

**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT NAIROBI**

**ELC SUIT NO. 1392 OF 2014**

**JOSEPH WANYOIKE .....**

**PLAINTIFF**

**VERSUS**

**REGINA NJERI GACHERU ..... 1<sup>ST</sup>**

**DEFENDANT**

**EUNICE WAWERU ..... 2<sup>ND</sup>**

**DEFENDANT**

**RULING**

1. What is before the Court for determination is the Plaintiff's Notice of Motion dated 29<sup>th</sup> September 2025, where he seeks the following Orders:

**a) Spent.**

**b) Spent.**

**c) That upon hearing this application inter parties, this Honourable court be pleased to order Regina Njeri Gacheru, the 1<sup>st</sup> Respondent herein**

***ELC SUIT NO. 1392 OF 2014***

***Ruling***

**to be committed to serve civil jail for a period not exceeding six (6) months for being in contempt of its orders of 29<sup>th</sup> May, 2015.**

**d) That the costs of this application be provided for in any event.**

2. The application is premised on grounds on its face and on the Plaintiff's supporting affidavit. He avers that vide this Court's ruling delivered on 29<sup>th</sup> May 2015, it directed that status quo prevailing be preserved pending hearing and determination of the suit but in direct disobedience of the said orders, the 1<sup>st</sup> Defendant has constructed a new iron sheet house/structure on the suit property. He explains that during a mention of the suit on 23<sup>rd</sup> September 2025, Counsel for the 1<sup>st</sup> Defendant intimated to this Court the issue of construction having been undertaken on the suit property, thus the 1<sup>st</sup> Defendant has admitted to disobeying this Court's orders and ought to be punished for being in contempt.

## **Response**

3. The application is opposed by the 1<sup>st</sup> Defendant who filed a replying affidavit. She avers that she is the allottee of **Plot No. F95** where she has lived over the years. Further, that this Court's orders of 29<sup>th</sup> September 2025 restrained interference with **Plot No. X33**, which is distinct from her plot and which she has never interfered with. She contends that the Court is yet to determine whether **Plot No. F95** Huruma Infilis-Kiamaiko is one and the same thing with **Plot No. X33**.
4. The 2<sup>nd</sup> Defendant did not file a response and parties did not file written submissions.

## **Analysis and Determination**

5. Upon consideration of the instant Notice of Motion application including the respective affidavits, the only issue for determination is whether the 1<sup>st</sup> Defendant is in contempt of this Court's orders of 29<sup>th</sup> May 2015 and if she should be

committed to civil jail for a period not exceeding six (6) months.

6. The Plaintiff claims that the 1<sup>st</sup> Defendant has acted in contempt of this Court's orders issued on the 29<sup>th</sup> May, 2015. The 1<sup>st</sup> Defendant insists that she has never interfered with the Plaintiff's **Plot No. X33** and avers that she is on her **Plot No. F95 Huruma Infils-Kiamaiko** which is distinct from the Plaintiff's plot.
7. Vide its Orders of 29<sup>th</sup> May 2015, this Court (L. Gacheru J) noted that the plot in dispute appears to have two different plot numbers, with the Plaintiff stating that it is **Plot No. X33 Huruma Infills-Mathare Phase 1**, while the 1<sup>st</sup> Defendant claims **Plot No. F95, Huruma Infils-Kiamaiko**. She proceeded to hold as follows:

***“Status quo herein should be preserved so that the***

***Plaintiff herein should not interfere with the Defendant's possession of Plot No. X33, Huruma***

***Infills-Mathare Phase 1, pending the hearing and determination of the suit.”***

- 8.** The Court of Appeal stated as follows in **Mukuha v Gashwe & 14 others [2023] KECA 1482 (KLR)**:

***“Often times, this Court has emphasized the need to make clear the actual factual position in relation to the subject matter whose status quo is to be maintained. The order should leave no room for more than one clear interpretation..”***

- 9.** While in the case of **Dean v Dean [1987] 1 FLR 517** cited in **Titus Musyoki Nzioka v John Kimathi Maingi & Another (2013) eKLR**, the Court stated as follows:

***“An application for contempt of Court or its antecedent orders has to establish clearly and precisely exactly of what the Respondent was in contempt of..”***

- 10.** On perusal of the Orders granted, I note the Judge directed that there should be no interference with the suit plot No. X33 Residential Plot - Huruma Estate (Kia Maiko) - Infill

plots. However, the 1<sup>st</sup> Defendant insists her plot is number F95. The said Court order did not confirm if X33 and F95 were one and the same. To my mind, I find that since the Status Quo Order did not qualify the actual factual position of the disputed plots and how the same should be maintained, it left room for different interpretations. In my view the Plaintiff has failed to establish clearly and precisely exactly of what the Defendant is in contempt of.

- 11.** In the foregoing, while associating myself with the decisions cited, I find that this is not a clear-cut case where the 1<sup>st</sup> Defendant can be cited for contempt as she has ownership documents over her land, and I will decline to do so.
- 12.** In the circumstances, I find the instant Notice of Motion application unmerited and will disallow it.
- 13.** Each party to bear their own costs.

**DATED SIGNED AND DELIVERED AT NAIROBI THIS  
23<sup>RD</sup> DAY OF MARCH, 2026**

**CHRISTINE OCHIENG**  
**JUDGE**

**In the presence of:**

Matwere for Plaintiff

Onyango for Ms Nyang for Defendant

Court Assistant: Joan

ORIGINAL