



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KABARNET

ELC CASE NO. E003 OF 2023

LYNN CHEMUTAI (Suing as the legal representative
of the Estate of the late **PRISCA CHEPKONG'A**
PLAINTIFF/APPLICANT

= VERSUS =

SUSAN KIMOSOP CHESIYNA (Sued as the legal
Representative of the Estate of the late
CHEBII CHESIYNA ELIJAH (Deceased) **1ST**
DEFENDANT/RESPONDENT

SIMON CHEMOIYWO **2ND**
DEFENDANT/RESPONDENT

R U L I N G

Introduction

1. This ruling is in respect of the notice of motion application dated 7th October, 2025. Through the application, the plaintiff/applicant seeks the following orders:-

1. Spent

2. Stay of delivery of judgment scheduled for delivery on 8/10/2025 until the defendants purge their alleged contempt of court or as the court may direct pursuant to the application;

3. The defendants be summoned to attend court to show cause why they should not be found in contempt of court and committed to civil jail for impunity and contempt of court orders issued on 31.1.2019;

4. That the costs of the application be awarded to the plaintiff/applicant.

2. The application is premised on the grounds on its face and supported by the affidavit of the applicant, Lynn Chemutai, sworn on 7th October, 2025.

3. As can be discerned from the grounds on the face of the application and the affidavit sworn in support thereof, the plaintiff/applicant complains that the defendants have disobeyed the court order issued on 31st January, 2019 by **Odeny J** by entering upon the suit properties, Baringo/Sergonjun/1241 and Baringo/Sergonjun/2028 and clearing the land for cultivation.

4. The applicant further complains that the respondents have used hostile villagers to enter the suit properties forcibly and threatened to harm her workmen and the people residing in the suit properties using machetes and other farm implements.
5. In reply and opposition to the application, the respondents filed the replying affidavit of the 1st defendant/respondent, Susan Kimosop Chesiyana, sworn on 15th October, 2025 in which they deny the allegations levelled against them and *inter alia* depone that cutting down trees in the area by third parties for firewood fetching and charcoal burning is a common occurrence.
6. It is the respondents' case that the pictorial illustrations provided by the applicant are incapable of being verified and/or incapable of proving that the alleged actions happened on the suit properties.
8. The application was disposed of by way of written submissions.

SUBMISSIONS

Applicant's submissions

9. In her submissions filed on 3rd November 2025, the applicant has framed two issues for the court's determination namely; whether the respondents are in contempt of court for willingly disobeying the court order issued on 31st January, 2019 and whether the court should defer the delivery of its judgment scheduled for 8th October, 2025 until the defendants purge the said contempt.
10. On whether the respondents are in contempt of court for willingly disobeying the court order issued on 31st January 2019, the applicant submits that the respondents are guilty of civil contempt of court. The applicant gives an account of the principles that underpin an application for civil contempt as espoused in **Kigio Group Company Limited v. Kibaara & 8 others (2024) KECA 919 (KLR)**.
11. Maintaining that the respondents willingly disobeyed the court order issued against them by forcibly re-entering the suit

properties, the applicant terms the explanation/defence offered by the respondents to be without merit. According to the applicant, the explanation or defence offered by the respondents that the activities complained of were carried out by third parties cannot absolve the respondents from liability.

12. The applicant submits that the respondents being the ones bound by the injunctive order, bear the responsibility to ensure its terms are respected by persons acting under their authority or on their behalf.
13. The applicant further submits that the respondents' failure to control and prevent the violation of the court order demonstrates that they are either involved in its disobedience or are culpable for dereliction of their duty to court.
14. Concerning absence of a Police report, the applicant submits that contempt of court is a specific offence against the court's authority, remedied through its own processes and is not dependent on parallel criminal report to the police.

15. According to the applicant, the photographic evidence and her sworn affidavit constitute *prima facie* proof of breach of the court order in question.
16. Terming the suggestion by the respondent that the application is a dilatory tactic profoundly ironic, the applicant submits that it is the respondents' own calculated actions on the eve of judgment that necessitated the application.
17. The applicant further submits that the application seeks not to delay justice but to preserve the court's authority which is the foundation upon which any judgment must stand.
18. Terming the respondents conduct complained of a direct challenge to judicial authority, the applicant maintains that she has made up a case for citing the respondents for contempt of court.

19. On whether the court should defer the delivery of its judgment until the respondents purge their contempt, the applicant submits that to deliver a judgment in favour of a party who remains in brazen contempt of the court's interim orders would be to reward defiance and signal that the court's process can be abused with no consequence.
20. The applicant further submits that her prayer for stay of delivering of the judgment of this court is grounded on three compelling pillars namely the primacy of purging contempt, the irreparable nature of penal consequences and the overarching public interest in upholding judicial authority.
21. According to the applicant, delivery of the judgment without first dealing with the application for contempt would render the application nugatory.

Respondent's submissions

22. The respondents filed submissions dated 11th November 2025, in which they submit that the allegation of trespass have been cursorily mentioned and thus falls short of the threshold

required to proof contempt of court orders. The respondents maintain that the application taken up by the applicant is a ploy to scuttle seamless flow of proceedings by maliciously attempting to stall delivery of judgment in this matter.

23. The respondents have made reference to several decided cases on primacy of contempt proceedings-**Cecil Miller v Jackson Njeru & Another (2017) KEHC 1499 (KLR); Econet Wireless Kenya Limited vs Minister for Information & Communication of Kenya & Another; Teachers Service Commission vs. Kenya National Union of Teachers & 2 others (2013)e KLR; Sheila Cassatt Issenberg & Another v Antony Machatha Kinyanjui (2021) KEHC 5692 (KLR)** and submitted that an order of contempt of court must be watertight and in terms anticipated by the Judicature Act and explored in the various authorities cited.

24. Concerning the instant application, the respondents submit that the applicant has dangled photographs before the court

without demonstrating that the said property subject of the order, is whereupon the alleged acts of contempt took place. The respondents further submit that the affidavit evidence attached does not do any good to the applicant's case.

25. The respondent further submits/ addresses the court as follows:-

“The instant application has been brought ominously a day prior to the delivery of judgment and with scantily adduced evidence of trespass and/or alleged contempt. It can only be inferred that the application was intended to serve a singular purpose-to stay the proceedings in terms of delivery of judgment.

The elements of disobedience of court orders are neither here nor there. The Applicant has failed to attach a report of the alleged trespass to found, albeit prima facie, the claim of trespass.

It is submitted, ... that the evidence of trespass and therefore contempt of court orders presented before the Honourable court does not rise above the threshold of higher standard, that of balance of probability.

The Respondents contend that on the basis of the evidence placed before court, the offence of contempt does not lie.

The lack of a report to demonstrate the alleged trespass save for foreign photographs placed before the court which are in no way a demonstration that the parcel of land subject of the court order was trespassed upon, the Respondents do not have a basis upon which they can raise a defence whenever they may be called to show cause why they should not be committed to civil jail.

Accordingly, the application is malicious, vexatious and the same is for dismissal.

Costs to the respondents..."

Analysis and determination

26. I have carefully read the case urged by the applicant and the response by the respondents. I have also read and considered the submissions filed by the parties. I find sole issue for the court's determination to be whether the applicant has made up a case for being granted the orders sought.
27. On that issue, upon carefully considering the evidence sought to be relied on by the applicant in support of her allegation that the respondents have trespassed into the suit property, thereby violating the interim orders granted by the court restraining them from interfering with the use of the suit property by the applicant, alongside the rebuttal offered by the respondents, I find and hold that the applicant has not proven that the respondents either by themselves or through persons acting on their authority, have indeed trespassed into the suit property in contravention of the orders of the court restraining them from doing so.

28. The upshot of the foregoing is that the applicant has not made up a case for being granted the orders sought. Consequently, I dismiss her application with costs to the respondents.

29. On delivery of the pending judgment, the same will be delivered on 9th March, 2026.

30. Orders accordingly.

**Dated, signed and delivered virtually at Busia this 25th day
of February, 2026**

L. N. WAITHAKA

JUDGE

In the presence of;

Ms Salim for the Applicant/ Plaintiff

Ms Achieng for the Respondent/ Defendant

Court Assistant; Tracy