

**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT SIAYA**

**ELCL O.S. NO. E020 OF 2025**

ORLEY OPIYO ODIPO. .APPLICANT (Suing as the legal representative of the estate of the late John Odipo Ongiengo)  
.....APPLICANT

VERSUS

FREDRICK ONYANGO MUGA .....1<sup>ST</sup>  
RESPONDENT

SIAYA DISTRICT LAND REGISTRAR VERSUS.....2<sup>ND</sup>  
RESPONDENT

HON. ATTORNEY GENERAL .....3<sup>RD</sup>  
RESPONDENT

**RULING**

1. The subject of this ruling is the application dated 26/06/2025 and 10/07/2025 both brought by the Applicant in the OS herein.

**APPLICATION DATED 26<sup>TH</sup> JUNE 2025**

2. The application dated 26<sup>th</sup> June 2025 seeks the following verbatim orders;-

1) THAT this application be and is hereby certified as urgent and be heard exparte in the first instance.

2) THAT an interim ORDER of temporary injunction be and is hereby issued, restraining the 1st respondent, his agents, family, servants and/or whomsoever, jointly and/or severally, from subdividing, transferring, or transmitting, or disposing, or charging, or registering any disposition relating to land parcel number Siaya/Karapul Ramba/4996, or demolishing the applicant's family's house or whatsoever interfering with the applicant's family's use and occupation of a portion (41 by 26 paces) of land parcel number Siaya/Karapul Ramba/4996, pending the hearing and determination of this application.

3) THAT an ORDER of temporary injunction be and is hereby issued, restraining the 1st respondent, his agents, family, servants and/or whomsoever, jointly and/or severally, from subdividing, transferring, or transmitting, or disposing, or charging, or registering any disposition relating to land parcel number Siaya/Karapul Ramba/4996, or demolishing the applicant's family's house or whatsoever interfering with the applicant's family's use and occupation of a portion (41 by 26 paces) of land parcel number Siaya/Karapul Ramba/4996, pending the hearing and determination of this suit.

4) THAT the costs of this application be provided for.

3. The application is premised on the grounds on its face and the supporting affidavit of Orley Opiyo Odipo sworn on

even date. Briefly the deponent states together with his family they have lived on a portion of Siaya/Karapul Ramba/4996 (suit property) continuously peacefully and openly since 1989. Infact in these proceedings he claims interest by dint of adverse possession against the current registered proprietor, Fredrick Onyango Muga the 1<sup>st</sup> respondent in the OS. His fear is that Fredrick may at any time evict him and demolish the family house situate in the claimed portion.

4. It is the deponents claim that his father bought the said portion from one Joanes Muharo Jwara in 15/12/1989, took possession, built a house which stands on the said portion of land to date, 36 years later. By the time of his fathers death in 2018 the said Joanes who is also deceased had not subdivided and transferred the portion to his late father.
5. The applicant states he has discovered from the Land registry that the land which he refers to as primary land was closed upon its subdivision into 2 new parcel numbers 3073 and 3074 reportedly by the said Joanes on 10/9/1990. He attached a copy of a green card for parcel 2736).
6. It is averred that upon the said subdivision of parcel 3073, his late father's house was located on the new parcel 3930. The deponent outlines the entries in the register after the death of Joanes showing further subdivisions culminating into his late father's house being located on a

new parcel 4772 which parcel after several transfers was registered on 20/12/2024, in the name of Fredrick Onyango Muga, the 1st respondent herein. The deponent also discloses he had lodged a caution against the property in 2019 fearing it would be sold.

7. According to him the 1<sup>st</sup> respondent who is his childhood acquaintance is not an innocent purchaser of the suit land. And has always known of the applicants family's proprietary rights on a portion of the suit land, where his late father's house stands to date. The applicant depones that he is apprehensive that he may at any time demolish his late father's house and evict them thus the present application.

**1<sup>st</sup> Respondents reply to the application dated 27<sup>th</sup> June 2025**

8. The application is opposed by the 1<sup>st</sup> Respondent who states in his replying affidavit sworn on 22/8/2025. It is noted that this affidavit responds to both applications herein. I will extract what is relevant to the current application.
9. It is deponed that the application dated 27/6/2025 had been overtaken by events based on the depositions in the supporting affidavit to the application dated 10/7/2025. This will become apparent later in this ruling.
10. The applicant admits the history of the sub divisions including parcel 4772 but states that the applicant did not

take any action against previous registered owners. That he was registered proprietor of plot 4996 on 20/12/2024 while the present suit was filed 6 months later. That the applicant saw him as an easy target to lay claim against.

11. According to the 1<sup>st</sup> respondent unknown persons had already demolished the structure on plot 4996 on 1/7/2025.
12. The application was heard by way written submissions. Parties complied by filing and exchanging submissions. Dated 7/10/2025 and 22/08/2025 respectively

### **Analysis and determination**

13. I have read the affidavit sworn in support of the application and those sworn in reply. I have also given due consideration to the submissions of the learned counsels appearing. The main issue for determination is whether the application is merited.
14. The application is brought under Articles 40 and 48 of the Constitution of Kenya, Sections 1A, 1B, 3, 3A and 6 of the Civil Procedure Act, Order 40, rule 1, 4 of the Civil Procedure Rules, 2010.
15. I think the court will focus on the provisions of order 40 Rule 1 of the Civil Procedure Rules which is the legal framework on interlocutory injunctions. It reads; -

### **1. Where in any suit it is proved by affidavit or otherwise—**

- a. **That any property in dispute in a suit is in danger of being wasted, damaged, or alienated by any party to the suit, or wrongfully sold in execution of a decree; or**
- b. **..... the court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal, or disposition of the property as the court thinks fit until the disposal of the suit or until further orders.**

16. The principles of granting temporary injunction are very clear and well enunciated in the celebrated case of **Giella v. Cassman Brown** where the court stated the conditions for grant of interlocutory injunctions as follows;

*“The conditions for the grant of interlocutory injunction are now I think well settled in East Africa. First an applicant must show a prima facie case with probability of success. Secondly an interlocutory injunction will not be normally granted unless the applicant might otherwise suffer irreparable injury which would not adequately be compensated by an award of damages. Thirdly if the court is in doubt it will decide an application on the balance of convenience.”*

17. But firstly I must observe that the application dated 27/6/2025 was placed before me ex parte under Certificate of Urgency on 1/07/2025. The applicant sought for temporary orders of injunction against the 1<sup>st</sup> Respondent herein having been apprehensive of an eviction. I issued the directions and made the following orders;-

**THAT the status quo as to the applicant's occupation of the portion 41 by 26 paces on the suit property Siaya/Karapul Ramba/4996 be maintained.**

18. I will quickly discuss the rationale for an order of status quo and what it portends. **The Black's Law Dictionary**, Butter Worth's 9<sup>th</sup> Edition, defines status quo as a Latin word which means 'the situation as it exists'. The purpose of an order of status quo has been articulated in many court case as highlighted here below;-

19. In the case of **Kenya Airline Pilots Association (KALPA) v Co-operative Bank of Kenya Limited & another [2020] eKLR**, the court stated:

*"... By maintaining the status quo, the court strives to safeguard the situation so that the substratum of the subject matter of the dispute before it is not so eroded or radically changed or that one of the parties before it is not so negatively prejudiced that the status quo ante cannot be restored thereby rendering nugatory its proposed decision."*

20. In the case of **Fatuma Abdi Jillo v Kuro Lengesen & another [2021] eKLR. In Republic Vs National Environment Tribunal, Ex-parte Palm Homes Limited & Another [2013] eKLR**, Odunga J [as he then was] quotes various decisions in a bid to distinguish status quo from injunctive orders, stated;

*“When a court of law orders or a statute ordains that the status quo be maintained, it is expected that the circumstances as at the time when the order is made or the statute takes effect must be maintained. An order maintaining status quo is meant to preserve existing state of affairs...Status quo must therefore be interpreted with respect to existing factual scenario...”***In TSS Spinning & Weaving Company Ltd Vs Nic Bank Limited & another [2020] eKLR**, the unpacked the purpose of a status quo order as follows: *“In essence therefore, a status quo order is meant to preserve the subject matter as it is/existed, as at the day of making the order. Status quo is about a court of law maintaining the situation or the subject matter of the dispute or the state of affairs as they existed before the mischief crept in, pending the determination of the issue in contention. ‘**In Kenya Airline Pilots Association (KALPA) Vs Co-operative Bank of Kenya Limited & another [2020] eKLR**, the purpose of a status quo order was explained as follows: “..... By maintaining the status quo, the court strives to safeguard the situation so*

that the substratum of the subject matter of the dispute before it is not so eroded or radically changed or that one of the parties before it is not so negatively prejudiced that the status quo ante cannot be restored thereby rendering nugatory its proposed decision.” **Murithi Jin Boabab Beach Resort as quoted by F. Tuiyot Saifudeen Abdullahi & 4 Others** in Mombasa High Court Misc. Civil Cause No. 11 of 2012, described the nature of a status quo order as follows: “In my view, an order to Status quo to be maintained is different from an order of injunction both in terms of the principles for grant and the practical effect of each. While the latter is a substantive equitable remedy granted upon establishment of a right, or at interlocutory stage, a prima facie case, among other principles to be considered, the former is simply an ancillary order for the preservation of the situation as it exists in relation to pending proceedings before the hearing and determination thereof. It does not depend on proof of right or prima facie case. In its effect, an injunction may compel the doing or restrain the doing of a certain act, such as, respectively, the reinstatement of an evicted tenant or the eviction of the tenant in possession. An order for status quo merely leaves the situation or things as they stand pending the hearing of the reference or complaint.”

21. Applying the above to the present application and the events that allegedly transpired after the above status quo orders were issued, I would still be inclined to follow the same path.
22. It is not in dispute that there was a structure on the property which was allegedly constructed by the applicants father that served as a family home since sometime in 1989. The 1<sup>st</sup> respondent does not deny its existence but states he is being pursued as an easy target by the applicant who never pursued the previous holders of the property. Prima facie therefore there would be need to protect the same.
23. However as deponed by the 1<sup>st</sup> respondent a demolition appears to have occurred after the court had issued orders that the status quo be maintained. Further details will be discussed later in the determination of the application dated 10/7/2025.
24. It is therefore pertinent that the status quo on the suit property is appreciated. The same was clarified on 18/09/2025 following engagements with counsel on record for parties. Mr. Okello for the applicant submitted that the 1<sup>st</sup> respondent attempted to demolish the structure and that the status quo should be as at 1/07/2025. From the depositions of the applicant in the application dated 10/7/2025 part of the roof had been removed.
25. The court observed thus '.....it appears there has been a demolition and therefore this is the status quo but in

addition the applicant shall remain on the suit property pending the hearing and determination of the applications dated 26/6/2025 and 10/7/2025'. The court emphasised this was the status quo to be maintained.

26. The court is still obligated to preserve the suit property and including the register to ensure things do not deteriorate further. This is the above status quo that shall be maintained pending the hearing and determination of the Originating Summons herein.

### **APPLICATION DATED 10<sup>TH</sup> JULY 2025**

27. The above application was filed by the Applicant in the OS. It seeks the following verbatim orders

1) SPENT

2) THAT this honourable court be pleased to promptly conduct a site visit to the suit property Siaya/Karapul Ramba/4996 to confirm the demolition of the applicant's family's previously standing house.

3) THAT the Officer Commanding Siaya Police Station to provide security during this honourable court's site visit to the suit property Siaya/Karapul Ramba/4996 and/or enforce any Orders issued by this honourable court in this case.

4) THAT this honourable court be pleased to cite the 1st respondent for contempt of this honourable court's Orders 5 and 6 issued on 1/7/2025, requiring that the status quo as to the applicant's occupation of the portion 41 by 26 paces on the suit property

Siaya/Karapul Ramba/4996 be maintained until 18/09/2025.

- 5) THAT this honourable court be pleased to Order the arrest of the 1st respondent and/or commit him to civil jail for a term of six (6) months and/or until he purges his contempt by restoring, to its immediate state before demolition, the applicant's family's house on the suit property Siaya/Karapul Ramba/4996.
- 6) Any other fit and just order that this honourable court may grant.
- 7) THAT the costs of this application be provided borne by the 1st respondent.

28. The application is premised on the following verbatim grounds that;-

- a. The applicant filed this suit on 20/6/2025.
- b. The applicant filed his urgent application on 30/6/2025.
- c. On 1/7/2025, this court ordered maintenance of status quo as to the applicant's occupation of portion of the suit land until 18/9/2025.
- d. The 1st respondent was personally served with the said court order on 2/7/2025.
- e. Between 5/7/2025 and 8/7/2025, the 1st respondent and/or his agents completely demolished the applicant's family's family house on the suit land.

- f. The applicant lodged a malicious damage and stealing report against the 1st respondent at Siaya Police Station on 5/7/2025.
  - g. The 1st respondent has shown utter contempt of the said court order of 1/7/2025.
  - h. The 1st respondent has undermined the dignity and authority of this honourable court. This honourable should reclaim its dignity and authority by citing the 1st respondent contempt and punishing him accordingly.
29. The application is supported by the affidavit of Orley Opiyo Odipo. The same rehashes the averments in the plaint and the grounds hereinabove. Additionally, it is deponed that on the morning of 5/7/2025, the applicant visited Siaya Town on a routine visit. He found that someone had removed the whole roofing structure and iron sheets from his family's said house on the suit land.
30. That he suspected that the 1st respondent was the culprit since he had been served with the suit papers herein three days earlier. That he made inquiries within the neighbourhood which led him to a lady who identified herself as the sister-in-law to the 1st respondent since she was married to the 1st respondent's brother, Vin Muga. That at her stall near White House within Siaya Town, the deponent found her with some of the timber and iron sheets from the demolished roof - photos of the demolished roof and iron sheets was attached.

31. It is deponed that he on 5/7/2025, lodged a malicious damage and stealing report at Siaya Police Station against the 1st respondent and his agents as OB NO. 24/05/07/25 and was awaiting the appropriate action by the police- a copy of police report is annexed.
32. It is stated after returning to Nairobi where he works, he on 8/7/2025 received received information from her contact persons in Siaya Town that the remaining portion of his family's house was demolished around 8/7/2025 - photos of the completely demolished house were annexed. The applicant avers that the 1st respondent's and/or his agents' said demolition of the house was calculated at defeating the pending application dated 27/6/2025 and the subject main suit for adverse possession.
33. In response to the application and the foregoing averments the 1<sup>st</sup> respondent in the replying affidavit sworn on 22/8 /2025.
34. The respondent depones that he had no knowledge of neither was he associated with the alleged invasion on 1st July 2025. That indeed he was served with pleadings herein on 7th July 2025 by which time the unknown persons had already demolished the structure on 1st July 2025. That the applicant admits in paragraph 7 that on 5th July, 2025 she found the roof missing but did not know who had removed it but only suspected it was the 1<sup>st</sup> defendant. That this is an admission on the part of the applicant that since temporary orders were issued the first time he visited the

impugned parcel is 5th July, 2025. That the applicant CANNOT conclusively tell the exact date of demolition. The names of the neighbours from whom she made inquiries and who allegedly led him to the stall the respondents alleged sister-in-law are not disclosed including the name of the said sister-in-law.

35. It is averred that the photos in support of the applicant's assertion do not show the alleged sister-in-law, her alleged stall, and timber situated in her alleged stall. That in spite of the report made by the applicant on 5th July 2025 the 1<sup>st</sup> respondent and his alleged sister-in-law have not been summoned by police or arraigned before any criminal court to answer to the charges. (See paragraph 8 of the Applicant's Supporting Affidavit dated 10th July 2025) 20.
36. The respondent states he cannot be in contempt if the house was demolished before he was served, on a date unknown to the applicant and by persons unknown to him. That suspicion that he removed the roof without proof and from unnamed sources is at best hearsay and not evidence of contempt.
37. The application is termed an afterthought and the court is invited to dismiss it.
38. The applicant responded by further affidavit sworn on 7/10/2025. It is deponed interalia that the respondent did not report the invasion to the police yet he is the registered owner. It is reiterated that the respondent was served on 7/7/2025 as confirmed by a telephone conversation on

2/7/2025 between the respondent and the applicants advocate on record. That there is direct and or circumstantial evidence pointing to the 1<sup>st</sup> respondent as the facilitator. It is stated the neighbours are Michael Olik Ododa and who later informed him that the 1<sup>st</sup> Respondent had visited and sought to know from them why they had informed the applicant about the demolition. That his civic duty was to report crimes to the police and he had no control over the pace of investigations and raising of Charges. Further that on 14/7/2025 a lorry KBS 419 associated with the 1<sup>st</sup> respondent as confirmed with NTSA records carried bricks of the demolished house from the scene.

### **Submissions**

39. The application was heard by way written submissions. Parties complied by filing and exchanging submissions. The applicants submissions are dated 7/10/2025 and the respondents 29/09/2025.

### **ANALYSIS AND DETERMINATION**

40. I have read the affidavit sworn in support of the application and those sworn in reply. I have also given due consideration to the submissions of the learned counsels appearing.
41. The main issue for determination is whether the application has met the threshold for grant of the orders of contempt.

42. Section 5(1) of the **Judicature Act** grants the High Court and the Court of Appeal the power to punish for contempt. It provides:(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 that power shall extend to upholding the authority and dignity of subordinate courts.
43. Section 29 of the Environment and Land Court Act also empowers the court to entertain contempt proceedings.
44. Mativo J. restated the test for establishing contempt in his decision in **Samuel M. N. Mweru & Others v National Land Commission & 2 others [2020] eKLR** where he stated –

*“40. It is an established principle of law that in order to succeed in civil contempt proceedings, the applicant has to prove*

*(i) the terms of the order,*

*(ii) Knowledge of these terms by the Respondent,*

*(iii) Failure by the Respondent to comply with the terms of the order.*

*Upon proof of these requirements the presence of wilfulness and bad faith on the part of the Respondent would normally be inferred, but the Respondent could rebut this inference by contrary proof on a balance of probabilities. 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 order;*
- c. The defendant has acted in breach of the terms of the order; and*
- d. The defendant's conduct was deliberate.”*

45. It is now established that the standard of proof in contempt proceedings is higher than proof on the balance of probabilities, almost but not exactly, beyond a reasonable doubt - see **Mutitika v. Baharini Farm Limited [1985] KLR 229, 234.**

46. The Supreme Court of Kenya in **Republic v Ahmad Abolfathi Mohammed & Sayeed Mansour Mousavi [2018] KESC 51 (KLR)** stated that contempt proceedings are quasi-criminal, they must be exercised with utmost care and only as a last resort and an applicant must establish that the alleged contemnor's conduct was

deliberate, in the sense that he or she wilfully acted in a manner that flouted the court order.

47. As already noted elsewhere in this ruling this court on 1/07/2025 made an order that the status quo as to the applicant's occupation of the portion 41 by 26 paces on the suit property **Siaya/Karapul Ramba/4996** be maintained. The orders were to subsist until 18<sup>th</sup> September 2025.
48. The next criteria is for the applicant to demonstrate that the orders of the court was brought to the alleged contemnors attention or knowledge. This is by service and which service must also meet the threshold for proper service.
49. The applicant has stated in his pleadings that the 1<sup>st</sup> Respondent was served with the above court order on 2/7/2025. See ground No. (d) of the present application. This is also reiterated in the certificate of urgency dated 10/7/2025. The applicant also confirms at paragraph 6 of the Replying affidavit that the respondent was served on the morning of 2/7/2025.
50. The respondent alleges at paragraph 11 that he was served with the pleadings on 7/7/2025.
51. An affidavit of service was produced by the applicant sworn by Michael Peter Otieno Awuor on 10/7/2025 a partner in the law firm on record for the applicant. Service was on whatsapp social media platform. At paragraph 5 therein it is deponed that service was undertaken on

2/7/2025 at 8.29am. The respondent does not deny that the telephone number used for service belongs to him. While he deponed that he was served on 10/7/2025 he does not attach any proof to confirm this and the mode of service.

52. I have reviewed the screen shorts of the whatsapp conversations and I'm persuaded that the applicant has proved that the orders were served on the 1<sup>st</sup> respondent as deponed.
53. The next requirement is to answer if the 1<sup>st</sup> respondent has acted in breach of the terms of the order. The burden of proof is on the person who alleges there was breach and it was done by the alleged contemnor.
54. In the circumstances of this case the applicant depones that the demolition occurred between 5/7/2025 and 8/7/2025. Firstly, partially by removal of the roof and thereafter complete demolition. There is no contestation that these demolitions occurred and which was against the court order which had clearly stated the status quo is maintained.
55. But was there proof that the above demolition was undertaken by the 1<sup>st</sup> respondent or people linked to him. The applicant has deponed that he suspected that the 1<sup>st</sup> respondent had a hand in the first demolition because he had been served 3 days earlier. But I must state at this point that mere suspicion would not suffice in view of the burden of proof which is slightly higher than that of a

balance of probabilities. Were the balance a lower one then it would be easier to conclude it was more probable than not since a motive could easily be imputed to the 1<sup>st</sup> respondent as the registered proprietor of the suit property.

56. Additionally, while the applicant states inquiries were made and some names disclosed, there was nothing on record from the said neighbours to confirm and or corroborate the averments attributed to them since the applicant did not see the person who undertook the demolition. Nothing would have been easier than for them to swear affidavits in this regard.
57. I think based on the material before court and the standard of proof set being slightly higher than that of civil cases I would be hesitant to infer that the 1<sup>st</sup> respondent facilitated and or undertook the demolition.
58. It is the finding of this court that the applicant did not prove to the required standard that the said demolition was undertaken by the 1<sup>st</sup> respondent and or facilitated by the said 1<sup>st</sup> respondent.
59. The following orders therefore issue to dispose of the applications dated 27<sup>th</sup> June 2025 and 10<sup>th</sup> July 2025; -

***1) THAT pending hearing and determination of the main suit the status quo as to the applicant's occupation of the portion 41 by 26 paces on the suit property Siaya/Karapul Ramba/4996 be maintained. For the avoidance***

***of doubt the applicant shall maintain possession of the said portion and complete demolition having taken place the remains shall be preserved as is on the ground.***

***2) THAT pending hearing and determination of the main suit an order of inhibition is hereby issued restricting the registration of any disposition in the register of land parcel Siaya/Karapul Ramba/4996.***

***3) THAT the application dated 10<sup>th</sup> July 2025 is hereby dismissed.***

***4) THAT costs of both applications shall abide the outcome of the main suit.***

Orders accordingly.

**Dated at Siaya this 19<sup>th</sup> Day of February, 2026**

**HON. JUSTICE A. E. DENA**

**JUDGE**

**19/02/2026**

**Ruling delivered virtually through Microsoft Teams  
Video Conferencing Platform in the Presence of:**

Mr. Okeyo for Appellant/Applicant

Mr. Ochanyo for 1<sup>st</sup> Respondent

No appearance for 2<sup>nd</sup> and 3<sup>rd</sup> Respondents

Court assistant: Ishmael Orwa

ORIGINAL