



Mwangi & 5 others v Karanja (Sued as the Administrator of the Estate of Karanja Njuguna Karanja) (Environment and Land Case E046 of 2025) [2025] KEELC 5759 (KLR) (29 July 2025) (Ruling)

Neutral citation: [2025] KEELC 5759 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENT AND LAND CASE E046 OF 2025
JM ONYANGO, J
JULY 29, 2025
IN THE MATTER OF THE LIMITATION OF ACTIONS ACT
AND
IN THE MATTER OF THE LAND ACT
AND
IN THE MATTER OF THE LAND REGISTRATION ACT
AND
**IN THE MATTER OF THE LAND PARCELS KOMOTHAI/
KIAMBURURU/171 AND KOMOTHAI/ KIAMBURURU/T.156**

BETWEEN

ISSAC NJUGUNA MWANGI 1ST PLAINTIFF
HANNA WANGARI MWANGI 2ND PLAINTIFF
JANE WAMBUI MWANGI 3RD PLAINTIFF
MARY WANJIRU MWANGI 4TH PLAINTIFF
MICHAEL KARANJA MWANGI 5TH PLAINTIFF
PETER NJANE MWANGI 6TH PLAINTIFF

AND

ELIJAH KARIUKI KARANJA (SUED AS THE ADMINISTRATOR OF THE ESTATE OF KARANJA NJUGUNA KARANJA) DEFENDANT



RULING

1. The Applicants approached the court through an Originating Summons dated 14th March 2025 seeking inter alia that they be registered as the owners of all that parcel of land known as Komothai/Kiambururu/156 measuring 0.22 acres and Komothai/Kiambururu/171 measuring 1.1 acres by virtue of the doctrine of adverse possession.
2. Contemporaneously with the Originating Summons, the Applicants filed an application seeking a temporary injunction restraining the Respondents, their agents, servants or employees from transferring, leasing charging, trespassing, entering, alienating disposing of, damaging, encroaching onto, wasting, evicting or interfering howsoever with the Plaintiff's quiet enjoyment, use, possession and occupation of the suit properties pending the hearing and determination of the main suit.
3. They also sought an order that a stay of proceedings do issue in Succession Cause No. E415 of 2023 in Chief Magistrate's Court at Kiambu pending the hearing and determination of the main suit.
4. The application is premised on the affidavit of Isaac Njuguna Mwangi, the 1st Applicant herein sworn on his own behalf and on behalf of the other applicants. He deposed that he wished to reiterate the averments in the affidavit in support of the Originating Summons. In the said affidavit he averred that he is the son of Eliud Mwangi Njuguna who was the only sibling of the late Karanja Njuguna Karanja and the eldest child of Njuguna Karanja. He further averred that the suit properties are registered in the name of Karanja Njuguna Karanja. That he was born on the suit properties in 1974 and he has lived thereon since.
5. He avers that initially their home was on parcel 156 while they used parcel 171 for farming. In 1988 they demolished their house on parcel 156 and erected their houses on parcel 171 as the land was more spacious. They used part of parcel 171 and 156 for farming. That he has been living on the suit property with his wife and children and mother. He has also buried three of his siblings, father and niece on the suit property without any objection from the respondents.
6. He deposes that on 28th October 2024 his family was summoned by the area chief in the presence of the defendants and given a 3 –months' notice to vacate the suit properties. In February 2025, the defendants who are his cousins took a surveyor to inspect the suit properties as the defendants intend to sell the land.
7. He avers that the defendants have never lived on the suit properties as the Applicants have been in open, continuous, uninterrupted and exclusive occupation of the suit properties since 1958 to date and their rights have therefore crystallized through the doctrine of adverse possession.
8. On 18.3.2025 the court issued the following directions in respect to the application:
 - i. That the application be served upon the Respondents forthwith.
 - ii. That the application is fixed for hearing on 24.4.25.
 - iii. That in the interim the status quo prevailing in the register and on the land with respect to title number Komothai /Kiambururu/ 156 and 171 as at the date of this order be maintained pending the hearing and determination of the application inter partes.
9. In response to the application, the Respondent filed a Replying affidavit sworn on 2.4.25 in which he deposed that he is the administrator of the estate of the late Karanja Njuguna Karanja who died on



- 17.10.2000. He averred that the deceased was survived by 7 children and two grand children. It was his further deposition that the Grant relating to the estate of the deceased was issued on 4.9.23 and confirmed on 16.7.24. He stated that the applicants are not beneficiaries of the deceased. That the suit property had since been sub-divided among the deceased's beneficiaries and each family member was apportioned his share. He annexed a copy of the mutation forms.
10. He averred that the applicants are his uncle's children and at the time their father died in 2000, he had not filed any case for adverse possession because he knew that the land did not belong to him.
 11. He averred that it was strange for the applicants to seek adverse possession over land that does not exist since it has been sub-divided and new titles issued.
 12. He stated that their uncle Eliud Mwangi Njuguna who is the applicants' father was given his share by his father and he sold it and left for greener pastures. He later came back with nothing.
 13. He averred that their father never transferred the suit properties to the Eliud Mwangi Njuguna although he allowed him to use the land and bury his kin thereon as he had no land since he had sold his land. He was of the view that the applicants had slept on their rights as they should have filed a claim for adverse possession when the Respondent's father was alive. He also blamed them for not having filed an Objection in the succession cause.
 14. He further deponed that the applicants had signed an agreement before the chief in which they agreed to move out of the suit properties within 3 months. He reiterated that the suit properties had since been sub-divided and distributed among the beneficiaries of Karanja Njuguna Karanja who could not be sued in a claim for adverse possession as they had not owned the land for 12 years.
 15. He reiterated that the applicants should have filed their claim against Karanja Njuguna Karanja before he died in 2000.
 16. He faulted the applicants for seeking adverse possession and constructive trust in the same breath.
 17. On 24.4.25 when the application came up for hearing the court gave directions that the application be canvassed by way of written submissions and a ruling was reserved for 17.7.25.
 18. On 7.7.25 the Applicants informed the court that they had filed an application dated 6.5.25. The said application seeks orders that the court finds that the Respondents are in contempt of the court order issued on 18th March 2025. Secondly, that upon finding that the Respondents are in contempt of the court order, the court be pleased to issue an order of committal to civil jail against Elijah Kariuki Karanja for disobedience of this Honourable Court's orders for a term not exceeding 6 months or that he be otherwise punished as this Honourable court may deem fit. Thirdly, that the Honourable court be pleased to direct that the Respondent to compensate the Applicants for the loss incurred due to his actions.
 19. The application is supported by the affidavit of Isaac Njuguna Mwangi sworn on 6th may 2025. The long and short of it is that after the Respondent was served with the order issued on 18.23.25 via WhatsApp he sent his workers to the suit properties on 3.5.25. The said workers forcefully entered the suit properties and cut down coffee plantations, sprayed drying chemicals on the maize, beans and cleared all the crops on the farm causing massive destruction in violation of the court order. The incident was reported to Kiambururu Police station. It is the applicant's contention that unless the Respondent is punished he will continue to act with impunity and the dignity of the court will be eroded.



20. The application was opposed by the Respondent through the Replying affidavit of Elijah Kariuki Karanja sworn on 23rd May 2025. In the said affidavit he acknowledges that he was served with the court order and according to him, the status quo was that his father who is now deceased was the registered owner of the suit properties. He further averred that he had obtained Certificate of Confirmation of Grant and distribution of his late father's estate had been done. He stated that the applicants had not objected to the confirmation of grant and the status was that the suit property had moved from the deceased and the beneficiaries had been issued with their titles. He added that the land had been surveyed and they had visited the land to clear the bush. He denied having disobeyed the court order and stated that he had to complete the succession process since he was an administrator.
21. The application was canvassed by way of written submissions and both parties filed their submissions. The said application is the subject of this ruling.
22. The singular issue for determination is whether the Respondent should be held to be in contempt of the court order issued on 18.3.25 and if so, whether he should be punished.

ANALYSIS AND DETERMINATION

23. Black's Law Dictionary [Ninth Edition] defines contempt of court as follows:

“Conduct that defies the authority or dignity of a court. Because such conduct interferes with the administration of justice, it is punishable usually by fine or imprisonment.”
24. The rationale for contempt orders is set out in the case of Teachers Service Commission v Kenya National Union of Teachers & 2 others [2013] eKLR where Ndolo J observed as follows:

“38. The reason why courts will punish for contempt of court is to safeguard the rule of law which is fundamental in the administration of justice. It has nothing to do with the integrity of the judiciary or the court or even the personal ego of the presiding judge. Neither is it about placating the applicant who moves the court by taking out contempt proceedings. It is about preserving and safeguarding the rule of law.”
25. Furthermore, in Econet Wireless Kenya Ltd v Minister for Information & Communication of Kenya & Another [2005] 1 KLR 828 Ibrahim, J [as he then was] stated:

“It is essential for the maintenance of the rule of law and order that the authority and the 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 of whom, an order is made by a 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.”
26. In the case of Kenya Human Rights Commission v Attorney General and Another [2018] eKLR, the Court observed as follows:

“Article 159 of *the Constitution* recognizes judicial authority of the courts and tribunals established under *the Constitution*. Courts and tribunals exercise this authority on behalf of the people and for that reason they must not only be respected and obeyed but must



also be complied with in order to enhance public confidence in the Judiciary which is vital for our Constitutional democracy. The Judiciary acts in accordance with the laws [Article 160] and exercises its authority through its judgments, decrees and orders or directions to check government power, keep it within the Constitutional stretch, hold the Legislature and Executive to account and thereby secure the rule of law, administration of justice and protection of human rights. For that reason, the authority of the courts and dignity of their processes are maintained when court orders are obeyed and respected thus courts become effective in the discharge of their Constitutional mandate...

It is therefore a fundamental rule of law that court orders be obeyed and where an individual is enjoined by an order of the court to do or refrain from a particular act, he has a duty to carry out that order. The court has a duty to commit that individual for contempt of its orders where he deliberately fails to carry out such orders. See *Louis Ezekiel Hart v Chief George1 Ezekiel Hart SC 52/2983 2nd February 1990*.”

...The fact that the power to punish for contempt is inherent and not granted by statute follows the recognition by *the Constitution* in Article 159 that judicial authority is derived from the people and vests in and is exercised by courts and tribunals established by or under *the Constitution*”

27. In order to make a case for civil contempt the applicant must prove certain elements which were set out in the case of *Cecil Miller v Jackson Njeru [2017]*. The court cited the book entitled “Contempt in Modern New Zealand which sets out the elements of Civil contempt as follows:
- a. That the terms of the order [or injunction or undertaking] were clear and unambiguous and were binding on the defendant.
 - b. That the defendant had knowledge of or proper notice of the terms of the order
 - c. That the defendant acted in breach of the terms of the order
 - d. That the defendant’s conduct was deliberate.
28. In the instant case, the order dated 18th March 2025 was served upon the respondents via whatApp as acknowledged in his Replying affidavit. The said order is clear and unambiguous and is binding on the respondents. More particularly the order provides that the status quo prevailing at the time of the order in the register and on the ground with respect to the suit properties shall be maintained pending the hearing and determination of the application inter partes. The status at the time was that the land was still registered in the name of the deceased.
29. The respondent having been served with the said order, proceeded to have the suit properties transferred to himself then he sub-divided the same and he alleges that new title deeds were issued to his siblings. Additionally, he sent his workers to the suit properties to destroy the Applicants crops.
30. The Respondent’s actions were in flagrant violation of the interim orders issued on 18th March 2025. It is therefore my finding that the respondent is culpable of disobeying the court order dated 18th March 2025. The matter shall be mentioned on 24th September 2025 for mitigation and sentencing.

DATED, SIGNED AND DELIVERED THIS 29TH DAY OF JULY 2025.

J. M ONYANGO

JUDGE

In the presence of:



Miss Wanjiku for the Applicants

Miss Gulenywa for the Respondent

Court Assistant: Hinga

