

**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT OF KENYA**

**AT NAKURU**

**ELC NO 265 OF 2016**

**JOHN MUTHEE NGUNJIRI .....**  
**APPLICANT**

**VERSUS**

**ALI IBRAHIM ..... DEFENDANT**

**R U L I N G**

1. In his judgement dated 20<sup>th</sup> December 2024 Hon. Ombwayo J granted the following orders:-

“ (a) An order of permanent injunction restraining the Defendant herein whether by himself his agents and/or servants from invading trespassing, cultivating, or in any way whatsoever interfering with the Plaintiff’s quiet possession and use of all that parcel of land formerly known as LR No.Gilgil/Gilgil Block 1/26307 (Kikopey) measuring approximately 1.3 Ha and currently undergoing the process of subdivision into LR Nos Gilgil/Gilgil Block 1/31518 - 31538.

Other than a declaration that the Defendant, Ali Ibrahim is the lawful proprietor owner and registered owner of parcel of land known as parcel No L.R No.29008 located in Gilgil township the counter claim is dismissed.

Each party shall bear own costs and the Ministry of Lands was to blame for the errors that caused the parties to come to court”

2. Arising from the Judgments two Notice of Motion were filed. The plaintiff’s Notice of Motion dated 20<sup>th</sup> June 2025 and the Defendant’s Notice of Motion dated 18<sup>th</sup> June 2025.
3. The Notice of Motion dated 20<sup>th</sup> June 2025 is brought under **Order 51 Rule 1, Order 22 Rule 29 of the Civil Procedure Rules, 2010, section 3A of the Civil Procedure Act, Chapter 21 of the Laws of Kenya and any other enabling provision of law)**
4. It seeks orders: -
  1. Spent
  2. That this Honorable Court be pleased to issue an order for eviction of the Defendant, his agents, servants, heirs or any other person claiming through him from all the parcels of land formerly known as LR No.Gilgil/Gilgil Block1/26307 ( Kikopey) and currently undergoing the process of subdivision into L.R Nos.Gilgil/Gilgil Block 1/31518-31538.
  3. That the Gilgil Sub County Police Commander be ordered to provide security to Court Bailiffs during the eviction.
  4. That costs of this application be in the cause.
5. The grounds are in the face of the Application and are set out in paragraphs 5 to 10.

6. The Application is supported by the affidavit of John Muthee Ngunjiri, the plaintiff/applicant herein, sworn on the 20<sup>th</sup> June 2025
7. It appears the Defendant did not file any response to this application.
8. The defendant's Notice of Motion dated 18<sup>th</sup> June 2026 is brought under **Article 159 of the Constitution, Section 3 and 5 (1) of the Judicature Act, Order 52 (3) of the Supreme Court Rules of England, Section 3A of the Civil Procedure Act and all other enabling provisions of the law).**
9. It seeks orders:
  - (a) Spent
  - (b) That Mr. John Muthee Ngunjiri be summoned to show cause why he should not be committed to Civil jail for disobeying court orders.
  - (c) That Mr John Muthee Ngunjiri committed to civil jail for a period of six months, for contempt of court.
  - (d) That alternative to praye Mr. John Muthee Ngunjiri above be fined Ksh.1,000,000/= for disobeying Court orders.
  - (e) That cost of this application be borne personally by Mr. John Muthee Ngunjiri Respondent herein.
10. The grounds are on the face of the application and are set out in paragraph 1 to 11.

11. The Application is supported by the Affidavit sworn by Ali Ibrahim, the Defendant/Applicant, on the 18<sup>th</sup> June 2025.
12. The application is opposed. There is a Replying Affidavit sworn by the plaintiff/Respondent, on the 9<sup>th</sup> July 2025.
13. The two applications proceeded by way of written submissions.

### **THE PLAINTIFF'S SUBMISSIONS**

14. They are dated 10<sup>th</sup> March 2026. They raise two issue for determination.
  - 1. Whether the plaintiff has willfully disobeyed any court orders so as to warrant citation for contempt.**
  - 2. Whether the plaintiff is entitled to an order of eviction against the Defendant following the judgment delivered by this Honorable Court.**
15. Counsel submitted that for an Applicant to succeed in contempt proceedings, he must establish:-
  - 1. The existence of a clear and unambiguous court order;**
  - 2. That the alleged contemnor had knowledge of the order, and;**
  - 3. That there was deliberate and willful disobedience of the order.**

Reliance is placed on the case of ***Shimmer Plaza Limited Vs National Block of Kenya Limited (2015) KECA 945 (KLR)***

16. It is also submitted that the injunctive orders granted on 20<sup>th</sup> December 2024 expressly restrained the Defendant, his agents, and/or servants. Further that the Defendant has failed to demonstrate the existence of any order binding upon the Plaintiff/Respondent which has been disobeyed.

17. It is further submitted that the Court entered judgment in favour of the Plaintiff; and affirmed his right to quiet possession and use of the suit property .

Reliance is placed on the cases of ***Machira t/a Machira & Co Advocates Vs East Africa Standard (2002) KEHC 1167; Mbogo Vs Shah (1968) E.A 93.***

18. Counsel also submitted that the Defendant's counterclaim was dismissed hence he ceased to have any legal claim over the suit property.

19. It is submitted that Eviction is a lawful mechanism for enforcing Court Decrees relating to possession of land and is necessary to give effect to the judgment already delivered; if there is no stay of execution.

Reliance is placed on the case of ***Tonui Vs Wekesa & 5 Others (2025) KEELC 1326 (KLR); Odoyo Vs Ojwang (2023) KEELC 19853 ( KLR)***

20. He prays that the Defendant's Notice of Motion dated 18<sup>th</sup> June 2026 be dismissed with costs and the Plaintiff's Notice of Motion dated 20<sup>th</sup> June 2026 be allowed.

## THE DEFENDANTS SUBMISSIONS.

21. They are dated 24<sup>th</sup> February 2026. They raise one issue for determination: -

**(i) Whether the Application dated 18<sup>th</sup> June 2025 is merited.**

22. It is submitted that the orders granted on the 20<sup>th</sup> December 2024 are clear. That the Defendant is the owner of the LRNo.29008 situated in Gilgil Township and the plaintiff has no right to be there unless with the Defendant's permission.

23. It is further submitted that the Plaintiff was aware of the said orders as he was present when judgment was delivered.

Reliance is placed on the cases of ***Sam Nyamweya & 3 others Vs Kenya Premier League Limited & 2 Others (2015) eKLR*** where the Court cited with approval the Court of Appeal's decision on ***Shimmers Plaza Limited Vs National Bank of Kenya Limited (2015) KECA 945 (KLR); Chege Kimotho & others Vs Vesters & Another (1988) KLR 48.***

24. It is submitted that the actions of the plaintiff/Respondent to invade the defendant's parcel and start carrying out survey works is tantamount to disobedience of the Court orders.

25. It is also submitted that court orders and decrees ought to be complied with.

Reliance is placed on the case of ***Teachers Service Commission Vs Kenya National Union of Teachers & 2 Others (2021) KECA 85 (KLR)***

He prays that the Application be allowed with costs.

26. I have considered the Notice of Motion dated 18<sup>th</sup> June 2025, the affidavit in support, the response thereto, the written submissions and the authorities cited. The issue for determination is whether the application meets the threshold for grant of the orders sought.
27. From the onset, the court on the 20<sup>th</sup> December 2024 gave a declaration that the Defendant is the owner of L.R No.29008 situated at Gilgil township. There are no orders restraining the plaintiff from accessing, using or enjoying his own suit property.
28. It is the plaintiff's position that he obtained orders in Nakuru MC Misc. Application E087 of 2025, dated 16<sup>th</sup> May 2025 which allowed him to seek security and to demarcate L.R Nos Gilgil Block1/31518-31538 respectively. He further stated that the Defendant came with Kenya Defence Forces Officers who chased him and the police officers away from the suit property.
29. It has been held time and time again that in order for the applicant to succeed in a case of contempt proceedings three elements need to be proved;
  - (i) Terms of the order;**
  - (ii) Knowledge of (i) above by the Respondents and**
  - (iii) Failure by the Respondents to comply with (i) above.**

**(See Trusted Society for Human Rights Alliance Vs Cabinet Secretary for Devolution and Planning & 3 Others [2017] eKLR and Nelson N Obuba Vs Itiru Mokoro Nyabwatania (2022) eKLR.**

30. Having narrowed down the question to whether the orders of 20<sup>th</sup> December 2024 were violated and bearing in mind the strict burden on the Defendant, to prove the breach on a margin higher than on a balance of probabilities and almost as high as beyond reasonable doubt, I find that Notice of motion dated 18<sup>th</sup> June 2025 has no merit.

There were no orders restraining the plaintiff from doing anything.

31. According to Black's Law Dictionary, contempt is a "disregard or disobedience to the rules or orders of a legislative or judicial body, or an interruption of its proceedings by disorderly behavior or insolent language in its presence or so near thereto as to disturb the proceedings or to impair the respect of such body".

32. In the case of ***Mutitika Vs Baharini Farm Ltd (1985) KLR 227*** it was held thus " **A contempt of court is an offence of a criminal character . 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 reasonable doubt. The standard of proof beyond 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 in nature.....”**

I am guided by the above Authorities in finding that the Application does not meet the threshold for grant of the orders sought.

33. In respect of the Notice of Motion dated 20<sup>th</sup> June 2025, the plaintiffs seeks the eviction of the Defendant from his suit property. Hon Ombwayo J granted orders of permanent injunction restraining the Defendant from interfering with the Plaintiffs use of his land. There is no finding that the Defendant is on the land and ought to be evicted.
34. My understanding of the orders is that each party was on his respective parcel of land. In any case, nothing prevents the Plaintiff from using lawful means to execute the decree.

I therefore decline to allow the Notice of Motion dated 20<sup>th</sup> June 2025 as no basis has been laid

35. In conclusion, I find no merit in the two applications. The final disposal orders are: -
  - a. The Notice of Motion dated 18<sup>th</sup> June 2025 is dismissed
  - b. The Notice of Motion dated 20<sup>th</sup> June 2025 is dismissed
  - c. Each party to bear own costs.

**Ruling dated signed and delivered virtually at Nakuru this 23<sup>rd</sup> day of April 2026.**

**L KOMINGOI**

**JUDGE**

**In the presence of:**

**Mr. Otieno for plaintiff**

**Mr. Okiro for the Defendant**

**Court Assistant: Derick**