

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT ELDORET
ELC LAND OS No. E016 OF 2025

MALAKWEN SEUREI KIBWAMBOK
APPLICANT

VERSUS

MARY KAPTINGEI RONO 1ST
RESPONDENT

ELIZABETH JEPTUM RONO 2ND
RESPONDENT

GRACE JEPKERING CHERUIYOT 3RD
RESPONDENT

RULING:

1. The Applicant moved this Court vide a Notice of Motion Application dated 15th January, 2026 seeking the following orders:-
 - (1) Spent
 - (2) THAT the Honourable Court be pleased to cite Mary Kapingei Rono, Elizabeth Jeptum Rono and Grace Jepkering Cheruiyot the 1st, 2nd and 3rd Respondents herein and the OCS Jua Kali Police Station, Eldoret for Contempt of Court for intentionally defying Court Orders dated 2nd October, 2025 and order their committal to civil jail for a period of six (6) months.
 - (3) THAT costs of this application be provided for.

2. The Application is grounded on the Applicant's Supporting Affidavit of even date. He deponed that on 8th May, 2025 he moved court for an injunction and maintenance of status quo to prevent the Respondents from interfering with his farming activities on his portion of Uasin Gishu/Sosioni/87 (the suit property). That on 15th May, 2025 the court directed that the prevailing status quo be maintained so that he stayed on the land, while he was barred from tilling pending hearing and determination of the Respondents' PO.
3. The Applicant deponed that the orders of status quo were amended to the effect that none of the parties should be evicted from the portions they occupy and they were at liberty to utilise their said portions pending determination of the application. According to the Applicant, the orders were issued in the presence of the Respondents advocates and later served on the 1st, 2nd and 3rd Respondents who directed the Process Server to serve their advocate on their behalf.
4. The Applicant averred that despite the clear terms of the orders, the Respondents have wilfully and unjustly evicted him from his portion and prevented him from continuing with his farming activities. He accused the Respondents of blatant disregard of the Court's authority, causing him immense financial and emotional distress. He avers that he reported the matter to the police and was issued with OB No. 13/24/12/2025. That unless the court cites the Respondents and the OCS Jua Kali for contempt, the orders of this court stand disobeyed.
5. The Respondents opposed the Application through an Affidavit sworn by the 3rd Respondent on 20th January, 2026 and filed in

court on 21st January, 2026. She deponed that the contents of the application are malicious, frivolous, vexatious and devoid of merit and should be dismissed with costs. She accused the Applicant of laches, concealment of material facts and half-truths and concealing the real issues, and further deponed that the application was defective in form and substance, strange in law and could not offer any remedy known in law.

6. The 3rd Respondent admitted that the orders made on 2nd December, 2025 allowed the parties to utilize their respective parcels of land, and that they were served with the order which they have fully complied with. She denied that they had evicted the Applicant or utilized his parcel of land hence the Applicant's application was full of falsehoods and deficient on precise facts. She averred that the Applicant was asking the court to cite them for merely utilising their land, without stating how many acres the Respondents had touched.
7. The 3rd Respondent asserted that they had maintained the status quo prevailing at the time the order was given. She claimed that the application is fatally defective as the court cannot cite them for contempt when the Applicant was guilty of falsehoods and misrepresentation. She urged that the applicant has not met the legal and evidentiary threshold required by law to hold them in contempt, thus the application is in bad faith, lacks merit and is an abuse of court process. She asked that the application be dismissed with costs.

Submissions:

8. The Application was canvassed by way of written submissions. The Applicant's submissions in support of the Application are dated 5th February, 2026, while the Respondents' submissions are dated 20th February, 2026.

The Applicant's Submissions;

9. The Applicant's advocate submitted that the orders were issued in the presence of all the parties and thereafter served to them. Counsel submitted that despite being served the Respondents have continued to disobey the same. Counsel cited Section 5 of the Contempt of Court Act, Sections 63 and 3A of the Civil Procedure Act and common law. Counsel further relied on **HCC No. 2 of 2014; Wendano Matuu Co. Ltd & 2 Others vs Joshua Kimeu Kioko & 8 Others.**
10. Secondly, Counsel submitted that the Respondents have not remedied the contempt and have instead taken steps to worsen the situation despite it having been reported to the authorities. Counsel termed it contempt in the face of the court as it is being perpetuated during the proceedings of the case and called for stiffer penalty. Counsel argued that the Police are charged with the responsibility of enforcing the law, and where they disobey court orders, it should not go unpunished. Counsel called on the court to reprimand the Officer for disobedience. Counsel urged that the court ought to take stern action per the case law relied on.

The Respondents Submissions;

11. Counsel for the Respondents on the other hand submitted that the Applicant had failed to prove to court the portion he claims to have occupied or that what was tilled was his portion. Counsel submitted that the Respondents had tilled their respective plots and denied the allegation that the Applicant had been evicted from his portion. Counsel argued that for the Applicant to prove contempt, he had to prove the acreage he claims to occupy at the time the order was made, and the acreage he claims the Respondents have occupied and evicted him from.
12. Counsel submitted that the Applicant had not rebutted the Respondents allegation that the 3 Acres he occupied are untouched. Counsel thus argued that the application has no merit and does not meet the threshold of the law to hold the Respondents in contempt. He relied on **Mohamed vs Gaitho (2024) KEHC 11841 (KLR)** and **Bhatnager vs Canada (Minister of Employment and Immigration) 1990 (ANL11120/SCC) (1990)2 SCR 217.**
13. Counsel submitted that the photographs annexed to the application don't meet the legal and practical threshold to be admitted as evidence. Counsel cited Section 78A and 106(B) of the Evidence Act on admissibility of electronic evidence. Counsel argued that the certificate was deficient because it was signed by the Applicant instead of the people who had taken the photographs. That the names of the said persons were not given but they are only described as the Applicant's sons. That the type of devices, their make, serial numbers, date, time and location is not given. That the storage device used to store the

media or print it is undisclosed, and the telephone number of the Advocate and the person who forwarded to him are also undisclosed. Counsel thus asked that the application be dismissed with costs.

Analysis and Determination:

14. I have considered the application herein, the reply by the Respondents and the submissions by the Parties. The only issue arising for determination is whether the Applicant has proved that the Respondents are indeed in contempt of the orders of the court.
15. First and foremost, I note that the Applicant cited Section 5 of the Contempt of Court Act. I must point out that the Contempt of Court Act No. 46 of 2016 was short-lived because it was declared unconstitutional in November 2018 in **Kenya Human Rights Commission versus Attorney General & Another (2018) eKLR**. The effect is that the said Act is no longer applicable as the law reverted to section 5 of the Judicature Act on matters contempt.
16. Turning now to the issue of contempt, in **Samuel M. N. Mweru & Others vs National Land Commission & 2 others (2020) KEHC 9233 (KLR)**, the court set out the elements that an applicant has to prove in order to succeed in civil contempt proceedings as follows:-

“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'."

17. The Court further held that 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.

18. In this instance, the Application dated 8th May, 2025 came up for directions on 15th May, 2025 where the court made the following orders:-

(1) That the Preliminary Objection dated 14th May, 2025 be canvassed by way of written submissions.

(2) THAT the same be filed and exchanged within 14 days.

(3) THAT status quo currently prevailing be maintained so that the Applicant remains on his residence and should not be evicted, but should not

till the land pending determination of the Preliminary Objection.

(4) THAT the OCS Jua Kali Police Station to ensure peace is maintained.

(5) THAT ruling on 25th September, 2025.

19. The matter again came up on 2nd October, 2025 for further directions and the court made the following order:-

(1) THAT the status quo order made on 15th May, 2025 is amended to state that none of the parties should be evicted from the portion each occupies and they are at liberty to utilize their said portions pending the determination of the application.

20. There is no doubt that the said orders were both clear and unambiguous in their terms. This is confirmed by the fact that none of the parties herein sought any interpretation or claimed that they could not understand the import of the said orders.

21. The next question therefore is whether the Respondents were aware of the said orders. The record indicates that the said order was made in the presence of Counsel for the Plaintiff/Applicant and Counsel for the Defendants/Respondents. The Applicant claims that the order was served personally on the Respondents, who directed that the same be served on their Advocates. However, going by the Affidavit of Service sworn by Victor Kipkemboi Korir, a Court process Server, and which is annexed to the Motion, the order so served was dated 8th May, 2025 and a copy thereof duly received by Mwaka & Company Advocates was also annexed.

22. That notwithstanding, the Respondents deponed in their response that the court did in fact make the orders of 2nd October, 2025 allowing parties to utilise their respective parcels on the suit property. The Respondents in their Replying Affidavit also admitted that they were indeed served with the orders. They have claimed that they have fully complied with the order and have not evicted the Applicant as claimed. This is enough indication that they are well aware and had sufficient notice and/or knowledge of the subject order.
23. The next consideration is whether the Respondents have acted in breach of the terms of the order. As proof that the Respondents evicted the Applicant from his parcel of land, he annexed photographs, two of which show what appears to be an open stick and barbed wire temporary gate. Some of them show tilled land and others show a tractor. There is nothing in the said photographs that demonstrate that he was evicted from the land.
24. The Respondents have denied evicting the Applicant from his parcel of land. They have also annexed photographs showing that the Applicant's houses are still standing and there are people in the said compound. There is indeed no proof that the Applicant was evicted.
25. As regards the standard of proof, in **Katsuri Limited vs Kapurchand Depar Shah (2016) KEHC 6447 (KLR)**, the court held that:-

“Although the proceedings are civil in nature, it is well established that an applicant must prove the elements beyond reasonable doubt, at least higher than the

standard in civil cases, the fact that the liberty of the defendant could be affected means that the standard of prove is higher than the standard in civil cases. It is incumbent on the applicant to prove that the defendant's conduct was deliberate in the sense that he or she deliberately or wilfully acted in a manner that breached the order

The prayer sought is for committal for contempt. The power to commit for contempt is one to be exercised with great care. An order committing a person to prison for contempt is to be adopted only as a last resort."

26. In the instant case, the evidence provided does not demonstrate that the Respondents disobeyed the court order made on 2nd October, 2025. It follows therefore that the Applicant has not met the standard of proof required in cases of civil contempt.
27. As to the submissions by the Respondents that the Certificate of Electronic Evidence is defective, I must state that it is an interesting argument to make. This is especially so because the Respondents have themselves annexed photographs and did not bother to comply with the requirements of Section 78A and 106B of the Evidence Act. They cannot be heard to fault the Applicant when they themselves are not compliant. One cannot approbate and reprobate.

Orders:-

28. As a result, the Application dated 15th January, 2026 is found to be without merit and is hereby dismissed with costs to the respondents.

29. Orders accordingly.

DATED, SIGNED and **DELIVERED** virtually at **ELDORET** on this **5TH** day of **MARCH, 2026** vide Microsoft Teams.

HON. C. K. YANO
ELC, JUDGE

In the virtual presence of;

Mr. Mwaka for Respondents.

Mr. Pala for Applicants.

Court Assistant - Laban.

ORIGINAL