



**Shah & another v Juma & 2 others; Chelogoi (Interested Party) (Environment and Land Case 312 of 2009) [2026] KEELC 698 (KLR) (4 February 2026) (Ruling)**

Neutral citation: [2026] KEELC 698 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT AND LAND CASE 312 OF 2009  
TW MURIGI, J  
FEBRUARY 4, 2026**

**BETWEEN**

**ASHOK RUPSHI SHAH ..... 1<sup>ST</sup> PLAINTIFF**

**HITENKUMAR AMRITLAL RAJA ..... 2<sup>ND</sup> PLAINTIFF**

**AND**

**JACOB JUMA ..... 1<sup>ST</sup> DEFENDANT**

**THE COMMISSIONER OF LANDS ..... 2<sup>ND</sup> DEFENDANT**

**THE REGISTRAR OF TITLES ..... 3<sup>RD</sup> DEFENDANT**

**AND**

**DAVIS NATHAN CHELOGOI ..... INTERESTED PARTY**

**RULING**

1. By a Notice of Motion dated 1<sup>st</sup> August 2025 brought under Section 5 of the *Judicature Act*, Sections 1A, 1B, and 3A of the *Civil Procedure Act*, the Applicant seeks the following orders:
  - a) That pending the hearing and determination of this application, this Court do issue a temporary injunction restraining the 1<sup>st</sup> and 2<sup>nd</sup> Respondents by themselves or through their representatives, assigns, or other persons whosoever from evicting the Applicant from possession and occupation of the parcel of land known as L.R. 18485 I.R 64011 or L.R. 19485 IR 232908 (Now Nairobi Block 80 44-72) located in Loresho Kabete Nairobi County.
  - b) That pending the inter partes hearing of this application, this court do order the immediate reinstatement of the Applicant/Interested Party back into possession and occupation of all that parcel of land known as L.R. 18485 I.R 64011 or L.R. 18485 I.R. 232908 (NOW NAOROBİ BLOCK 80 44-72) located in Loresho Lower Kabete Nairobi County.



- c) That the Nairobi Regional Police Coordinator and the OCPD Gigiri Police Westlands Sub-County, Nairobi, do enforce the Court orders pending the hearing and determination of the application.
  - d) That this Honorable Court be pleased to grant the Applicant leave to institute contempt of court proceedings against the 1<sup>st</sup> and 2<sup>nd</sup> Respondents, the Nairobi Regional Criminal Investigation Officer, the Nairobi Regional Police Commander, the OCPD Gigiri West lands Sub-County, the DCIO Gigiri, and Victor Juma Owiti, the Principal, Prosecution Counsel, for disobeying the ruling of this Honorable Court entered on 22<sup>nd</sup> April 2024.
  - e) That this Honorable Court be pleased to find that the 1<sup>st</sup> and 2<sup>nd</sup> Respondents, the Nairobi Regional Criminal Investigation Office, the Nairobi Regional Police Commander, the OCPD Gigiri Westlands Sub-County, and Victor Juma Owiti, the Principal Prosecution Counsel, are in contempt of the ruling delivered by this Court on 22<sup>nd</sup> April 2024.
  - f) That summons do issue to the 1<sup>st</sup> and 2<sup>nd</sup> Respondents, the Nairobi Regional Criminal Investigation Officer, the Nairobi Regional Police Commander, the OCPD Gigiri Westlands Sub-County and Victor Juma Owiti, the Principal Prosecution Counsel, to appear before this court to show cause why they should not be committed to civil jail for a period not exceeding six (6) months for disobeying the ruling entered by this court on 22<sup>nd</sup> April 2024.
  - g) That the costs of the application be in the cause.
2. The Application is based on the grounds appearing on its face together with the supporting affidavits of Davis Nathan Chelogoi, sworn on even date.

### **The Applicant's Case**

3. The Applicant averred that on 22<sup>nd</sup> April 2024, this court dismissed the application filed by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents seeking his eviction from the suit property. He further averred that the 1<sup>st</sup> and 2<sup>nd</sup> Respondents did not appeal or seek review of the ruling.
4. He averred that the 1<sup>st</sup> Respondent lodged a complaint with the Nairobi Area Regional Criminal Investigation Office and concealed material facts by falsely reporting that unknown persons were occupying the suit property, thereby prompting the office to open an inquiry file, which was later forwarded to the ODPP.
5. He stated that by a letter dated 24<sup>th</sup> July 2025, the Director of Public Prosecutions(DPP) instructed the Director of Criminal Investigations (DCI) to charge all individuals occupying the suit property with the offences of forcible detainer and trespass.
6. He maintained that the 1<sup>st</sup> and 2<sup>nd</sup> Respondents were aware of the ruling dismissing their application for eviction, which allowed him to remain in possession and occupation of the suit property.
7. He further asserted that the eviction carried out by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents was unlawful because no eviction order had been issued by the Court. He argued that the 1<sup>st</sup> and 2<sup>nd</sup> Respondents' deliberate disobedience of Court orders in carrying out a forcible eviction amounted to contempt of court and undermined the authority of this court.
8. The Applicant contends that unless the Court intervenes, he will suffer prejudice due to the blatant and contemptuous actions of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents.



## The 1<sup>st</sup> And 2<sup>nd</sup> Respondents Case

9. The 1<sup>st</sup> and 2<sup>nd</sup> Respondents opposed the application through a replying affidavit sworn by Ashok Rupshi Shah on 1<sup>st</sup> September 2025.
10. The deponent averred that, together with the 2<sup>nd</sup> Respondent, they are the registered proprietors of the suit property, which has since been subdivided into 29 parcels, each with its own title.
11. He further averred that this court, by its judgment dated 28<sup>th</sup> July 2022 declared him the legal and bona fide owner of the suit property, cancelled the rival title held by the then Defendant and issued a permanent injunction restraining trespass or dealing with the land. He asserted that the said judgment had neither been set aside nor varied.
12. He explained that the Applicant was joined to the suit as an Interested Party after the judgment was delivered and subsequently filed ELC No. E070 of 2023, which the Court of Appeal stayed by its ruling dated 11<sup>th</sup> October, 2023.
13. The deponent contends that the application does not meet the threshold set in *Giella v Cassman Brown & Company (1973) E A 358*, as the Applicant has not established a prima facie case. He further asserts that various proceedings, including those before the Land Registrar, confirmed that the title held by him and the 2<sup>nd</sup> Respondent is genuine.
14. He also stated that the Office of the Director of Public Prosecution, in its letter dated 24<sup>th</sup> July 2025, authorized the Director of Criminal Investigations to prosecute persons who had invaded the suit property. He emphasized that the Applicant was not among those arrested, as specified in the ODPP's letter.
15. He contended that the directives to cite the officers for contempt are unwarranted as they were neither named in the application nor served with the notice. He further contended that the officers bear no responsibility for any orders in this court's judgment and were merely performing their duties in accordance with Articles 157 and 245 of *the Constitution*.
16. He argued that it would be unreasonable to allow the Applicant to take possession of the suit property, given the allegations of his involvement in numerous criminal activities and the pending criminal charges against him for forgery, uttering a false document, obtaining registration through false pretenses, and abuse of office.
17. The deponent asserted that the Applicant has not shown that he would suffer irreparable harm that cannot be adequately compensated by damages. He further asserted that the balance of convenience favours them, as they are the legal and bona fide owners of the suit property.
18. He contended that the prayer for possession seeks to reverse the Court of Appeal's decision, which stayed the ruling granting the Applicant possession of the property, and that doing so would infringe upon the 1<sup>st</sup> and 2<sup>nd</sup> Respondents' right to peacefully enjoy the property.
19. He argued that the Applicant has no right to deal with the property and has failed to show that he is in contempt of the court order.
20. He maintained that there was no positive order granting the Applicant possession of the suit property. He contended that the people arrested on the suit property were goons.
21. The application was canvassed by way of written submissions



### **The Applicant/interested Party's Submissions**

22. The Applicant filed his submissions dated 19<sup>th</sup> September 2025.
23. On behalf of the Applicant, Counsel outlined the following issues for the court's determination:
  - a) Whether the forceful eviction of the Applicant from the suit property on 31<sup>st</sup> July 2025 was in contempt of the ruling of 22<sup>nd</sup> April 2024;
  - b) Whether summons ought to be issued to the 1<sup>st</sup> and 2<sup>nd</sup> Respondents to show cause why they should not be cited for contempt for effecting an unlawful eviction on 31<sup>st</sup> July 2025;
  - c) Whether an order of reinstatement of the Applicant back to the suit property should issue.
24. Regarding the first issue, Counsel submitted that the Applicant's eviction on 31<sup>st</sup> July 2025 by the Respondents, with police assistance, was based on the DPP's recommendations to charge occupants of L.R. 18485 I.R 64011 or L.R. 18485 I.R 232908 with forcible detainer and trespass. Counsel further submitted that the Respondents were aware of the ruling delivered on 22<sup>nd</sup> April 2024 by Honourable Lady Justice Omange, which they did not challenge.
25. It was submitted that the 1<sup>st</sup> Respondent's complaint that unknown persons had trespassed and were in possession of the suit property was made with the mischievous intent to disregard and disobey the court's ruling
26. Counsel further submitted that the Applicant's eviction from the suit property was carried out without following the procedure under Section 152 of the *Land Act*, as no eviction notice was issued and no eviction orders were obtained against the Applicant. To support this point, reliance was placed on the cases of *Salome Wabwile v. Alfred Okumu Musinaka (2022) KEELC 1200 (KLR)* and *Julius L. Marten v. Caleb arap Rotich (2021) KEELC 195 (KLR)*.
27. Regarding the second issue, Counsel submitted that the 1<sup>st</sup> and 2<sup>nd</sup> Respondents, the Nairobi Regional Criminal Investigation Officer, the Nairobi Regional Police Commander, the OCPD Gigiri Westlands Sub-County, the DCIO Gigiri and Victor Juma Owiti, the Principal Prosecution Counsel, should be summoned to show cause why they should not be cited for contempt as they were involved in the decision that led to the Applicant's forcible eviction.
28. With regard to the third issue, Counsel contended that the Applicant's forcible eviction violated the Court's ruling and the provisions of Section 152 of the *Land Act*. It was argued that in proceedings before this Court and the Court of Appeal, the Courts declined to issue eviction orders pending the hearing and determination of the matters. It was further submitted that this court's ruling prohibited the Respondents from evicting the Applicant, and therefore the Court should order the Applicant's reinstatement to possession and occupation of the suit property.

### **The 1<sup>st</sup> And 2<sup>nd</sup> Respondents Submissions**

29. The 1<sup>st</sup> and 2<sup>nd</sup> Respondents filed their submissions dated 2<sup>nd</sup> October 2025.
30. On behalf of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents, Counsel outlined the following issues for the court's determination:
  - a) Whether the Interested Party is entitled to injunctive relief;
  - b) Whether the Interested Party/Applicant is entitled to possession of the suit property; and



- c) Whether there was contempt on the part of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents herein.
31. Regarding the first issue, Counsel submitted that the Applicant has no legal or beneficial interest in the suit property. Counsel argued that the 1<sup>st</sup> and 2<sup>nd</sup> Respondents are entitled to the fruits of the judgment, which declared them the bona fide owners of the suit property.
  32. Counsel further argued that the Applicant has failed to meet the criteria set out in the cases of *Giella v Cassman Brown Co Limited* (1973) EA 358 and *Wilfred Waweru & another v Kenya Women Microfinance Limited* (2018) eKLR.
  33. Regarding the second issue, Counsel submitted that the Applicant is not entitled to an order of reinstatement to the suit property as he joined the proceedings after judgment had been rendered, and the court had already determined the ownership and entitlement of each party. It was further argued that the court is functus officio. To support this point, reliance was placed on the case of *Kabansora Millers Ltd v Nyangena*, Civil Appeal E665 of 2022 (2025) KEHC 4754 (KLR) (Civ).
  34. Counsel argued that this court cannot determine the issue of possession because the Applicant has joined the 3<sup>rd</sup> Defendant's appeal and must await the Court of Appeal's decision.
  35. Counsel submitted that the Applicant has never been granted possession of the suit property by any order of this Court. Counsel further submitted that Justice Komingoi's decision was made in rem, declaring the 1<sup>st</sup> and 2<sup>nd</sup> Respondents the bona fide legal owners of the suit property.
  36. Counsel argued that reinstating the Applicant to the suit property would overturn the Court of Appeal's decision in Civil Appeal E207 of 2024, which stayed the orders granting the Applicant possession of the suit property. It was further argued that such reinstatement would deprive the decree holders of their right to enjoy the fruits of their judgment.
  37. Regarding the third issue, Counsel submitted that there was no positive or negative order in favour of the Applicant or against the 1<sup>st</sup> and 2<sup>nd</sup> Respondents that would support a finding of contempt.
  38. Counsel further submitted that the 1<sup>st</sup> and 2<sup>nd</sup> Respondents did not deliberately evict the Applicant from the suit premises. It was further submitted that criminal justice cannot be regarded as a deliberate breach of non-existent orders. Counsel submitted that it is absurd to summon state officials, as they are unaware of the status of this matter. It was submitted that the Applicant cannot dictate how the officers of law and the ODPP should conduct their duties and functions.
  39. In conclusion, Counsel urged the court to dismiss the application with costs.

### **Analysis And Determination**

40. Having considered the application, the respective affidavits, and the rival submissions, the following issues arise for determination:
  - a) Whether the Applicant has met the threshold for the grant of an injunction.
  - b) Whether the 1<sup>st</sup> and 2<sup>nd</sup> Respondents, the Nairobi Regional Criminal Investigation Officer, the Nairobi Regional Police Commander, the OCPD Gigiri Westlands Sub-County, and Victor Juma Owiti, the Principal Prosecution Counsel, are in contempt of the order issued on 22<sup>nd</sup> April 2024.
41. On the first issue, the principles for the grant of an injunction were laid down in the celebrated case of *Giella vs Cassman Brown & Co Ltd* 1973 EA 358 as follows: -



- 1) Firstly, the Applicant must show a prima facie case with a probability of success.
  - 2) 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.
  - 3) Thirdly, if the court is in doubt, it will decide an application on a balance of convenience.
42. The first issue for determination is whether the Applicant has established a prima facie case with a probability of success.
43. In *Mrao Ltd vs First American Bank of Kenya Ltd & 2 Others* [2003] eKLR, the Court of Appeal defined a prima facie case as follows:
- “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 that there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter.”
44. The Applicant seeks an injunction restraining the 1<sup>st</sup> and 2<sup>nd</sup> Respondents from evicting him from the suit property. He asserts that the ruling of 22<sup>nd</sup> April 2024 barred the 1<sup>st</sup> and 2<sup>nd</sup> Respondents from evicting him from the suit property. The ownership of the suit property has already been determined by a final judgment delivered on 28<sup>th</sup> July 2022. Although the Applicant was not a party at the time, the binding effect of that judgment remains unless it is challenged through legal channels. The ruling of 22<sup>nd</sup> April 2024 did not grant possession to the Applicant; it declined to order his eviction in the circumstances then prevailing.
45. The Applicant seeks reinstatement to the suit property. The Respondents assert that there is no evidence demonstrating that the Applicant was in possession of the suit property. Reinstatement is a mandatory and restorative remedy. Based on the evidence presented by the parties, I find that granting the order for reinstatement would effectively determine possession in favour of the Applicant, notwithstanding a subsisting judgment and a stay issued by the Court of Appeal.
46. Based on the foregoing, I find that the Applicant has not established a prima facie case with a probability of success.
47. The conditions set out in the *Giella vs Cassman Brown Case* (Supra) are to be considered sequentially.
48. In so finding, I am persuaded by the holding in the case of *Nguruman Limited Vs Jan Bonde Nielsen & 2 Others* [2014] eKLR where the Court of Appeal stated as follows: -
- “...these are the three pillars on which rest the foundation of any order of injunction, interlocutory or permanent. It is established that all the above three conditions and stages are to be applied as separate, distinct and logical hurdles which the applicant is expected to surmount sequentially... if the applicant establishes a prima facie case that alone is not sufficient basis to grant an interlocutory injunction, the court must further be satisfied that the injury the respondent will suffer, in the event the injunction is not granted will be irreparable. In other words, if damages recoverable in law are an adequate remedy and the respondent is capable of paying, no interlocutory order of injunction should normally be granted, however strong the applicant’s claim may appear at that stage. If a prima facie case is not established, then irreparable injury and balance of convenience need no consideration”.



49. Having found that the Applicant has not established a prima facie case with a probability of success, it will be immaterial to consider the other limbs that are to be considered for a grant of a temporary injunction.
50. Regarding the second issue, the Applicant seeks to have the 1<sup>st</sup> and 2<sup>nd</sup> Respondents, the Nairobi Regional Criminal Investigation Officer, the Nairobi Regional Police Commander, the OCPD Gigiri Westlands Sub-County, the DCIO Gigiri, and Victor Juma Owiti, the Principal Prosecution Counsel, cited for contempt of the ruling issued on 22<sup>nd</sup> April 2024.
51. The Black’s Law Dictionary, 9<sup>th</sup> Edition, defines contempt of court as follows:
- “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.”
52. In *Econet Wireless Kenya Ltd vs Minister for Information & Communication of Kenya & Another* [2005] eKLR, Ibrahim J (as he then was) stated 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.”
53. Order 40 Rule 3(1) of the Civil Procedure Rules provides as follows:
- 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.
54. 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.
55. In the case of *Carla Burchell v. Barry Grant Burchell*, the High Court of South Africa, Eastern Cape Division, Case No. 364 of 2005, held that to succeed in civil contempt proceedings, an applicant must prove:
- a) The terms of the order
  - b) Knowledge of these terms by the respondent
  - c) Failure by the respondent to comply with the terms of the order.



56. Back home, in *Samuel M.N Mweru & Others v National Land Commission & 2 Others* (2020) e KLR, the court set out the elements to be proved in an application for contempt of court as follows:
- 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.
57. The first issue for determination is whether the terms of the order were clear. It is not in dispute that on 22<sup>nd</sup> April, 2024, the court dismissed the 1<sup>st</sup> and 2<sup>nd</sup> Respondents' application dated 13<sup>th</sup> September, 2023, seeking eviction orders against the Applicant. Accordingly, I find that the order issued on 22<sup>nd</sup> April 2024 was clear and unambiguous.
58. The next issue for determination is whether the 1<sup>st</sup> and 2<sup>nd</sup> Respondents and the state officers were served or had proper notice of the order. It is not in dispute that the 1<sup>st</sup> and 2<sup>nd</sup> Respondents were aware of the order. The 1<sup>st</sup> and 2<sup>nd</sup> Respondents asserted that the state officers were not aware of the application, as they were not served with the application or notice.
59. In contempt proceedings where committal is sought, the alleged contemnor must be specifically identified, joined, and served in his or her personal capacity because individual liberty is at stake. A government officer or state department acts only through natural persons. In contempt proceedings, the individual officer responsible must be specifically named and given an opportunity to respond. In *Republic v Principal Secretary Ministry of Defence ex parte George Kariuki Waithaka* (2019) eKLR, the court held that:
- “Where an order of committal is sought, the alleged contemnor must be personally cited, served, and given an opportunity to show cause since the proceedings are penal in nature.”
60. Similarly, in *Teachers Service Commission v Kenya National Union of Teachers & 2 others* (2013) eKLR, the court held that:
- “Orders of committal affect personal liberty and must therefore strictly comply with procedural safeguards.”
61. In the matter at hand, it is not in dispute that, apart from the office of the Principal Prosecution Counsel, the officers alleged to be in contempt were not joined in their individual capacities. Similarly, the state officers were not served with the application or the notice of committal. These omissions are not mere technicalities; they go to the root of the application and offend the principles of natural justice.
62. On whether the 1<sup>st</sup> and 2<sup>nd</sup> Respondents deliberately breached the court's ruling, the Applicant has a duty to prove his case beyond the 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.



63. The Applicant must prove wilful and deliberate disobedience of the court order if they are to succeed, as was held in the case of *Gatharia K. Mutitkika 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 prove on a balance of probabilities, almost but not exactly beyond reasonable doubt. The standard of proof beyond 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.”

64. The Applicant relied on the ruling delivered on 22<sup>nd</sup> April 2024, which declined his eviction. The 1<sup>st</sup> and 2<sup>nd</sup> Respondents argue that the removal of occupants on 31<sup>st</sup> July 2025 was a criminal law enforcement action against trespassers, not a civil eviction. They further argue that state officers cannot be cited for contempt for performing their constitutional duties under Articles 157 and 245 of *the Constitution*. They also contend that the Applicant was not on the list of persons evicted from the suit property.

65. Insofar as the 1<sup>st</sup> and 2<sup>nd</sup> Respondents are alleged to have committed contempt with the assistance of state officers who were neither named nor cited in the application, this court finds that the Applicant has not proved contempt against the 1<sup>st</sup> and 2<sup>nd</sup> Respondents to the required standard.

66. The upshot of the foregoing is that the application dated 1<sup>st</sup> August 2025 is without merit and is hereby dismissed with costs.

**RULING SIGNED, DATED, AND DELIVERED VIA MICROSOFT TEAMS THIS 4<sup>TH</sup> DAY OF FEBRUARY, 2026.**

.....

**HON. T. MURIGI**

**JUDGE**

In The Presence Of :

Mwangi appearing together with Wanyioke for the 1<sup>st</sup> Respondent

Moriasi for the 2<sup>nd</sup> Plaintiff

Ms Kioko holding brief for Assa for the Interested Party/Applicant

Ashioya holding brief for Nelson Havi for Senior Counsel

