



**Ruto v County Government of Kericho (Environment and Land Petition
E001 of 2022) [2026] KEELC 709 (KLR) (12 February 2026) (Ruling)**

Neutral citation: [2026] KEELC 709 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KERICHO
ENVIRONMENT AND LAND PETITION E001 OF 2022
LA OMOLLO, J
FEBRUARY 12, 2026**

BETWEEN

JOSEAH KIPLANG'AT RUTO PETITIONER

AND

COUNTY GOVERNMENT OF KERICHO RESPONDENT

RULING

Introduction.

1. This ruling is in respect of the Petitioner/Applicant's Notice of Motion application dated 12th June, 2025. The application is expressed to be brought under Sections 1A, 1B & 3A of the [Civil Procedure Act](#), Order 51 Rule 1 of the Civil Procedure Rules, Section 3 & 13 of the [Environment and Land Court Act](#) and Article 159 of [the Constitution](#) of Kenya.
2. The application seeks the following prayers;
 - a. Spent
 - b. That the Governor of Kericho County, the County Secretary and the CECM for Water, Environment, Energy, Forestry, and Natural Resources, Kericho County, the contemnors herein, be cited for contempt of Court Orders of this Honorable Court issued on the 28th of September, 2023.
 - c. That upon citation for contempt, the Governor of Kericho County, The County Secretary and the CECM for Water, Environment, Energy, Forestry, and Natural Resources, Kericho County, the contemnors herein be sanctioned by committal to civil jail for six (6) months, sequestration of property, payment of a fine and/or any further orders as this Court shall deem appropriate.



- d. That this Honourable Court be pleased to issue an order of mandatory injunction compelling the Governor of Kericho County, the County Secretary and the CECM for Water, Environment, Energy, Forestry, and Natural Resources, Kericho County to immediately cease the dumping, disposal and incineration of solid wastes and other forms of waste on the suit properties; Kericho Municipality Block 1/390, Kericho Municipality Block 1/391, Kericho Municipality Block 1/392, Kericho Municipality Block 1/393, Kericho Municipality Block 1/394, Kericho Municipality Block 1/402, Kericho Municipality Block 1/403, Kericho Municipality Block 1/404 and Kericho Municipality Block 1/405 and the dumpsite.
 - e. That this Honourable Court be pleased to issue a positive mandatory injunction compelling the Governor of Kericho County, the County Secretary and the CECM for Water, Environment, Energy, Forestry, and Natural Resources, Kericho County to clear the wastes currently deposited on the dumpsites and the suit properties within the next 60 days.

In default, the Applicant be empowered by this Honourable Court to take necessary steps towards a cleanup of the dumpsite at the Respondent's cost estimated at Kenya Shillings Thirty Million (Ksh. 30,000,000/=) and that the said amount be deposited with the Applicant within a period of 30 days from the date of default.
 - f. That this Honourable Court be pleased to direct the National Environment Management Authority (NEMA) to oversee compliance with the orders herein.
3. The application is based on the grounds on its face and the Supporting Affidavit of the Petitioner/ Applicant sworn on 12th June, 2025.

Factual Background.

4. The Petitioner/Applicant commenced the present proceedings vide the Petition dated 15th May, 2022 where he sought the following orders;
- a. A declaration be and is hereby issued that the fundamental right and freedoms of the Petitioner to the suit properties has been infringed by the Respondent's actions or omissions subject of this Petition, in contravention of Article 40 *the Constitution* of Kenya, 2010.
 - b. A declaration be and is hereby issued that the fundamental right and freedoms of the Petitioner to a clean and healthy environment has been infringed by the Respondent's actions or omissions subject of this Petition, in contravention of Article 42 *the Constitution* of Kenya, 2010.
 - c. A declaration be and is hereby issued that the fundamental right and freedoms of the Petitioner to the highest attainable standard of health, reasonable standards of sanitation and clean and safe water has been infringed by the Respondent's actions or omissions subject of this Petition, in contravention of Article 43 *the Constitution* of Kenya, 2010.
 - d. A declaration be and is hereby issued that the Respondent's actions or omissions subject of this Petition are in contravention of Article 69 (1) *the Constitution* of Kenya, 2010 that lists its obligation as regards the environment to, inter alia, include:
 - a. ensuring sustainable exploitation, utilization, management and conservation of the environment and natural resources,
 - b. encouraging public participation in the management, protection and conservation of environment (sic),



- c. protecting biological diversity,
 - d. establishing systems of environmental impact assessment, environmental audit and monitoring of environment,
 - e. eliminating processes and activities that are likely to endanger the environment.
- e. A declaration be and is hereby issued that the Respondent's actions or omissions subject of this Petition are in contravention of Article 69 (2) *the Constitution* of Kenya, 2010 that requires every person to cooperate with state organs and other persons to protect and conserve the environment and ensure ecologically sustainable development and use of natural resources.
 - f. A declaration be and is hereby issued that the Respondent's actions or omissions subject of this Petition are in contravention of Section 42 (1) (e) of the Environmental Management and Coordination Act no. 8 of 1999 that protects rivers and wetlands and prohibits any person, without any approval from the National Environmental Management Authority, given after an Environmental Impact Assessment in relation to the river or wetland from depositing any substance in the river or wetland that is likely to have adverse environmental effects on the river or wetland. (sic)
 - g. A declaration be and is hereby issued that the Respondent's actions or omissions subject of this Petition are in contravention of Section 63 of the Environmental Management and Coordination Act no. 8 of 1999 for failing, neglecting, refusing and or declining to procure an Environmental Impact Assessment Licence (sic) from the National Environmental Management Authority in relation to the suit properties.
 - h. A declaration be and is hereby issued that the Respondent's actions or omissions Subject of this Petition are in contravention of Section 72 of the Environmental Management and Coordination Act no. 8 of 1999 that prohibits the dumping or discharging pollutants or such matter in aquatic environment.
 - i. A declaration be and is hereby issued that the Respondent's actions or omissions subject of this Petition are in contravention of Section 87 (1) of the Environmental Management and Coordination Act no. 8 of 1999 that prohibits any person from discharging or disposing of any wastes in such a manner as to cause pollution to the environment or ill health to any person.
 - j. A declaration be and is hereby issued that the Respondent's actions or omissions subject of this Petition are in contravention of Section 87 (4) of the Environmental Management and Coordination Act no. 8 of 1999 that prohibits any person from operating a Waste Disposal Site without a licence (sic).
 - k. A declaration be and is hereby issued that the Respondent's actions or omission subject of this Petition are in contravention of Section 88 and 89 of the Environmental Management and Coordination Act No. 8 of 1999 for failing, neglecting, refusing and/or declining to procure a Waste License from the National Environmental Management Authority in relation to the suit properties for the transport of wastes, operating a waste disposal Sites or Plants on operating an existing waste disposal Sites or Plants.
 - l. An order of permanent injunction be and is hereby issued immediately restraining the Respondent from trespassing and or in any other way illegally unlawfully and or without any reasonable excuse entering unto the suit properties known as Kericho Municipality Block 1/390, Kericho Municipality Block 1/391, Kericho Municipality Block 1/392, Kericho Municipality Block 1/393, Kericho Municipality Block 1/394, Kericho Municipality Block



1/402, Kericho Municipality Block 1/403, Kericho Municipality Block 1/404 and Kericho Municipality Block 1/405 and continuing to so do and or permitting the same.

- m. An order of Permanent Injunction be and is hereby issued immediately restraining the Respondent from dumping and or incinerating solid wastes and other forms of wastes on the suit properties known as Kericho Municipality Block 1/390, Kericho Municipality Block 1/391, Kericho Municipality Block 1/392, Kericho Municipality Block 1/393, Kericho Municipality Block 1/394, Kericho Municipality Block 1/402, Kericho Municipality Block 1/403, Kericho Municipality Block 1/404 and Kericho Municipality Block 1/405 or in any other way willfully destroying and damaging the said suit properties and continuing to so do without the Petitioner's knowledge and or consent and or permitting the same.
- n. An order of Permanent Injunction be and is hereby issued immediately restraining the Respondent from diminishing the value of the suit properties known as Kericho Municipality Block 1/390, Kericho Municipality Block 1/391, Kericho Municipality Block 1/392, Kericho Municipality Block 1/393, Kericho Municipality Block 1/394, Kericho Municipality Block 1/402, Kericho Municipality Block 1/403, Kericho Municipality Block 1/404 and Kericho Municipality Block 1/405 by dumping and or incinerating solid wastes and other forms of wastes thereon and continuing to so do and or permitting the same.
- o. An order of permanent injunction to be and is hereby issued immediately restraining the Respondent from operating a waste disposal site on the suit properties known as Kericho Municipality Block 1/390, Kericho Municipality Block 1/391, Kericho Municipality Block 1/392, Kericho Municipality Block 1/393, Kericho Municipality Block 1/394, Kericho Municipality Block 1/402, Kericho Municipality Block 1/403, Kericho Municipality Block 1/404 and Kericho Municipality Block 1/405 without an Environmental Impact Assessment license from the National Environmental Management Authority and/or permitting the same.
- p. An order of Permanent Injunction be and is hereby issued immediately restraining the Respondent from operating a waste disposal site on the suit properties known as Kericho Municipality Block 1/390, Kericho Municipality Block 1/391, Kericho Municipality Block 1/392, Kericho Municipality Block 1/393, Kericho Municipality Block 1/394, Kericho Municipality Block 1/402, Kericho Municipality Block 1/403, Kericho Municipality Block 1/404 and Kericho Municipality Block 1/405 and continuing to do so without a waste License from the National Environmental Management Authority and or permitting the same.
- q. An order of Permanent Injunction be and is hereby issued immediately restraining the Respondent from blatantly depositing solid wastes and other substances that are likely to have adverse environmental effects on the river and or wetland neighboring the suit properties known as Kericho Municipality Block 1/390, Kericho Municipality Block 1/391, Kericho Municipality Block 1/392, Kericho Municipality Block 1/393, Kericho Municipality Block 1/394, Kericho Municipality Block 1/402, Kericho Municipality Block 1/403, Kericho Municipality Block 1/404 and Kericho Municipality Block 1/405 of otherwise so doing, without any approval from NEMA, given after an Environmental Impact Assessment in relation to the said river or wetland or at all and or permitting the same.
- r. An order of Permanent Injunction be and is hereby issued immediately restraining the Respondent from arbitrarily depriving or limiting or in other way restricting the Petitioner of the enjoyment of his right to the suit properties known as Kericho Municipality Block 1/390, Kericho Municipality Block 1/391, Kericho Municipality Block 1/392, Kericho Municipality Block 1/393, Kericho Municipality Block 1/394, Kericho Municipality Block 1/402, Kericho



Municipality Block 1/403, Kericho Municipality Block 1/404 and Kericho Municipality Block 1/405 or of his interest thereon and or permitting the same.

- s. An Environmental Restoration Order compelling the Respondent to carry out an environmental restoration process of the suit properties to the satisfaction of this Court and the Petitioner.
 - t. General Damages.
 - u. Special Damages.
 - v. Exemplary Damages.
 - w. Costs of this Petition to be awarded to the Petitioner.
 - x. Interest at Court rates.
 - y. Any other or further relief that this Court may deem fit and just to grant.
5. In response to the Petition, the Respondent filed a Preliminary Objection dated 16th December, 2022 and a Replying Affidavit sworn by Sylvia Inziani the Respondent's Physical Planner on 7th December, 2022.
6. On 28th September, 2023 the Court delivered judgement and issued the following orders;
- a. A declaration is hereby made that the Respondent has violated the Petitioner's right to a clean and healthy environment under Article 42 of *the Constitution* of Kenya, 2010 in regard to the manner in which they have operated the dumpsite.
 - b. The Respondent shall with immediate effect, if it intends to continue using the dumpsite, apply to NEMA for a waste disposal site license in respect of the dumpsite as provided for under Sections 87, 88 and 89 of EMCA or other relevant legal provisions within 14 (fourteen) days from the date of delivery of this judgment.
 - c. NEMA shall then consider such application and process it pursuant to the relevant legal provisions within forty-five (45) days of receipt and report to this Court. Depending on the report, this Court reserves the discretion to issue any further orders that may be deemed necessary in order to properly safeguard the Petitioner's rights to a clean and healthy environment.
 - d. If no application for a waste disposal site licence is made as ordered above or if the terms of any licence granted by NEMA are not complied with, NEMA shall make an application to this Court under section 90 of EMCA.
 - e. NEMA shall monitor compliance with these orders and cause this matter to be mentioned periodically as necessary to update the Court on compliance by the Respondent and compliance by NEMA itself.
 - f. I therefore order that this judgment be served upon NEMA so that they can proceed to ensure compliance with the orders issued herein, and to report to this Court as earlier directed.
 - g. Finally on costs, I do award costs of this Petition to the Petitioner to be payable by the County Government of Kericho.
7. The application under consideration first came up for hearing on 16th June, 2025 when the Court directed that it be served upon the Respondent.



8. On 28th July, 2025, the Court issued directions that the application be canvassed by way of written submissions.
9. On 9th October, 2025, the matter was mentioned to confirm filing of submissions and then reserved for ruling.

The Petitioner/Applicant's contention.

10. The Petitioner/Applicant contends that he filed a Petition dated 15th May, 2022 which was heard and judgement delivered on 28th September, 2023.
11. The Petitioner/Applicant also contends that in the Judgement, the Respondent was directed as follows;
 - a. Under order (ii), the Court directed the Respondent, to, with immediate effect, if it intended to continue using the dumpsite, apply to NEMA for a waste disposal site license in respect of the dumpsite as provided for under Sections 87, 83 and 89 of EMCA or other relevant legal provisions within 14 (fourteen) days from the date of delivery of the judgment;
 - b. Under order (vi), the Court directed the Respondent to; with immediate effect issue licenses to all the transporters of waste and
 - c. Under order (vii), the Court directed that; in the meantime, the facility be secured with a perimeter wall with a provision of storm water drainage.
12. The Petitioner/Applicant further contends that the Respondent has failed to comply with the judgement of the Court as it has not applied to NEMA for a waste disposal site license for the dumpsite.
13. It is the Petitioner/Applicant's contention that the Respondent has also failed to issue licenses to all transporters of waste. The Respondent has also failed to secure the dumpsite with a perimeter wall and with a provision of storm water drainage.
14. It is also the Petitioner/Applicant's contention that the Respondent has continued to dump and dispose raw waste on the dumpsite without a license by NEMA and in defiance of the Court's judgement.
15. It is further the Petitioner/Applicant's contention that the said dumpsite continues to discharge effluents to the river whose water is being consumed by unsuspecting residents, thereby exposing them to health risks.
16. The Petitioner/Applicant contends that the toxic fumes from the incineration of the solid wastes in addition to the contamination emanating from the effluents flowing into the river pose imminent health risks to him and the members of the public. He goes on to state that the health risks include respiratory diseases, groundwater contamination and waterborne diseases.
17. The Petitioner/Applicant also contends that he requested the Respondent to confirm if it had obtained the waste disposal site license but his request did not elicit any response.
18. The Petitioner/Applicant further contends that the Governor, Kericho County, the County Secretary and the County Executive Committee Member for Water, Environment, Energy, Forestry and Natural Resources, Kericho County are under the obligation to ensure that the judgement of the Court is complied with.



19. It is his contention that the Governor, Kericho County, the County Secretary and the County Executive Committee Member for Water, Environment, Energy, Forestry and Natural Resources, Kericho County should be held personally liable for the continued dumping and disposal of the raw waste on the dumpsite which is in contempt of this Court's judgement.
20. It is also his contention that the Respondent's actions have contravened his right to a clean and healthy environment which is provided for under Article 42 of *the Constitution* of Kenya.
21. It is further his contention that his rights under Article 70 of *the Constitution* of Kenya have also been contravened.
22. He contends that the continued unregulated waste disposal, raw waste overflow and spillage onto his parcels of land together with the emission of toxic fumes will cause irreparable and irreversible degradation to his land and will also affect his health.
23. He also contends that the Court should issue an order to compel the Governor, Kericho County, the County Secretary and the County Executive Committee Member for Water, Environment, Energy, Forestry and Natural Resources, Kericho County to clear the waste deposited in the dumpsite and the suit parcels of land within the next 60 days.
24. He further contends that in default, the Court should empower him to take the necessary steps to clear the dumpsite at the Respondent's costs.
25. It is his contention that he has taken the liberty of consulting a professional who has estimated the cost of clearing the dumpsite to be Kshs. 30,000,000/=.
26. He ends his deposition by stating that it is in the interest of justice that the application be allowed as prayed.
27. The Respondent did not file a response to the application.

Issues for Determination.

28. The Petitioner/Applicant filed his submissions on 3rd October, 2025 while the Respondent did not file any submissions.
29. The Petitioner/Applicant sets out the background of the suit, reiterates his averments in his affidavit in support of the application and submits on the following issues;
 - a. Whether the contemnors are in contempt of Court and if they should be cited and punished for contempt.
 - b. Whether the Applicant is entitled to further reliefs sought to prevent further degradation of the environment.
 - c. Whether costs should be awarded to the Applicant.
30. On the first issue, the Petitioner/Applicant submits that Court orders must be obeyed. The Petitioner/Applicant relies on the judicial decisions of *Econet Wireless Kenya Ltd v Minister for Information & Communication of Kenya & another* [2005] KLR 828, *Sam Nyamweya & Others vs Kenya Premier League Ltd and Others* [2015]eKLR, *North Tetu Farmers Co. Ltd vs Joseph Nderitu Wanjohi* [2016] eKLR and submits that there are four elements that must be proved for a party to be cited for contempt.
31. The Petitioner/Applicant submits that firstly, the terms of the order must be clear, unambiguous and binding on the contemnors.



32. The Petitioner/Applicant also submits that the orders issued by the Court in the judgement delivered on 28th September, 2023 are clear and binding on the contemnors who are under an obligation to comply with them.
33. The Petitioner/Applicant further submits that secondly, the contemnors must have knowledge of the order.
34. It is the Petitioner/Applicant's submissions that the Respondent actively participated in the present proceedings and is aware of the terms of the judgement.
35. It is also the Petitioner/Applicant's submissions that the last two elements are that the contemnors must have acted in breach of the orders of the Court and that their conduct was deliberate.
36. It is further the Petitioner/Applicant's submissions that the Respondent has willfully, intentionally and deliberately disobeyed the orders of the Court.
37. The Petitioner/Applicant submits that the Respondent failed to file a response to the application under consideration and the application is therefore unopposed.
38. The Petitioner/Applicant also submits that Courts punish for contempt in order to uphold its dignity and authority.
39. The Petitioner/Applicant therefore urges the Court to find that the contemnors are in contempt of Court.
40. The Petitioner/Applicant further submits that the Court should punish the contemnors by either committing them to civil jail for a period not exceeding six months, sequestering their property, order for payment of a fine or issue any orders it may deem fit to grant.
41. On the second issue, the Petitioner/Applicant submits that he seeks for a mandatory injunction under prayers (4) and (5) of the application under consideration.
42. The Petitioner/Applicant relies on the judicial decision of *Giella vs Cassman Brown* [1973] EA and submits that since judgement in this matter has already been delivered, he has established a prima facie case.
43. The Petitioner/Applicant also submits that the Court has already ruled on the merits of his suit and the present application is only seeking for the enforcement of the judgement of the Court.
44. The Petitioner/Applicant further submits that the Respondent's contemptuous actions have degraded his parcels of land and caused eminent health risks.
45. It is the Petitioner/Applicant's submissions that given the said situation, the Court should in the interest of justice swiftly intervene and issue the mandatory reliefs sought.
46. The Petitioner/Applicant reiterates that the Court can empower him to take the necessary steps and clean up the dump site at the cost of kshs. 30,000,000/= to be borne by the Respondent.
47. The Petitioner/Applicant relies on the judicial decisions of *William Musembi & 2 Others vs China Wu Yi Limited & another* [2020] eKLR, *Sawe Lamu vs National Environmental Management Authority & another* [2019] eKLR and submits that the Respondent's actions are a direct assault on his constitutional right to a clean and healthy environment.



48. The Petitioner/Applicant relies on Section 27 of the *Civil Procedure Act*, the judicial decisions of Cecilia Karuru Ngayu vs Barclays Bank & another [2016] eKLR, Morgan Air Cargo Limited vs Evrest Enterprises Limited [2014] eKLR and urges the Court to allow his application with costs.

Analysis and Determination.

49. I have considered the Petitioner/Applicant's application and submissions. It is my view that the only issue that arises for determination is whether the application dated 12th June, 2025 has merit.
50. Before proceeding any further, it is important to note that judgement in this matter was delivered on 28th September, 2023.
51. It is also important to note that the firm of advocates representing the Petitioner/Applicant at the time when judgement was delivered is Ken Ochieng & Company Advocates.
52. The application under consideration has been filed by Mutuma Gichuru & Associates Advocates who have also filed a Notice of Appointment of Advocates dated 10th June, 2025.
53. Order 9 Rule 9 of the Civil Procedure Rules provides as follows;
- “When there is a change of advocate, or when a party decides to act in person having previously engaged an advocate, after judgment has been passed, such change or intention to act in person shall not be effected without an order of the Court—
- (a) upon an application with notice to all the parties; or
- (b) upon a consent filed between the outgoing advocate and the proposed incoming advocate or party intending to act in person as the case may be.”
54. In the judicial decision of Archer & another v Archer & 2 others [2024] KEELC 7068 (KLR) the Court while considering the provisions of Order 9 Rule 9 of the Civil Procedure Rules held as follows;
- “22. Accordingly, for a valid change of Advocates to be effected after Judgment, Court order (sic) must issue either on application or by consent filed in Court. Such an application need not be separate from the substantive application as the prayers for change of advocates can be dealt first but within the same application which may contain other prayers as may be desired by an Applicant.
23. It is evident that before a Notice of Change of Advocates can only (sic) be filed after judgment has been delivered, it must be preceded by either an application wherein an incoming advocate seeks leave to come on record for a party or by a consent between the outgoing and proposed incoming advocate or party intending to act in person as the case may be...
29. Clearly the provisions of Order 9 Rule 9 of the Civil Procedure Rules make it mandatory that for any change of Advocates after judgment has been entered to be effected, then there must be an order of the Court upon application with notice to all parties or upon a consent filed between the outgoing Advocate and the proposed incoming Advocate. The reasoning behind the provision was



well articulated in the case of “S. K. Tarwadi – Versus - Veronica Muehlmann [2019] eKLR” where the Judge observed as follows:

“.....In my view, the essence of the Order 9 Rule 9 of the CPR was to protect advocates from the mischievous clients who will wait until a judgment is delivered and then sack the advocate and either replace him....”

30. In the case of “Lalji Bhimji Shangani Builders & Contractors –Versus - City Council of Nairobi [2012] eKLR” the Court held as follows: -

“A party who without any justification decides not to follow the procedure laid down for orderly conduct of litigation cannot be allowed to fall back on the said objective for assistance and where no explanation has been offered for failure to observe the Rules of procedure the Court may well be entitled to conclude that failure to comply therewith was deliberate.”

31. The Plaintiffs’ counsel coming on record ought to have sought leave of the Court to come on record, then file and serve the notice of change of Advocates before filing the application dated 8th March, 2024. It must be remembered that the provisions of Order 9 Rule 9 of the Civil Procedure Rules do not impede the right of a party to be represented by an Advocate of his/her choice, but sets out the procedure to be adhered to when a party wants to change counsel after judgment has been delivered so as to avert any undercutting and or chaos. Thus a party so wishing to change his counsel must notify the Court and other parties.” (Emphasis mine)

55. In the above cited judicial decision, the Court held that the provisions of Order 9 Rule 9 of the Civil Procedure Rules are mandatory. The Court also held that there must be an order of the Court upon application with notice to all the parties or a consent filed between the outgoing advocate and the proposed incoming advocate for a party to procedurally change advocates after judgement has been delivered.

56. In the present case, it is evident that Mutuma Gichuru & Associates Advocates have neither sought leave to come on record nor have they filed a consent between them and Counsel currently on record for the Petitioner/Applicant.

57. Consequently, Mutuma Gichuru & Associates Advocates have not complied with the mandatory provisions of Order 9 Rule 9 of the Civil Procedure Rules and are, therefore, not properly on record.

Disposition.

58. Taking the foregoing into consideration, I find that the Notice of Motion application dated 12th June, 2025 has been improperly filed in Court and it is hereby struck out.

59. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KERICHO THIS 12TH DAY OF FEBRUARY, 2026.

L. A. OMOLLO

JUDGE.



In the presence of: -

Mr. Mureithi for Mutuma for the Petitioner.

Court Assistant; Mr. Joseph Makori.

