



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT MILIMANI LAW COURTS, NAIROBI
ELCJR NO E042 OF 2025

ELIJAH ATEBE
.....APPLICANT

VERSUS

COUNTY GOVERNMENT OF NAIROBI.....1ST
RESPONDENT THE CHIEF OFFICER HOUSING AND URBAN
RENEWAL COUNTY GOVERNMENT OF NAIROBI.....2ND
RESPONDENT
CHIEF EXECUTIVE COMMITTEE MEMBER,
BUILDING ENVIRONMENT AND URBAN PLANNING
COUNTY GOVERNMENT OF NAIROBI.....3RD
RESPONDENT
THE COUNTY ATTORNEY COUNTY
GOVERNMENT OF NAIROBI.....4TH
RESPONDENT
OFFICER COMMANDING STATION,
PANGANI POLICE STATION.....5TH
RESPONDENT

RULING

1. The application that is before the court is the one dated 15th September 2025 where the applicant seeks the following orders
 - a. Spent
 - b. Spent

- c. **THAT** this Honourable Court be pleased to issue orders compelling the 2nd Respondent to furnish the Applicant with rent invoices with respect to the suit property.
- d. **THAT** in default of prayer (3) above, a Notice to show cause do issue why contempt proceedings should not be commenced against the 2nd Respondent.
- e. **THAT** in the alternative, this Honourable court be pleased to give directions as to where the Applicant shall henceforth deposit the monthly rent payable in respect to the suit property.
- f. Costs of this application be provided for.

The application was premised on grounds as in the application and the supporting affidavit of Simon Ndubi Atebe. The grounds set forth was that the court issued orders on the 12th June 2025 which orders gave the applicant leave to file an application for judicial review as against the respondents and which leave was to operate as a stay against any eviction of the applicant. That on instruction of the 2nd respondent officials from the county government of Nairobi in total disregard of the court's orders invaded the applicant's premises in a bid to frustrate the tenancy. That further the 2nd respondent has not issued rent invoices which are necessary to facilitate the payment of rent by the applicant.

The applicant is apprehensive that the actions of the respondents are to frustrate the tenancy which might lead to unlawful eviction hence this application.

Applicant's submissions

The applicant submitted the actions to withhold the rent was aimed to circumvent the court's orders by conducting a constructive eviction this he relied on the case of **Serem v Bett (Civil Appeal 48 of 2019) [2023] KEHC 17698 (KLR)**.

He submitted that the actions constituted contempt on the part of the 2nd respondent.

The respondents entered appearance but did not respond to the application hence it is uncontroverted.

Analysis and determination

Having looked at the application and the submissions by the applicant, he raised the issue of the 2nd respondent being in contempt of court and seeks the court to issue an order compelling the 2nd respondent to furnish rent invoices with respect to the suit property and in the alternative the court do issue a notice to show cause to the 2nd respondent on why contempt proceedings should not be initiated.

Indeed, there is existence of the court order of 12th June 2025. A perusal through the said court order, indicates that the court did state on order 2 that the 1st, 2nd and 3rd respondents should issue a rent account statement in relation to the suit premises known as House no 30 of county residential rent houses located in Old Ngara Estate Nairobi, for the applicant to offset the rent arrears. The applicant indicates that he has not been able to pay rent as the respondents have not acted on order no 2 and further the respondents have defied order no 1 by invading the suit premises.

The said court order reads as follows

1. *That leave is hereby granted to the ex parte applicant to apply for order of prohibition restricting the 1st, 2nd, and 3rd Respondents, their agents, servants, and or whosoever acting upon their instructions from evicting, terminating the lease or tenancy, transferring in any way, interfering, reallocating or alienating the suit property known as House no 30 of county residential rent houses located in Old Ngara Estate Nairobi.*
2. *That leave is hereby granted to the ex parte applicant to apply for orders of Mandamus to compel the 1st, 2nd and 3rd respondents to produce a rent account statement in relation to ex parte applicant's alleged rent arrears in relation to the suit property known as House no 30 of county residential rent houses located in Old Ngara Estate Nairobi*

Going by the above then it can be said that the court order was clear as to its terms which terms have been defied by the respondents. The 1st, 2nd and 3rd respondents have to date not issued the rent account statement on the arrears of the applicant as from June to September when this application was filed and the applicant has been frustrated on payment. The applicant in her supporting affidavit has also alluded to the fact that the 2nd respondents sent agents to invade the suit premises and attached evidence to that effect of interreference with the door to the premises and of the court orders that were on the door having been torn. This action would defeat the purpose of order 1 which permits the applicant to stay on the suit premises without interference from the

respondents. The respondents are represented by the office of the county attorney through its notice of appointment dated 18th June 2025. The Advocate on record was duly authorized as the agent of the Respondents and their service was sufficient to constitute service to the respondents as evidenced with the annexed affidavit of Michael Mutinda dated 9th July 2025.

The actions of the respondents which actions at this point are deliberate, and having established knowledge of the court orders qualifies as contempt. In the case of **Samuel M. N. Mweru & Others vs National Land Commission & 2 Others [2020] e KLR** J Mativo held that, in order to succeed in contempt proceedings, the applicant has to prove the following: -

“That the terms of the order were clear and unambiguous and binding to the Defendant; that the defendant had knowledge of or proper notice of the terms of the order; that the Defendant has acted in breach of the terms of the order and the Defendant’s conduct was deliberate. The Defendant/Respondent has not stated that the terms of the Judgment dated 11th June 2020 were unclear and ambiguous.” Similarly in the case of **Geoffrey Kathiri Kisin & 10 Others vs East Africa Portland Cement Co. Ltd & 5 Others [2021] e KLR** the Court of Appeal observed that:-

“It is trite law that to commit a person for contempt of court firstly, the court must be satisfied that the person has deliberately and wilfully disobeyed a court order that he was aware of. Secondly, the order of the court that is alleged to have been disobeyed must be clear and precise so

as to leave no doubt as to what a party was supposed to do or refrain from doing (see A. B & Another vs R. B. [2016] eKLR. Lastly, the standard of proof in committal proceedings is higher than proof in a balance of probabilities but not as high as proof beyond reasonable doubt...''

I am guided by the above authorities. The issue of contempt arises however the applicant has prayed for other orders in the alternative to the one seeking issuance notice to show cause why contempt proceedings should not be commenced.

Being that there is an alternative prayer, it would be in the interest of justice to grant prayer no 2 which prayer seeks to compel the 2nd respondent to furnish the applicant with rent invoices as opposed to issuing a notice to show cause and grant the 2nd respondent a chance to obey the court orders and on failure to honour the same, then the notice to show cause should issue.

In conclusion, I find merit in this application and I grant the following orders: -

- a) **THAT** the 2nd Respondent and or her agents are hereby restrained from trespassing, harassing, threatening the Applicant and/or demolishing, damaging the suit premises and or interfering with the Applicant's tenancy.
- b) **THAT** the 2nd Respondent to furnish the Applicant with rent invoices with respect to the suit property.
- c) **THAT** in default of prayer (3) above, a Notice to show cause shall issue to the 2nd respondent to show cause why contempt of court proceedings should not be commenced against her.

d) That costs of this application be borne by the Respondents.

It is so ordered.

DATED, SIGNED and DELIVERED virtually at **NAIROBI** on this **16TH** day of **FEBRUARY 2026**.

MOHAMMED N. KULLOW
JUDGE

Ruling delivered in the presence of: -

Mr. Atebe..... for the Applicant

N/A..... for the Respondents

Philomena W...... Court Assistant