ordering the Applicant to vacate the premises within 30 days. The Applicant was served with the notice to vacate on 18/2/25, and he voluntarily vacated the said premises on 27/2/25, carrying away part of his property in the presence of his officers. He refused to take the inventory, forcing them to double-lock the premises, as some of his property remained uncollected.
5. That the orders subject of this application were delivered much later on 6/3/25. Upon delivery of the said orders, counsel for the Respondents informed the court that the Applicant had already vacated the premises. He asserted that the Respondents have not interfered with the premises in any way since the delivery of the Ruling, and that the premises have remained locked since the applicant vacated voluntarily.
6. For the above reasons, the court was urged to dismiss the application for want of proof.
7. Having considered the application, the responses and the applicant's written submissions, the key issue for determination is whether the

Applicant has proved contempt of court on the part of the Respondents.

8. The standard of proof in such proceedings was articulated by the Court of Appeal in the case of **Mutitika vs. Baharini Farm Limited [1985] KLR 227** as follows:

‘...We agree with Mr. Khaminwa’s submissions in this respect. In our view the standard of proof in contempt proceedings must be higher than proof on a balance of probabilities, almost but not exactly, beyond reasonable doubt. We envisage no difficulty in courts determining the suggested standard of proof. 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 offences which can be said to be quasi-criminal in nature...’

9. This court concurs with the Applicants submissions that for an application for contempt to succeed, the Applicant is duly bound to prove the following 4 elements; -

- a) the terms of the Order (or injunction or undertaking) were clear and unambiguous and were binding on the Defendant;
- b) the Defendant had knowledge of or proper notice of the terms of the Order;
- c) the Defendant has acted in breach of the terms of the Order;
- and
- d) the Defendant’s conduct was deliberate.

10. The orders issued by the court on 6/3/25 are restated as follows;

- a. “The Preliminary Objection dated 14/2/25 is unmerited and it is hereby dismissed
- b. An order of stay of execution of the Judgment dated 20/12/25 in Milimani MCELC E148 of 2022 is hereby issued limited to a period of One Hundred and Eighty days (180) days within

which the applicant ought to have filed his Record of Appeal and prosecute his appeal to finality.

- c. In default the orders herein granted shall lapse automatically
- d. Costs of the application shall bide the determination of the appeal.”

11. The Respondents have confirmed knowledge of and receipt of the said orders, as they were delivered in the presence of their counsel, Learned Counsel Ms Ayuma. No evidence has therefore been placed before the court to demonstrate any ambiguity or vagueness with respect to the above orders, and consequently the court has no reason to hold otherwise.

12. The crux of this matter is whether the Applicant has proved that the Respondents disobeyed the court orders issued on 6/3/25. The Applicant states that he has written many letters to the Respondents requesting that they reopen the premises in compliance with the court orders. The Respondents aver that the Applicant voluntarily vacated the premises on 27/2/25 pursuant to the notices issued on 18/2/25, following the dismissal of the Applicant’s case in the lower court. They further aver that he carried away part of his property and left some behind, and that, since he declined to have an inventory conducted, the Respondents, out of an abundance of caution, double-locked the suit premises because some of his property remained inside. The court was shown the door to the premises with two padlocks. See Exhibit TO3b, annexed to the Replying Affidavit sworn by C.I Opondo.

13. From the foregoing, it is clear that by the time the Ruling was delivered on 6/3/25, the applicant was no longer in the premises. This explains why the Applicant was pleading with the Respondents to open the premises so as to comply with the court orders. The Respondents’ account of the events at the time was aptly captured by the Respondent’s counsel on 6/3/25, when she informed the court that the applicant had vacated the premises the week before. The week

before the 6th day of March 2025 is the week commencing the 27th - 31st of February, 2025.

14. Given the circumstances described in the preceding paragraph, the Applicant has not tendered any evidence in support of the alleged eviction, namely the date, the manner of eviction, whether any notice was given, and any pictorial evidence to persuade the court that he was evicted after the court orders. The Court is persuaded that the Applicant had already vacated the premises by the time the orders were issued, and the Court is of the view that there is no evidence that the orders of the Court were disobeyed, at least by the Respondents. Taking the totality of the evidence before the Court, it would appear that the orders of the Court were overtaken by events.

15. In the absence of any disobedience of the court orders on the part of the Respondents, the court cannot conclude that any of the Respondents' actions were willful and deliberate. The burden of proof lay with the Applicant to prove contempt to the required standard. The court is thus not satisfied that the Applicant has proved the contempt alleged against the Respondents.

16. Final orders for disposal

- a. The application dated the 20/6/2025 is unmerited.
- b. It is dismissed with costs to the Respondents.

DATED, SIGNED AND DELIVERED VIRTUALLY IN NAIROBI THIS 22ND DAY OF JANUARY 2026 VIA MICROSOFT TEAMS.

**J G KEMEI
JUDGE**

Delivered online in the presence of:

1. Ms. Mutuku HB for Mr. Mosota for the Appellant
2. Ms. Ayuma for the 1st and 2nd Respondent

3. C/A – Ms. Yvette Njoroge

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