

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MAKUENI

ELC CASE NO E032 OF 2025

PIUS MALUNGU NDAMBUKI.....
PLAINTIFF

VERSUS

ALOIS MUIA.....1ST DEFENDANT

LAND REGISTRAR, MAKUENI COUNTY..... 2ND
DEFENDANT

RULING

1. The Plaintiff filed this suit against the Defendants claiming
 - 1) **That the 1st Defendant/Respondent, Alois Muia be arrested and committed to civil jail for a period of six (6) months for contempt of court, having been served with and disobeyed this honourable court's injunction orders given on 25th September, 2025.**
 - 2) **That the OCS Emali police station do assist in the arrest of the Respondent.**
 - 3) **That the costs of this application be borne by the Respondent.**
2. The Applicant contends that he obtained injunctive orders on 25th September, 2025 restraining the 1st Defendant/Respondent from evicting or demolishing a building on his parcel of land known as plot 648 situate at Emali Town. The orders were served upon the Respondent on 29th September, 2025 but despite service of the orders of injunction, the Respondent went ahead to demolish the Applicant's building on the night of 9th/10th October, 2025 under the supervision of the local police.

3. The Applicant contends that the demolition of his building when there were orders restraining the same was utter contempt of court for which the Respondent ought to be punished.
4. The Respondent opposed the Applicant's application based on a replying affidavit sworn on 28th October, 2025. The Respondent denied disobeying any orders in respect of the Applicant's plot No. 648 at Emali Town. He states that the demolition which was carried out on the night of 9th /10th October was in compliance with enforcement of the court decree given on 28th December, 2018 over Land Parcel No. Emali Township Block 1/98 which decree had been upheld by the Court of Appeal in Civil Appeal No. 123 of 2019.
5. The demolition was done under supervision of the officer commanding Emali police station in line with the orders of the court given on 24th January, 2024. The demolished structures were within the boundaries of plot No. Emali Township Block 1/98 in line with the decree of the court. The Respondent further stated that this court delivered a ruling similar to the application the genesis of this contempt application on 15th May, 2025 in which the application in ELC E017 of 2025 was dismissed.
6. The Respondent states that had he been served with an order touching on plot number Emali Township Block 1/98, no demolition will have occurred. He further states that he cannot be punished for contempt when he was executing a lawful decree where there were no orders of stay of execution.
7. The Applicant filed his submissions dated 21st November, 2025. The Applicant submitted that the Respondent has not denied service of the orders given on 25th September, 2025 restraining him from demolishing the building on plot 648 at Emali. The orders of the court were served upon the Respondent by a process server called Justus Mweli Nzina.

8. The Applicant submitted that he had proved all the elements required in an application for contempt of court. He relied on the case of **Koilel & 2 Others –vs- Koilel & Another Civil Appeal E002 of 2021 (2022) KEHC ID 288 (KLR) 30 June, 2022 (Judgment)**.
9. The Respondent filed his submissions dated 21st January, 2026. The Respondent submitted that he did not commit any contempt of court order. What he did on the night of 9th /10th October, 2025 was to effect the decree given on 28th December, 2018. He submitted that the Applicant had not proved the existence of plot 648 at Emali and that the Respondent had willingly disobeyed any court order. He further submitted that the demolition occurred within the boundaries of plot No. Emali Township Block 1/98 whose ownership had been affirmed by the Court of Appeal.
10. I have carefully considered the Applicant's application, the opposition to the same by the Respondent as well as the submissions by the parties. The only issue for determination is whether the Applicant has proved that the Respondent was in contempt of the court order given on 25th September, 2025.
11. In order to determine whether the Respondent is in contempt of the court order given on 25th September, 2025, a brief background of the dispute is necessary. The Respondent had filed a suit being ELC No. 98 of 2017 against one Edward Mutinda Ndeti over property known as Emali Township Block 1/98. In a judgment delivered on 28th December, 2018 the court found that the property belonged to the Respondent. Edward Mutinda Ndeti moved to the Court of Appeal and filed an appeal against the decision of the court. The appeal was dismissed and the judgment of the ELC court was affirmed.
12. Edward Mutinda Ndeti just as the Applicant in this application was alleging that the Respondent had illegally annexed his plot into what became Emali

Township Block 1/98. On 8th April, 2025, the Applicant herein had filed a chamber summons in which he was seeking to be joined in ELC No. 98 of 2017 as a Defendant and that the judgment delivered on 28th December, 2018 be set aside so that he can be heard. His contention was that his plot No. 648 lay within plot No. Emali Township Block 1/98. The court dismissed this application with costs in a ruling delivered on 30th October, 2025.

13. Before the court delivered ruling of 30th October, 2025, the Applicant filed the present suit in which he contends that the Respondent had illegally included his plot No. 648 into Emali Township Block 1/98. He is seeking for cancellation of title to Emali Township Block 1/98 so that he can claim his plot 648 which is within the Respondent's plot. The Applicant contemporaneously filed an application for injunction which was duly served upon the Respondent but the Respondent did not respond to the said application. When the application came up for hearing interpartes on 25th September, 2025, the Respondent was not present and the court allowed the application as prayed.

14. There is no doubt that the court gave an injunction stopping the eviction or demolition of the Applicant's property. The order was very clear on what the Respondent was expected to do. The order was served upon the Respondent by a process server called Justus Mbweli Nzina who swore an affidavit to that effect. The Respondent does not deny that he was served with the order.

15. The Respondent states that he did not commit any contempt as he was enforcing a decree in respect of plot number Emali Township Block 1/98. This is the true position but the main question is whether the Respondent complied with the order of 25th September, 2025. The Respondent may have chosen to ignore the orders given on 25th September, 2025 based on a ruling of this court given on 15th May, 2025 in which the court had dismissed an

application brought under ELC E017 of 2025 which application was similar to the one which the court allowed on application by the Applicant.

16. The Respondent was under obligation to obey the order of 25th September, 2025 even if he believed the order was illegal or obtained for lack of material non disclosure. Had the Respondent responded to the Applicant's application for injunction perhaps the result will have been different given the decision in ELC 98 of 2017 which decision was affirmed by the Court of Appeal. Whether plot 648 existed within plot Emali Township Block 1/98 or not is not an issue to be determined in this application. The proper procedure which the Respondent would have followed was to apply for discharge of the orders of 25th September, 2025 before he could move to evict the Applicant.

17. In the case of **Rose Detho –vs- Ratilal Automobile Limited & 6 Others Nairobi Civil Appeal No. 311 of 2006**, the Court of Appeal stated at **paragraph 60** as follows:

“60. In Worbun Limited –vs- Margaret Bashford (2016) eKLR, this court reaffirmed the position in Refrigeration and Kitchen Utensils Ltd –vs- Gulabanchand Potatlal Shah & Another Civil Application No. 39 of 1990 where it was observed:

“A party who knows of an order, whether null or valid, regular or irregular, cannot be permitted to disobey it..... It would be most dangerous to hold that the suitors, or their solicitors, could themselves judge whether an order was null or valid whether it was regular or irregular. That they should come to court and not take it upon themselves to determine such question..... he should apply to the court that it might be discharged. As long as it exists it must not be disobeyed”.

18. The Respondent decided to ignore the court order of 25th September, 2025 willingly. I therefore find that the Respondent is guilty of contempt of the

court order of 25th September, 2025. The Respondent shall appear before the court on a date to be given after the delivery of this ruling for appropriate sentence. The Applicant shall have costs of this application.

It is so ordered.

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HON. E. OBAGA

JUDGE

RULING DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS THIS 16TH DAY OF APRIL, 2026.

IN THE PRESENCE OF:

Mr. Mbindyo for 1st Defendant.

Mr. Asiyo for Mr. Nzari for Plaintiff.

Court assistant - Deodata