



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ELC CASE NO. E439 OF 2025

POLLY GATHONI WAWERU1ST
PLAINTIFF

DR. MARY KIMANI2ND
PLAINTIFF

-VERSUS-

MUTHAIGA NORTH GARDENS
BALOZI ASSOCIATION (MNGBA)1ST
DEFENDANT

GILBERT OKWIRI2ND
DEFENDANT

KONDIK WALTER3RD
DEFENDANT

PATRICK NGAHU.....4TH
DEFENDANT

CANON SECURITY SERVICES LTD5TH
DEFENDANT

RULING

1. Before me are two applications for determination. The first application is a Notice of Motion dated 3rd September 2025 brought under Articles 22, 23, 40, 42 and 47 of the Constitution of Kenya, Sections 3 and 13 of the Environment and Land Court Act, Sections 1A, 1B and 3A of the Civil Procedure Act and Order 40 Rules 1, 2 and 4 of the Civil Procedure Rules in which the Plaintiffs/Applicants seek the following orders:

1) Spent.

2) Spent.

3) Spent

4) Spent

5) That an order do issue restraining all persons employed, contracted, or otherwise acting as security personnel under the instruction or control of the 1st to 5th Defendants from enforcing, executing, or obeying any directive that unlawfully restricts or bars the 1st and 2nd Plaintiffs, their guests, or their service providers from accessing their residences.

6) That a prohibitory injunction do issue restraining the Defendants, their agents, servants, employees, members, and any other persons acting on their instruction from:

a. Engaging in any conduct within Muthaiga North Gardens Balози that causes

nuisance, harassment, or disturbance to the Plaintiffs' quiet possession and enjoyment of their residences, whether by way of hostile communication, interference with access, or obstruction of services.

b. Dumping, accumulating, or permitting the accumulation of solid, liquid, or medical waste in or around the Plaintiffs' residences or the common areas of the estate in a manner that constitutes an environmental hazard or nuisance;

c. Discriminating against the 2nd Plaintiff in relation to access, services, or the enjoyment of her residence on account of her status as a Person with Disability.

7) That a mandatory injunction do issue compelling the Defendants, jointly and severally, to abate the nuisance and environmental hazard arising from the obstruction and/or denial of garbage collection services, and to forthwith comply with applicable environmental health and waste management regulations, including the Nairobi County statutory notice dated 31st July 2025.

8) That the Defendants, jointly and severally, be restrained from levying, demanding, or

purporting to enforce service charge arrears or related penalties against the Plaintiffs unless founded upon a lawful contractual or statutory basis and sanctioned by this Honourable Court.

9) That pending the hearing and final determination of the main suit, temporary injunctions be and are hereby issued in terms of prayers 3, 4, 5, 6, 7, and 8 above.

10) That the costs of this Application be provided for and borne by the 1st, 2nd, 3rd, 4th, and 5th Defendants jointly and severally.

2. The application is based on the grounds appearing on its face together with the supporting affidavit of Polly Gathoni Waweru, sworn on even date.

THE APPLICANTS CASE

3. The deponent averred that she is the registered owner and resident of Plot No. 28030/39, while the 2nd Plaintiff is the registered owner of Plot Nos. 28030/32 and 28030/33 within Muthaiga North Gardens Balozi.
4. She further averred that they are not members of the 1st Defendant's association and, therefore, the association lacks authority over non-members.
5. She explained that on various dates, the 1st to 5th Defendants ordered restriction of entry and exit for non-member homeowners and their guests, and denied access to

- designated service providers, thereby exposing them to health hazards.
6. She contended that the 1st and 2nd Defendants, acting through the estate's security, repeatedly restricted their guests and designated service providers, including Taka Taka Solutions, from accessing their residences, resulting in garbage accumulating outside their residences and posing environmental and public health risks.
 7. She explained that on 31st July 2025, the Nairobi County Chief Officer in charge of Environment issued a statutory notice directing the Defendants to stop illegal dumping, cease restricting licensed waste handlers, and grant access to specified premises for waste collection, which they disregarded.
 8. She stated that the Defendants thereafter issued service charge demands of KShs. 81,500/= each and threatened to deny garbage collectors access to their homes. She asserted that the 2nd Plaintiff, who is bedridden and registered as a person with a disability, requires uninterrupted sanitary waste disposal, and that her health and dignity were compromised.
 9. The deponent maintains that the impugned conduct constitutes trespass, nuisance, and unlawful interference with their proprietary and constitutional rights.
 10. In conclusion, the Applicants urged the Court to allow the application as prayed.

THE 1ST, 2ND, 3RD AND 4TH DEFENDANT'S CASE

11. The 1st to 4th Defendants filed a replying affidavit sworn by Walter Magero Kondik on 16th September 2025 in opposition to the application.
12. The deponent averred that the 1st Defendant, a Residents' Association consisting of 276 members, including the Plaintiffs, is authorized under its constitution to oversee and maintain common areas and shared amenities within Muthaiga North Gardens.
13. He further averred that the Association levies a monthly service charge to fund common services, including security, maintenance of common areas, CCTV, garbage collection, and landscaping. He explained that the charge was approved at the annual general meetings and later revised at the AGM on 22nd March, 2025, from KShs. 4,000/= to KShs. 4,500/=.
14. He averred that, pursuant to a resolution of 22nd March 2025, garbage collection services were suspended for members in arrears, although the Plaintiffs continued to receive other common services.
15. He further averred that a dispute arose over the change of officials following an AGM held on 15th July 2023, at which the 1st Plaintiff allegedly participated and was elected Chairlady, but the changes were not registered by the Registrar of Societies due to lack of quorum. He contended that the 1st Plaintiff thereafter mobilized members to refuse payment of the service charge. He argued that the Plaintiffs' denial of membership was inconsistent with their prior participation in association affairs and payment of levies.

16. He further argued that even if the Plaintiffs were not members, they were obligated to contribute to the service charge by virtue of owning property within the estate and benefiting from the common services. He further argued that nonpayment of the service charge would constitute unjust enrichment at the expense of compliant residents.
17. He denied the allegations that he restricted the Plaintiffs or their guests from entering or exiting the estate, stating that any restriction applied only to trucks operated by Taka Taka Solutions. He also denied the allegations of dumping waste outside the Plaintiffs' residences, asserting that the Plaintiffs dumped waste at the Association's premises on 30th July, 2025.
18. He maintained that the service charge demands were lawful and uniform, and that as of 1st September, 2025, each Plaintiff owed KShs. 86,000/= in arrears.
19. He asserted that restricting access to the Plaintiffs' private garbage trucks was the only practical way to enforce payment. He argued that allowing the garbage trucks to operate would prejudice the Association and its compliant members.

THE RESPONSE

20. In a further affidavit sworn on 21st September 2025, the 1st Plaintiff challenged the deponent's authority to swear the affidavit on behalf of the 1st to 4th Defendants. She contended that the authority was not a valid resolution

because it was not extracted from the minutes of a properly convened meeting.

21. She reiterated that the Plaintiffs are not members of the 1st Defendant because they neither applied for nor consented to membership. She argued that the mere inclusion of their names in an internal register cannot create binding obligations.
22. She relied on the Defendants' admission that the AGM of 15th July 2023 lacked quorum, arguing that any election of officials was null and void and cannot confer any rights or obligations upon them.
23. She further stated that the Plaintiffs had never paid a service charge to the 1st Defendant and termed the statements as internally generated. She maintained that any payments made were to the former association account, as evidenced by bank and mobile money records.
24. She also challenged the validity of the 2025 AGM resolutions revising the service charge, which originated from an association the Plaintiffs did not belong to. She argued that in light of the acknowledged quorum defects, the resolutions were void.
25. She maintained that the Defendants admitted to barring garbage trucks engaged by the Plaintiffs and asserted that such conduct was unlawful and violated their constitutional rights to property and to a clean and healthy environment.
26. She rejected the allegation that non-payment of the service charge was motivated by personal grievance, explaining that

residents had sought a special general meeting to address governance issues.

27. She denied liability for the alleged arrears of KShs. 86,000/= per Plaintiff, asserting the absence of any contractual basis. She also denied dumping waste at the Defendants' premises, contending that any improper disposal was occasioned by the blockade of licensed collectors.
28. The application was canvassed by way of written submissions.

THE PLAINTIFFS' SUBMISSIONS

29. The Plaintiffs filed their submissions dated 9th October 2025.
30. On behalf of the Plaintiffs, Counsel outlined the following issues for the Court's determination:
 - a) *Whether the Applicants have established a prima facie case;*
 - b) *Whether the Applicants stand to suffer irreparable harm if the orders sought are not granted*
 - c) *Where the balance of convenience lies pending the determination of the suit.*
31. Regarding the first issue, Counsel submitted that the Plaintiffs had established a prima facie case as outlined in **Giella v Cassman Brown & Co. Ltd [1973] EA 358** and **Mrao Ltd v First American Bank of Kenya Ltd & 2 Others [2003] KLR 125**.
32. Counsel submitted that the Plaintiffs' claim was grounded in violations of Articles 36, 40, 42, 47, and 54 of the

Constitution, as well as statutory protections under the Environmental Management and Co-ordination Act and the Sustainable Waste Management Act, 2022. Counsel further submitted that the Defendants lacked lawful authority to restrict waste management services to private homeowners who are not members of the 1st Defendant's Association. It was further submitted that membership in a residents' association was voluntary and could not be imposed without consent.

33. Counsel argued that the Defendants acknowledged restricting licensed waste collectors to compel payment of alleged service charges, an act that constitutes unlawful self-help and coercion. Counsel further contended that the Plaintiffs' constitutional rights were violated by obstructing access to waste management services, thereby fulfilling the requirements for interlocutory protection.
34. Counsel relied on a statutory notice issued by Nairobi County to argue that the ongoing obstruction violated Article 42 of the Constitution and the Persons with Disabilities Act.
35. Regarding the second issue, the Counsel submitted that the continued accumulation of garbage exposed the Plaintiffs to ongoing environmental and health risks, humiliation, and interference with access, which could not be adequately compensated by damages.

36. Counsel submitted that the balance of convenience favours the preservation of lawful access and environmental hygiene.
37. Counsel relied on **Locabail International Finance Ltd v Agro-Export & Another [1986] 1 ALL ER 90** to submit that the Applicants had met the threshold for the grant of a mandatory injunction at the interlocutory stage. Counsel also relied on **Kenya Breweries Ltd & Another v Washington O. Okeyo [2002] eKLR**, **Belle Maison Ltd v Yaya Towers Ltd [1996] eKLR**, **Nation Media Group & 2 Others v John Harun Mwau [2014] eKLR**, and **Mwangi Stephen Muriithi v Daniel Toroitich arap Moi & Another [2017] eKLR**, to submit that an interlocutory mandatory injunction may issue where there is a continuing infringement of rights and the wrong is readily remediable.

THE 1ST, 2ND 3RD AND 4TH DEFENDANTS' SUBMISSIONS

38. The 1st to 4th Defendants filed their submissions dated 4th November, 2025. On their behalf, Counsel submitted that the dispute arose from the suspension of garbage collection services following the Plaintiffs' failure to pay the service charge. Counsel further submitted that the Plaintiffs, as members of the 1st Defendant's Association, are bound by its rules and financial obligations.
39. Regarding whether a prima facie case had been established, Counsel argued that the Plaintiffs merely invoked constitutional provisions without demonstrating a concrete

nexus between the cited rights and the alleged violations. It was submitted that the Plaintiffs failed to show discrimination under the Persons with Disabilities Act and that the service charge was uniformly applied. Counsel further argued that the Plaintiffs did not deny non-payment but instead relied on alleged non-membership.

40. Counsel submitted that the 1st Plaintiff attended the Annual General Meeting of 15th July 2023 and was elected Chairlady, and that the 2nd Plaintiff had previously remitted the service charge. Counsel further submitted that non-members who benefited from common services were liable to contribute to the service charge.
41. To support this point, reliance was placed **on Kinyanjui & 13 others v Richu & 4 others, as officials of Thome V Residents Welfare Association & another [2024] KEELC 4359 (KLR), and Kiriinya M. Mwendia v Runda Water Limited & Another [2014] eKLR**, in which the courts upheld the reasonableness of requiring non-members who benefit from common services to pay applicable charges. It was argued that without payment, the Plaintiffs had not established a prima facie case.
42. On irreparable harm, counsel submitted that the characterization of the harm as environmental or continuous harm does not render it irreparable
43. On the balance of convenience, Counsel argued that it would be unsafe to grant mandatory relief before trial as the issues raised were not clear and straightforward. In conclusion,

Counsel urged the court to dismiss the application with costs.

44. The second application is a Notice of Motion dated 23rd October 2025, brought under Section 63(c) of the Civil Procedure Act, Section 5 of the Judicature Act, and Order 40 Rule 3 of the Civil Procedure Rules, in which the Plaintiffs/Applicants seek the following orders:

i) That the 1st to 5th Defendants/Respondents, together with their agents, servants, employees and/or any persons acting under their authority; including the named individuals: ALPHONSE OWINO, MS. CAROLINE OMANYO, MR. MESHACK NYAKARESI, AND MR. JOSEPH MATAYO, employees of Canon Security Limited; be found to be in wilful contempt of the Court Orders issued on 24th September 2025.

ii) That the said alleged contemnors be and are hereby ordered to personally attend Court and show cause why they should not be committed to civil jail or otherwise punished for contempt of Court.

iii) That the Honourable Court do issue such further or consequential orders as may be necessary to enforce full compliance with its Orders of 24th September 2025, including removal of any obstruction preventing Taka Taka

Solutions (the Plaintiffs' licensed waste handler) from accessing the Plaintiffs' premises.

- iv) That the Officer Commanding Station (OCS) Muthaiga Police Station do provide assistance to ensure compliance with the Orders of this Honourable Court and to prevent further obstruction, harassment, or environmental nuisance at the Plaintiffs' residences.***
- v) That the costs of this Application be borne jointly and severally by the Respondents and the named contemnors.***

45. The application is based on the grounds appearing on its face together with the supporting affidavit of Polly Gathoni Waweru, sworn on even date.

THE APPLICANTS CASE

46. The deponent averred that on 24th September 2025, the Court issued a temporary injunction restraining the Defendants, their agents, or persons acting under their authority from denying waste collection services or causing environmental obstruction at the Plaintiffs' residences within Muthaiga North Gardens Balozzi.
47. She further averred that the orders were extracted and served upon the Defendants and their Advocates on 9th October 2025 and brought to the attention of Canon Security Limited personnel stationed at the estate gate on the same day, as evidenced by an acknowledged email.

48. That despite service, the Defendants, through security personnel, including Caroline Omanyo, Meshack Nyakaresi, Joseph Matayo, and a supervisor, Alphonse Owino, continued to deny access to the Plaintiffs' licensed waste management provider, Taka Taka Solutions.
49. She asserted that the continued obstruction rendered their residences unhygienic and unsafe, thereby exposing the 2nd Plaintiff to health risks and indignity.
50. She maintained that the impugned conduct constituted wilful disobedience of the Court's orders and amounted to contempt, warranting sanctions.

THE 1ST, 2ND, 3RD, AND 4TH DEFENDANTS CASE

51. The Defendants filed a replying affidavit, 2025, sworn by Walter Magero Kondik, 4th November, in opposition to the application. The deponent acknowledged he was aware of the orders issued on 24th September 2025.
52. He explained that they continue to bar trucks belonging to Taka Taka Solutions from entering, based on legal advice from their advocates.
53. The deponent contended that they acted on legal advice and that even if that advice were erroneous, their conduct could not amount to wilful disobedience.
54. He urged the court to dismiss the application with costs.

THE RESPONSE

55. In a supplementary affidavit dated 5th November 2025, the 1st Plaintiff averred that their advocates, by an email dated

27th September 2025, rejected the Defendants' interpretation of the order. She asserted that the injunction issued on 24th September 2025 remained operative.

56. She averred that Order No. 6 merely granted liberty to consider the Defendants' proposal and did not suspend or qualify the injunction restraining interference with access or waste collection. She contended that, despite the service and clarification of the Court order, the security personnel continued to obstruct Taka Taka Solutions' access to their residences.
57. She contended that reliance on legal advice did not justify the Defendants non compliance and that misinterpretation of a court order was no defense to contempt.

THE 5TH DEFENDANT'S CASE

58. The 5th Defendant filed a Replying Affidavit, sworn by Joseph Macharia, in opposition to the application. The deponent averred that the 5th Defendant acted in good faith and solely on the 1st Defendant's instructions pursuant to a Security Services Agreement dated 1st September, 2025.
59. He disputed that personal service was effected upon named guards.
60. He asserted that the order of 24th September 2025 prohibited the denial of waste collection generally but did not expressly grant access to Taka Taka Solutions. In conclusion, he urged the court to dismiss the application with costs.

61. The application was canvassed by way of written submissions.

PLAINTIFFS SUBMISIONS

62. The Plaintiffs filed their submissions dated 5th November 2025. On behalf of the Plaintiffs, Counsel submitted that the 1st to 4th Defendants expressly admitted knowledge of the orders issued on 24th September 2025, yet deliberately declined to comply.

63. Counsel maintained that the operative orders restrained the Defendants from restricting access to the Plaintiffs' residences causing or permitting nuisance, obstruction, environmental hazard, or denial of waste collection. It was further submitted that the liberty granted to the Plaintiffs to accept the 1st Defendant's proposal to reinstate garbage collection did not suspend or qualify the injunctive protection already granted.

64. Counsel relied on **Teachers Service Commission v Kenya National Union of Teachers & 2 Others [2013] eKLR** and **Econet Wireless Kenya Ltd v Minister for Information & Communication of Kenya & Another [2005] eKLR** to submit that court orders must be obeyed unless they are varied or set aside, and cannot be circumvented by unilateral interpretation.

65. Counsel further submitted that the continued obstruction resulted in unsanitary and hazardous conditions, elevating the matter into one of public health concern.

66. Regarding the service charge, Counsel argued that access to private premises by licensed service providers cannot lawfully be conditioned on payment of disputed charges without a contractual relationship. To support this argument, Counsel relied on **Kiriinya M. Mwendia v Runda Water Limited & Another [2014] eKLR**. In conclusion, Counsel urged the Court to allow the application as prayed.

THE 1ST, 2ND, 3RD AND 4TH DEFENDANTS SUBMISSIONS

67. The 1st to 4th Defendants filed their submissions dated 10th November 2025. On their behalf, Counsel submitted that the Plaintiffs had not established that the Defendants were in contempt of the Court order. It was argued that the alleged breach concerned prayer 3(b) of the Notice of Motion dated 3rd September 2025, which sought to restrain the entry of designated service providers, including Taka Taka Solutions, and was not granted.

68. Counsel relied on **Eunice Nafula Tembe v Multiple Hauliers (E.A) Ltd & 3 Others [2014] KEHC 4653 (KLR)** and **Bank für Arbeit und Wirtschaft A.G v Attorney General & Another [1999] KECA 13 (KLR)** to argue that the Defendants could not be held in contempt for failing to comply with an order the Court had declined to grant.

69. Counsel submitted that the Defendants acted in good faith in interpreting the scope of the order. It was argued that even if the legal advice was erroneous, reliance on it negated the element of deliberateness required to prove contempt. To

support this argument, reliance was placed on **Cecil Miller v Jackson Njeru & Another [2017] eKLR.**

THE 5TH DEFENDANT'S SUBMISSIONS

70. The 5th Defendant filed its submissions dated 17th November 2025.
71. On behalf of the 5th Defendant, Counsel submitted that the contempt application against it was defective due to misjoinder, as it named the 5th Defendant rather than the specific individuals alleged to have disobeyed the court. To support this point, reliance was placed on **Mwaisama & 158 Others v Ndara B Community & 2 Others [2025] KEELC 7371 (KLR)** where the court held that contempt is an act of personal responsibility. It was further submitted that the 5th Defendant acted as an agent and implemented the instructions pursuant to its contract.
72. Counsel argued that contempt must be proved to a higher standard than ordinary civil cases. Counsel submitted that the Plaintiffs had failed to demonstrate a clear and unambiguous order, knowledge and proper service endorsed with a penal notice.
73. To support this point reliance was placed on **Erick Kiprotich Bett v Independent Electoral and Boundaries Commission & 2 Others [2022] eKLR, Philip Chepkwony v Benjamin Tarus & 4 Others [2021] KEHC,** and **Ochino & Another v Okombo & 4 Others [1989] KECA,** as well as **David Njoroge Kinuthia & 653 Others v**

Gnanjivan Screws and Fasteners Limited & 5 Others [2021] KEHC.

74. It was submitted that the order did not expressly mandate access to Taka Taka Solutions and that any ambiguity must be resolved in favour of the alleged contemnor. In conclusion, Counsel urged the court to dismiss the application with costs.

THE PLAINTIFF'S FURTHER SUBMISSIONS

75. The Plaintiffs filed further submissions dated 10th November 2025 and reiterated the contents of the supporting affidavit and submissions. Counsel argued that waste collection is a statutory public health function regulated under the **Environmental Management and Co-ordination Act, the Sustainable Waste Management Act, 2022**, and the **Public Health Act**. Counsel also argued that a private association cannot dictate which licensed waste handler a homeowner engages.
76. Relying on Article 259 of the Constitution, Counsel submitted orders are to be interpreted purposively and in a manner that promotes the Bill of Rights. Further reliance was placed on **Law Society of Kenya v Attorney General & 3 Others (Environment and Land Court, 2023) eKLR** and **Peter K. Waweru v Republic [2006] eKLR** on the centrality of the right to a clean and healthy environment.

ANALYSIS AND DETERMINATION

77. Having considered the applications, the respective affidavits, and the rival submissions, the following issues arise for determination:

a) Whether the Plaintiffs have met the threshold for the grant of an injunction.

b) Whether the 1st to 5th Defendants are in contempt of the Court's orders of 24th September 2025.

78. Regarding the first issue, the principles applicable to an application for an injunction were set out in the case of **Giella v Cassman Brown & Co Ltd 1973 EA 358** as follows: -

✓ ***First, the applicant must show a prima facie case with a probability of success.***

✓ ***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.***

✓ ***Thirdly, if the court is in doubt, it will decide an application on a balance of convenience.***

79. A prima facie case was defined in **Mrao Ltd v First American Bank of Kenya and 2 others, (2003) KLR 125** as:

"A Prima facie case in a civil application includes but 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 there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter”.

80. It is not in dispute that the Plaintiffs are the registered proprietors of the properties located in the Muthaiga North Gardens Balozi estate. The Plaintiffs produced copies of certificates of title establishing ownership of the properties.
81. The Plaintiffs assert that the Defendants deprived Taka Taka Solutions of access to their residences, resulting in the accumulation of refuse and potential health hazards. They provided correspondence from Taka Taka Solutions confirming its contractual obligation as a waste collection service provider; photographs showing the buildup of refuse near their dwellings; a cease-and-desist letter dated 21st February 2024 addressed to the estate management; a statutory notice issued by Nairobi City County directing the termination of restrictions against licensed waste handlers concerning House No. 349; and a demand notice dated 31st July 2025, issued in the name of Muthaiga North Balozi Association, demanding payment of alleged service charge arrears amounting to KShs. 81,500/= . The Plaintiffs further assert that the Defendants' actions caused the accumulation of refuse and potential health hazards.
82. The Defendants, on the other hand, maintain that the Plaintiffs are obligated to pay the service fee because their residences are within the estate.

83. Based on the evidence presented by the parties, the issues for determination are whether the Plaintiffs are members of the 1st Defendant, whether they are bound to pay the service charge by virtue of property ownership within the estate, whether arrears exist, and whether the alleged denial of access extended beyond the garbage track contracted by the Plaintiffs.
84. The Court is aware that at the interlocutory stage, it is not required to make any definitive conclusion on matters in controversy. The Plaintiffs contended that they are not members of the 1st Defendant and therefore its rules are not binding upon them. They further contended that the internal register was created to include their names. They disputed the payment records. These issues will require examination of the Association's register, its Constitution, and payment records, among others. These matters can only be determined at a full trial, where the parties will have the opportunity to call evidence and challenge it by way of cross-examination.
85. The Applicants also seek to restrain the Defendants from levying or demanding a service charge and arrears. In my view, granting this order at the interlocutory stage would amount to determining the dispute over whether the Plaintiffs are bound by the Association. Granting such an order would be tantamount to issuing final orders.
86. Based on the evidence presented before me, I find that the Plaintiffs have not established a prima facie case.

87. The conditions set out in **Giella vs Cassman Brown (supra)** are to be considered sequentially. Having found that the Plaintiffs have not established a prima facie case, it will be immaterial to consider the other limbs that are to be considered for a grant of an injunction.
88. The evidence presented by the parties shows that the estate has an existing communal waste management arrangement.
89. The court appreciates the Plaintiffs' concerns about waste management. In the interest of public health and sanitation, the court finds it prudent to direct that garbage collection within the estate shall continue under the existing waste arrangement pending the hearing and determination of this suit.
90. This precautionary measure is intended to maintain the status quo and prevent environmental or health risks.
91. Should it be established that the Plaintiffs were lawfully bound to contribute to the communal waste management services and failed to do so, the Defendants shall be at liberty to recover any sums due from them.
92. Conversely, if it is established that the Plaintiffs were not legally obligated under the Association's framework, appropriate relief shall be granted. These measures will ensure that essential services continue uninterrupted while safeguarding the parties' respective rights.
93. Regarding the second issue, **Black's Law Dictionary, 9th 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.”

94. Section 5 of the ***Judicature Act*** 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.

95. In **Econet Wireless Kenya Ltd vs Minister for Information & Communication of Kenya & Another (2005) eKLR**, the court observed 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.”

96. The law applicable to the present application is Order 40 Rule 3(1) of the Civil Procedure Rules, which states that:

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.

97. 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:

“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)b) The defendant had knowledge of or proper notice of the terms of the knowledge.

c) c) The defendant has acted in breach of the terms of the order and

d)d) The defendant's conduct was deliberate".

98. The first issue for determination is whether the terms of the order were clear. The order at the centre of this application was issued on 24th September 2025. Prayer No. 3(a) and (c) were issued pending the hearing and determination of the application. The order provide as follows

THAT pending the hearing and determination of the Application, a temporary injunction be and is hereby issued restraining the 1st, 2nd, 3rd, 4th, and 5th Defendants, their agents, employees, servants, or anyone acting under their authority or direction from:

a. Restricting, blocking, or in any way interfering with the 1st and 2nd Plaintiffs'/Applicants' right of access to and from their residences within Muthaiga North Gardens Balozi;

c. Causing, permitting, or continuing any act of nuisance, obstruction, or environmental hazard, including but not limited to the accumulation of garbage, denial of waste collection, or other interference with the Plaintiffs' quiet and peaceful enjoyment of their residences."

99. The Defendants do not deny knowledge of the order.

100. Regarding whether the Respondents deliberately breached the court order, the Applicants must prove their case beyond a 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. To succeed in contempt proceedings, the Applicants must prove wilful and deliberate disobedience of the court order as outlined in **Gatharia K. Mutikika 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 proof on a balance of probabilities, almost but

not exactly beyond a reasonable doubt. The standard of proof beyond a 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.”

101. Similarly, in **Peter K. Yego & Others vs Pauline Wekesa Kode, ACC NO. 194 of 2014**, the court held that:

“It must be proved that one had actually disobeyed the court order before being cited for contempt.”

102. In the matter at hand, the Plaintiffs contend that the Respondents willfully disobeyed orders by preventing Taka Taka Solutions from accessing their residences.

103. However, the Defendants’ position is that, upon receiving legal advice, they understood that the Court had declined to grant a specific prayer requiring them to allow entry to the Plaintiffs’ designated waste handler, and that they were therefore entitled to continue barring the trucks.

104. The record shows that although Prayer 3(c), which restrained the Defendants from denying waste collection, was granted, Prayer 3(b), which sought entry of designated service providers, including garbage collection services such as Taka Taka Solutions, was not granted. The 5th Respondent argued that the Plaintiffs had not proved contempt against it because it was sued in its corporate capacity. A corporate body acts only through natural persons, and when penal

consequences are sought, the individual responsible must be clearly named and given an opportunity to respond. In light of the foregoing, I find that the Plaintiffs have not proved to the required standard that the Defendants are in contempt of the court order.

105. In the end, I find that both applications lack merit and are hereby dismissed. Costs to abide with the outcome of the suit.

**RULING SIGNED, DATED, AND DELIVERED VIA
MICROSOFT TEAMS THIS 20th DAY OF FEBRUARY 2026.**

.....
**HON. T. MURIGI
JUDGE**

IN THE PRESENCE OF:

Martha Waweru for the Applicants

Court Assistant - Ahmed