



REPUBLIC OF KENYA



Kassim v Wanjiku & another (Environment and Land Case Civil Suit E305 of 2025) [2026] KEELC 778 (KLR) (13 February 2026) (Ruling)

Neutral citation: [2026] KEELC 778 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND CASE CIVIL SUIT E305 OF 2025
TW MURIGI, J
FEBRUARY 13, 2026**

BETWEEN

MAALIM ADAN KASSIM PLAINTIFF

AND

CECILIA SOFI WANJIKU 1ST DEFENDANT

THE LAND REGISTRAR NAIROBI 2ND DEFENDANT

RULING

1. Before me for determination are two applications. The first application is a Notice of Motion dated 18th June 2025, brought under Articles 40 and 23(3)(b) of *the Constitution* of Kenya, Section 1A, 1B, and 3A of the *Civil Procedure Act*, Order 51, Rule 1, and Order 40, Rule 1 of the Civil Procedure Rules, in which the Plaintiff/Applicant seeks the following orders:
 - a. That a temporary injunction be issued restraining the 1st Defendant, whether by herself, her servants, agents, assigns, and/or representatives, from disposing, alienating, leasing, charging, subdividing, wasting, demolishing, and/or constructing structures on all that parcel of land comprised in title No. Nairobi Block 49/158.
 - b. That a temporary injunction to issue restraining the 1st Defendant whether by herself, her servants, agents, assigns and/or representatives from charging, leasing, sub-dividing, alienating, transferring, demolishing and/or constructing structures or interfering with the Plaintiff's quiet possession of all that parcel of land known as Nairobi Block 49/158 pending the hearing and determination of this suit.
 - c. That the costs of this application be provided for.
2. The application is based on the grounds appearing on its face together with the supporting affidavit of Maalim Adan Kassim, sworn on even date.



The Plaintiff/Applicant's Case

3. The Applicant averred that by a letter of allotment dated 4th January, 2019, the National Land Commission allocated to him the parcel of land known as Nairobi Block 49/158, measuring approximately 0.0759 hectares, hereinafter referred to as the suit property.
4. He further averred that pursuant to the said allotment, he paid a settlement fee of Kshs. 1,499,550/-, which was received and accepted by the National Land Commission. Subsequently, he was issued a certificate of lease dated 28th November 2022 for the suit property for a period of ninety-nine years, commencing on 1st July 2010. He explained that upon conducting an official search on 2nd May 2023, he confirmed that his name had been duly registered as the proprietor of the suit property in the land register.
5. He averred that on 30th November, 2023, his neighbors informed him that the 1st Defendant was claiming ownership of the suit property. Upon visiting the property, he was denied access and has since been unable to regain possession.
6. The Plaintiff contends that the 2nd Defendant breached its statutory duty by issuing more than one certificate of title for the same parcel of land and should therefore indemnify him for any resulting loss.
7. The Applicant is Apprehensive that unless the orders are granted, the 1st Defendant will evict him or interfere with his occupation and quiet enjoyment of the suit property, thereby occasioning him prejudice, injustice, and irreparable loss. He asserted that he has expended considerable resources on the acquisition and development of the suit property, but is unable to proceed with development under the prevailing circumstances.
8. The second Application is a Notice of Motion dated 21st November 2025, brought under Order 40 Rule 3 and Order 51 Rule 1 of the Civil Procedure Rules, in which the Plaintiff/Applicant seeks the following orders:
 - a. The 1st Respondent, Cecilia Sofi Wanjiku, is found to be in contempt of court for disobeying the orders that were issued on 7th November 2025.
 - b. Upon being found in contempt, the 1st Respondent Cecilia Sofi Wanjiku be detained at Pangani Police Station or any other prison or rehabilitation facility for a period of six (6) months or for such period and on such terms as this Honourable Court may determine.
 - c. Costs of the application be provided and/or paid by the 1st Respondent.
9. The application is premised on the grounds appearing on its face together with the supporting affidavit of Maalim Adan Kassim, sworn on even date.

The Plaintiff/Applicant's Case

10. The Applicant averred that despite service of the pleadings, hearing notices, and court orders, the 1st Respondent failed to Appear in court on 7th November 2025 and has since undertaken excavation and construction on the suit property in blatant disregard of the Court's orders. He further averred that the 1st Respondent has instructed third parties to guard the ongoing construction and block access to the property, conduct that constitutes a deliberate and contemptuous violation of the Court's authority and dignity.
11. The Plaintiff asserted that unless the orders sought are granted, the suit property would be wasted, thereby rendering the suit nugatory.



The 1st Defendant's Case

12. The 1st Defendant filed Grounds of Opposition dated 24th November 2025, in opposition to the applications. She contended that the applications are fatally defective, untenable, and legally unsustainable. She further contended that the prayers sought have been overtaken by events and are therefore moot. She further contended that the applications seek orders binding a third party who has not been included in the proceedings, thereby violating the principles of natural justice. She maintained that both applications are an afterthought, incompetent, incurably defective, and an abuse of the Court process.
13. The 1st Defendant also filed a replying affidavit dated 29th January 2026, in which she stated that she is the lawful proprietor of Nairobi Block 49/158, formerly known as Plot 36/VII/106 Eastleigh, having acquired the freehold title through an indenture dated 24th October 1980, registered on 5th November 1980. She averred that she has been in possession and occupation of the suit property since 1976.
14. She accused the Plaintiff of fraudulently claiming ownership of the suit property, asserting that she had thwarted the Plaintiff's prior attempts to assert ownership. She stated that on 11th October, 2023, she became aware that the Plaintiff was purporting to sell the suit property as its owner, prompting her to write to the Plaintiff's advocate asserting her ownership.
15. She explained that she wrote to the Cabinet Secretary in charge of Lands on 12th October 2023, to the National Land Commission on 17th October 2023, and subsequently to the Chief Land Registrar, the Commissioner on Administrative Justice, the Directorate of Criminal Investigations and the Ethics and Anti-Corruption Commission on 26th October 2023, seeking investigations into the fraudulent activities and forged documents.
16. She averred that by a letter dated 28th November, 2023, the Ministry of Lands, Public Works, Housing, and Urban Development confirmed that she is the owner of Nairobi Block 49/158. She contended that the Plaintiff could not lawfully be allocated property that had belonged to her since 1976 and that the Plaintiff's allegations regarding allotment and registration were part of a fraudulent scheme to dispossess her.
17. She maintained that the Plaintiff has never been in possession or occupation of the suit property, a position she asserted was consistent with the Plaintiff's admission that he was denied access. She explained that she sold the suit property to a third party on 28th August 2024 and thereafter granted vacant possession. Consequently, she denied any knowledge of the alleged excavation or construction activities on the property, having relinquished possession after the sale.
18. She argued that the allegations regarding excavation and construction are misconceived and emotive, noting that the current owner is lawfully entitled to use and enjoy the property. She emphasized that the Plaintiff failed to establish a prima facie case warranting injunctive relief since the Plaintiff lacks an equitable interest in the subject property.
19. Regarding the contempt application, the 1st Defendant acknowledged that the status quo orders were served upon her advocates on 27th November 2025. However, she asserted that she was not in contempt as she neither possessed nor exercised any control over the suit property, having sold it in August 2024. She further denied instructing or paying anyone to carry out construction or to guard the property, describing the allegations as defamatory, sensational, and directed at the wrong party.
20. Parties were directed to canvass both applications by way of written submissions. At the time of writing this ruling, no submissions had been filed by the parties.



Analysis and Determination

21. Having considered the application and the respective affidavits, the following issues arise for the determination of this court:
 - a) Whether the Applicant has met the threshold for the grant of a temporary injunction; and
 - b) Whether the 1st Defendant is in contempt of the orders issued by the Court on 7th November 2025.
22. Regarding the first issue, the principles governing interlocutory injunctions were set out in *Giella v Cassman Brown* (1973) EA 358 and restated in *Nguruman Limited v Jan Bonde Nielsen & 2 Others* [2014] eKLR. An applicant must establish:
 - i. First, the Applicant must show a prima facie case with a probability of success.
 - ii. Secondly, an interlocutory injunction will not normally be granted unless the Applicant might otherwise suffer irreparable harm which would not be adequately compensated by an award of damages.
 - iii. Thirdly, if the court is in doubt, it will decide an application on a balance of convenience.
23. The first issue for determination is whether the Applicant has established a prima facie case with a probability of success. The Court of Appeal in *Mrao Ltd v First American Bank of Kenya and 2 others*, (2003) KLR 125, defined a prima facie case as:

“A Prima facie case in a civil application includes, but is not confined to, a genuine and arguable case. It is a case which, on the material presented to the court, a tribunal properly directing itself will conclude there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter”.
24. It is not in dispute that both parties are claiming ownership of the suit property. The Plaintiff's claim of ownership of the suit property is based on a letter of allotment dated 4th January 2019 and a Certificate of Lease dated 28th November 2022. The 1st Defendant's claim is based on an indenture dated 24th October 1980, a Certificate of Title dated 30th November 2023, and a sale agreement dated 28th August 2024. It is evident that both parties hold competing titles.
25. The issue of ownership requires interrogation at trial, including whether the land was available for allotment in 2019 and whether double allocation occurred.
26. At this interlocutory stage, the Court is not required to make definitive findings. It is sufficient that the Plaintiff has demonstrated an arguable claim to the registered title, which has been challenged.
27. The Plaintiff asserts that he was allocated the suit property by the National Land Commission and was subsequently issued a title. The 1st Defendant asserts that she sold the property before the suit was instituted. If the property was indeed transferred in August 2024, prior to the institution of these proceedings, injunctive relief directed solely against her would serve no purpose unless the transferee is joined.
28. The issue of ownership can only be determined in a full trial where the parties will have the opportunity to call evidence and have the same challenged by way of cross-examination. Having regard to the evidence presented by the parties, I find that the Plaintiff/Applicant has established a prima facie case and, accordingly, the suit property should be preserved pending trial. To prevent further dealings and



protect the substratum of the suit, an order preserving the status quo as of the date of this ruling shall issue, binding the parties herein and any person claiming through them pending joinder of the alleged purchaser.

29. Regarding whether the Applicant will suffer irreparable harm that cannot be adequately compensated by an award of damages, the Applicant must show that the harm cannot be quantified in monetary terms or remedied.
30. The Plaintiff asserts that ongoing excavation activities and the potential dispossession are taking place. Given the uniqueness of the land and competing claims, damages may not adequately compensate for the deprivation of proprietary rights.
31. On the balance of convenience, the court must weigh the hardship the Applicant would suffer if the injunction is denied against the hardship the Respondents would suffer if the injunction is granted. Based on the evidence presented by the parties herein, I find that the balance of convenience favors preserving the suit property pending the hearing and determination of this suit.
32. Regarding the second issue, Black's Law Dictionary, 9th Edition, defines contempt of court as:

“conduct that defies the authority or dignity of the court. Because such conduct interferes with the administration of justice, it is punishable usually by fine or imprisonment.”
33. Section 5 of the *Judicature Act* confers jurisdiction on the superior Courts to punish for contempt and provides that;
 1. The High Court and the Court of Appeal shall have the same power to punish for contempt of court as is for the time being possessed by the High Court of Justice in England, and such power shall extend to upholding the authority and dignity of subordinate courts.
 2. An order of the High Court made by way of punishment for contempt of court shall be appealable as if it were a conviction and sentence made in the exercise of the ordinary original criminal jurisdiction of the High Court.
34. In *Econet Wireless Kenya Ltd vs Minister for Information & Communication of Kenya & Another* (2005) eKLR, the court observed as follows:

“It is essential for the maintenance of the Rule of Law and order that the authority and dignity of our courts are upheld at all times. The court will not condone deliberate disobedience of its orders and will not shy away from its responsibility to deal firmly with proved contemnors. It is the plain and unqualified obligation of every person against or in respect to whom an order is made by the court of competent jurisdiction, to obey it unless and until that order is discharged. The uncompromising nature of this obligation is shown by the fact that it extends even to cases where the person affected by an order believes it to be irregular or void.”
35. The applicable law governing this application is Order 40 Rule 3(1) of the Civil Procedure Rules, which provides that:

In cases of disobedience, or of 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.



36. In *Carla Burchell v. Barry Grant Burchell*, Eastern Cape Division, Case No. 364 of 2005, the High Court of South Africa held that, to succeed in civil contempt proceedings, an applicant must prove:
- i) The terms of the order;
 - ii) Knowledge of these terms by the Respondent;
 - iii) Failure by the Respondents to comply with the terms of the order.
37. In *Samuel M.N. Mweru & Others v National Land Commission & 2 Others* (2020) e KLR, the court outlined the elements to be proved in a contempt of court application as follows:
- “Perhaps the most comprehensive of the elements of civil contempt was stated by the learned authors of the book *Contempt in Modern New Zealand*, who succinctly stated, ‘there are essentially four elements that must be proved to make the case for civil contempt. The applicant must prove to the required standard (in civil contempt cases, which is higher than civil cases) that:
- 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 knowledge.
 - c) The defendant has acted in breach of the terms of the order and
 - d) The defendant’s conduct was deliberate”.
38. The first issue for determination is whether the terms of the order were clear. The order at the center of this application was issued on 7th November, 2025, on the following terms:
- a. That an order of status quo to preserve the suit property is hereby granted.
 - b. That the 1st Respondent is hereby restrained from carrying out further excavation on the property pending the mention date of 3rd December 2025.
39. The terms of the order were clear and unambiguous.
40. The next issue for determination is whether the 1st Respondent was properly served or duly notified. The Applicant contends that the order was served on the Respondent and/or their legal representative. The 1st Respondent confirmed she was aware of the orders issued on 7th November 2025. Based on the foregoing, I am convinced that the 1st Respondent was aware of the terms of the order.
41. Regarding whether the Respondent deliberately breached the court order, the Applicant must prove its case beyond a balance of probabilities. This is because contempt of court is in the nature of criminal proceedings, and the liberty of the subject is usually at stake. To succeed in contempt proceedings, the Applicant must prove wilful and deliberate disobedience of the court order, as outlined in *Gatharia K. Mutikika v Baharini Farm Ltd* (1985) KLR, where the court held that:
- “A contempt of court is an offence of a criminal nature. 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 a reasonable doubt. The standard of proof beyond a reasonable doubt ought to be left where it belongs, to wit, criminal cases. It is not safe to extend it to offences which can be said to be quasi-criminal nature.”



42. Similarly, in Peter K. Yego & Others vs Pauline Wekesa Kode ACC NO. 194 of 2014, the court held that:

“It must be proved that one had actually disobeyed the court order before being cited for contempt.”

43. In the matter at hand, the Petitioner contends that the Respondent wilfully disobeyed the conservatory orders by continuing excavation on the suit property. To support this claim, the Plaintiff relied on photographs showing excavation on the suit property.

44. On the other hand, the 1st Respondent contends that she sold the suit property to a third party before the suit was filed and, therefore, was not in contempt. Contempt cannot be established against a party that neither has possession nor control of the property. She produced a sale agreement in support of her assertions.

45. I have carefully considered the photographs relied upon by the Plaintiff. Although these photographs depict construction activities, they lack date and time stamps. The Plaintiff did not present any locational evidence, such as coordinates, a surveyor’s report, or a site map, linking the photographed activities to the suit property, subject to the court orders. Similarly, there is no evidence that the men carrying out the excavation were employees or contractors acting under the authority of the 1st Defendant. The court accepts that this evidence raises a legitimate concern. However, contempt proceedings require more than suspicion or inference.

46. Based on the foregoing, I find that the Applicant has failed to prove that the 1st Respondent is in contempt of the court order.

47. In the end, I find that the application dated 21st November 2025 is without merit and is hereby dismissed with costs.

48. Regarding the application dated 18th June 2025, a status quo order is hereby issued as of the date of this ruling to preserve the suit property pending the hearing and determination of this suit.

49. For avoidance of doubt, the suit property known as Nairobi Block 49/158 shall not be sold, transferred, alienated, charged, leased, subdivided, developed, constructed upon, wasted, or in any manner further dealt with pending the hearing and determination of this suit.

50. The Applicant is awarded costs of the application

RULING SIGNED, DATED, AND DELIVERED VIA MICROSOFT TEAMS THIS 13TH DAY OF FEBRUARY, 2026.

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HON. T. MURIGI
JUDGE

In the Presence of: -

Ndungu holding brief for Kimathi for the Plaintiff/Applicant

Ahmed-Court Assistant

