



REPUBLIC OF KENYA



KENYA LAW
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Mathenge & another v Ouko & 4 others (Environmental and Land Originating Summons E027 of 2023) [2026] KEELC 1935 (KLR) (5 March 2026) (Ruling)

Neutral citation: [2026] KEELC 1935 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIROMENTAL AND LAND ORIGINATING SUMMONS E027 OF 2023**

LG KIMANI, J

MARCH 5, 2026

BETWEEN

AGNES WACHUKA MATHENGE 1ST APPLICANT

JOSEPH C WAMBUGU 2ND APPLICANT

AND

ROSELYNE DOLA OUKO 1ST RESPONDENT

AARON TAFARI OUKO 2ND RESPONDENT

ANDREW ATINDA OUKO 3RD RESPONDENT

THOMPSON HULL LIMITED 4TH RESPONDENT

PRISCILLA NYATICH OUKO 5TH RESPONDENT

RULING

1. This ruling is in respect of the Notice of Motion filed by the 5th Respondent (OS)/ Applicant, Thompson Hull Limited, dated 31st October 2025, praying for:
 1. Spent;
 2. That this Honourable Court be pleased to find and hold that the Respondents are in contempt of the orders of this Honourable Court issued on 26th September 2024, directing that the status quo of L. R. No. 3589/47 be maintained;
 3. That the Honourable Court be pleased to order the Respondents to purge their contempt and comply with the orders of this Honourable Court issued on 26th September 2024;



4. That the Officer Commanding Station (OCS) Karen Police station do ensure compliance with the orders of this Honourable court; and
5. That the costs of the application be borne by the Respondents herein.

Background: The Applicant's case

2. The 1st and 2nd Respondents filed two applications dated 26th March 2024 and 22 April 2024. In the earlier application, the Respondents prayed that the court issue an order that the Respondents in the Originating Summons (OS) be cited for contempt for evicting the Respondents herein from the suit property in contravention of the orders issued in Succession Cause No. 353 of 1997; in the matter of the estate of Jason Atinda Ouko and ELC Case Number 493 of 2011; Karen Kwamboka Okari versus Roselyne Dola Ouko & 2 others.
3. In the latter application, the Respondents herein sought orders of injunction restraining the Respondents in the OS from entering L. R. No. 3589/47. [hereinafter referred to as 'the suit property']. They also sought an order reinstating them into the suit property.
4. In their Affidavits in support of the application, they averred that the Respondents in the OS had hired several goons who descended upon them, evicted them and demolished buildings within the suit property.
5. A Ruling dated 26th September 2024 was delivered by Justice Omenge. In terms of the reinstatement, the court on the above applications stated thus, 'on the last issue of whether the court should order... reinstatement of the Applicants into the suit property, the court notes that given the many orders that have been given in this matter, and also considering that the information given on them is at best scanty, this court would be causing greater confusion by reinstating the Respondents herein into the suit property before hearing the parties.'
6. Consequently, she issued the following orders:
 - i. An order of injunction is hereby issued restraining any construction and transfer of the suit property to 3rd parties pending the hearing and determination of the Originating Summons; and
 - ii. ...the application for contempt and reinstatement fails.
7. The Application herein dated 31st October 2025 is supported by an Affidavit dated 31st October 2025 and a Further Affidavit dated 26th January 2026, sworn by Moses Kong'a Chebon, one of the directors of the Applicant herein. He swore that the Honourable court on 26th September 2024, ordered a status quo over the suit property.
8. The Applicant's case is that the Ruling of this Court was clear, unequivocal and incapable of misinterpretation, and that the Respondents were duly aware of its terms. The deponent avers that the Respondents proceeded, on 20th December 2024, to register a restriction against the suit property.
9. It is further deponed that in blatant disregard of the subsisting orders of this Court, the Respondents orchestrated a forceful invasion of the suit property by dispatching in excess of one hundred individuals, described as goons, who unlawfully entered the premises and evicted the Applicant therefrom. The Applicant contends that the eviction was carried out without any lawful authority and in direct contravention of the Court's directives.



10. The deponent further avers that the matter was reported to the relevant law enforcement authorities through counsel, and that an Occurrence Book (OB) number was duly issued, evidencing formal complaint of the alleged unlawful acts.
11. It is the Applicant's position that during the said invasion and eviction, the Respondents' agents occasioned extensive destruction to buildings, boundary fences and personal property situated on the suit premises. In addition, it is alleged that eight motorbikes belonging to the guards stationed on the property were unlawfully detained.
12. The Applicant maintains, upon advice of counsel, that orders issued by a court of competent jurisdiction are binding and must be obeyed unless and until they are lawfully set aside, reviewed or discharged. Accordingly, the deponent asserts that the Respondents' conduct amounts to willful disobedience of this Court's orders.
13. As a consequence of the foregoing acts, the Applicant avers that he has suffered substantial loss and damage, including loss of possession of the suit property, destruction of property and interruption of livelihood. He contends that unless the Respondents are sanctioned for their alleged contempt, they will persist in undermining the authority and dignity of this Court.

The 1st to 4th Respondents' [OS] case

14. In response to the application, Jonathan Wanjohi swore and filed a Replying Affidavit dated 2nd December 2025. He described himself as the duly appointed co-administrator of the estate of the late Raphael Nderitu, deponing that he had the authority of his co-administrator as well as the 1st to 4th Respondents in the Originating Summons, and was therefore competent and duly authorised to swear the affidavit on their behalf.
15. The deponent set out the history of the suit property and averred that the Respondents have at all material times been in physical, open and actual possession thereof. He maintained that their occupation has been continuous and uninterrupted, and that they remain in possession to date.
16. He further deponed that the Applicant had on several occasions attempted to forcibly evict the Respondents from the suit property. According to him, these incidents were reported at the Karen Police Station. In particular, he averred that the 1st Respondent was issued with a notice of eviction on 6th September 2023 by the Applicant, who alleged ownership of the land. He further stated that attempts to evict the Respondents were made on 28th September 2025 and 30th September 2025.
17. The deponent also swore that upon reporting the matter at Karen Police Station, they returned to find that their motorcycles had been impounded and taken to Lang'ata Police Station. He added that a complaint lodged with the Independent Policing Oversight Authority (IPOA) was not pursued on the basis that the dispute was already under the jurisdiction of the Court.
18. He contended that the present application had been filed in bad faith and was founded on a misrepresentation of the facts. He asserted that, contrary to the Applicant's allegations, it was the Applicant who had engaged goons to invade the suit property in an attempt to forcibly evict the Respondents.
19. Finally, the deponent averred that the Respondents were not in contempt of any court order and that the Applicant had failed to adduce cogent or sufficient evidence to establish the alleged contempt. He therefore prayed that the application be dismissed with costs to the Respondents.



The Applicant's submissions

20. Counsel representing the Applicant filed submissions dated 26th January 2026 stating that the issue of determination was whether the Respondents should be cited for contempt. Counsel defined contempt as a disregard of orders, and in this case, under a court of competent jurisdiction.
21. Counsel cited the case of Econet Wireless Kenya Limited versus Minister for Information & Communication of Kenya and Another [2005] KEHC, where Honourable Justice Ibrahim stated inter alia that it was essential for the rule of law to be maintained so that the authority and dignity of our courts are upheld. The Honourable judge went on to say that an order had to be made and stand until it was discharged.
22. Counsel averred that the Respondents had full knowledge of the court's Ruling to maintain status quo, yet they disregarded the same by disrupting the suit property. The order was valid, clear and unambiguous; restraining the parties from disturbing the status quo on the suit property pending final determination.
23. Counsel submitted that there were four standard elements that needed to be met to prove contempt. They averred that the Respondents had knowledge of the court's orders and participated in the proceedings.
24. Counsel averred that there was wilful disobedience of the court order. The act of sending goons and destroying the suit property was an example of such disobedience. To that effect, the Respondents ought to be held in contempt. In that regard, Counsel cited the case of Owino versus Siololo & 4 others [ELC Case E007 of 2024] (2025) KEELC 3207 (KLR).
25. Counsel submitted that the terms were plain and unequivocal [Teacher's Service Commission versus Kenya National Union of Teachers & 2 others [2013] eKLR]
26. It was their position; according to the case of Basil Criticos versus Attorney General & 8 others [2012] eKLR, that knowledge of an order supersedes personal service.
27. Having not sought clarification, variation, review, or stay of the orders before taking the impugned actions, they dispossessed the rule of law and condemned the conduct of the courts.

The Respondents' submissions

28. Counsel filed submissions dated 30th January 2026 on behalf of the Respondents and submitted that the application was made in bad faith and the Applicant had misrepresented the facts. They reiterated that it was the Applicant who had sent goons to the suit property in an attempt to forcibly evict the Respondents from the suit property.
29. Counsel submitted that the Respondents are not in contempt, and the Applicant had not produced any evidence to prove their allegations.
30. Counsel cited Perna versus Foss 2015 ONSC 5636, where it was held that: "The cases state that the civil contempt remedy is one of last resort and that great caution must be exercised when considering contempt motions. Contempt remedies should not be sought or granted where other adequate remedies are available to the alleged aggrieved party. Any doubt must be exercised in favour of the person alleged to be in breach of the order."
31. Counsel submitted that the threshold for the charge of contempt of court as against the Respondents had not been met by the Applicant, and the application ought to be dismissed with costs.



orders and undertakings is in the public interest. This reflects a public expectation that those who ignore court orders will be brought to account quickly.”

“It is justice itself that is flouted by contempt of Court, not the individual Court or Judge attempting to administer it ... The absence of an effective and efficient enforcement regime would ultimately lead to anarchy. With effective administration of justice, public confidence in the administration of the law is also necessary for its effective administration and requires that there is a strong expectation that those who ignore court orders are quickly brought to account.”

38. Since the *Contempt of Court Act*, 2016, [SEE the case of *The Kenya Human Rights Commission vs Attorney General & Another* [2018] eKLR] was declared unconstitutional, the substantive law governing contempt proceedings is the *Judicature Act*, Section 5 of which 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.

39. Additionally, section 29 of the *Environment and Land Court Act* under the title offences provides as follows;

“Any person who refuses, fails or neglects to obey an order or direction of the Court given under this Act, commits an offence, and shall, on conviction, be liable to a fine not exceeding twenty million shillings or to imprisonment for a term not exceeding two years, or to both.”

40. As a principle, Courts do not act in vain, and their orders must at all times be respected. Judges have wide latitude in deciding whom to hold in contempt of court. The standard of proof in civil contempt proceedings is higher than the balance of probabilities in civil cases, although not as high as beyond a reasonable doubt as in criminal contempt.

41. In civil proceedings, contempt applications remain an important enforcement mechanism available to litigants where court orders made in their favour are not complied with

42. Essentially, four elements must be proved to make the case for civil contempt.

- a. The terms of the order were clear and unambiguous and were binding on the Respondents.
- b. The Respondents had knowledge of or proper notice of the terms of the order;
- c. The Respondents failed to comply with the terms of the order, and
- d. the Respondents' conduct was deliberate.

[SEE the cases of *North Tetu Farmers Co. Ltd vs Joseph Nderitu Wanjohi* (2016) eKLR and *Republic vs Attorney General & Another ex parte Mike Maina Kamau* [2020] eKLR]

43. In *Fakie v CCII Systems (Pty) Ltd*³ (*Fakie*), the Court stated that, ‘for contempt to be proven, a deliberate disregard is not enough, since the noncomplier may genuinely, albeit mistakenly, believe



him- or herself entitled to act in the way claimed to constitute the contempt.’ Consolidated Fish (Pty) Ltd v Zive 1968 (2) SA 517 (C) 524D as applied in Noel Lancaster Sands (Edms) Bpk v Theron 1974 (3) SA 688 (T) 691C stated that, ‘in such a case, good faith avoids the infraction.’ Though in Noel Lancaster Sands (Edms) Bpk v Theron 1974 (3) SA 688 (T) 692E-G per Botha J, rejecting the contrary view on this point expressed in Consolidated Fish v Zive (above), the court stated that, ‘even a refusal to comply that is objectively unreasonable may be bona fide (though unreasonableness could evidence lack of good faith).’

44. According to Mbekezeli Ncube versus 4B Protection Services and 2 others [J906-20] Johannesburg, SA, Deane, AJ these requirements, that the refusal to obey should be both wilful and mala fide, and that unreasonable non-compliance, provided it is bona fide, does not constitute contempt, in accord with the broader definition of the crime, of which non-compliance with civil orders is a manifestation. They show that the offence is committed not by mere disregard of a court order, but by the deliberate and intentional violation of the Court’s dignity, repute or authority that this evinces. Honest belief that non-compliance is justified or proper is incompatible with that intent.
45. As a start, it is important to be clear on the orders issued in the Ruling dated 26th September 2024 by Lady Justice Omenge.
 - i. An order of injunction is hereby issued restraining any construction and transfer of the suit property to third parties pending the hearing and determination of the Originating Summons.
 - ii. The Preliminary Objection, the application for contempt and reinstatement fail; and
 - iii. Costs to abide by the determination of the Originating Summons.
46. The Court will examine whether the Applicant proved the four elements required to make the case for civil contempt.

a) Whether there was a clear and unambiguous order

47. The Ruling delivered on 26th September 2024 issued two substantive orders: An injunction restraining any construction and transfer of the suit property to third parties pending the hearing and determination of the Originating Summons; and the application for contempt and reinstatement was declined.
48. The Court did not expressly issue an order directing that “status quo” be maintained in general terms. Rather, the operative injunctive relief specifically restrained construction and transfer.
49. The Applicant contends that the Court ordered maintenance of the status quo. However, a plain reading of the extracted orders reveals that the express restraint is related to construction and transfer. No positive order reinstating any party into possession was granted.
50. Contempt proceedings, being quasi-criminal in nature, demand strict construction of the order allegedly breached. The Court must be satisfied that the order allegedly disobeyed is precise and unequivocal.
51. In the present case, the order did not expressly restrain entry upon the land or dealings relating to possession save in so far as construction or transfer was concerned.



(b) Whether the Respondents knew the order

52. There is no dispute that the parties were present during the delivery of the Ruling. Knowledge of the order may therefore be inferred. On this limb, the Applicant has satisfied the requirement.

(c) Whether there was willful disobedience

53. The Applicant alleges that the Respondents: Registered a restriction against the title; orchestrated a forceful invasion of the suit property; Evicted the Applicant and destroyed property and detained motorcycles.
54. The Respondents, on the other hand, deny these allegations and assert that they have always remained in possession of the suit property. They contend that it was the Applicant who attempted to evict them.
55. The Court notes that the allegations by both parties are serious and mutually contradictory. No independent evidence has been placed before the Court conclusively demonstrating that the Respondents carried out the alleged invasion. While reference is made to an OB number, no investigation findings or independent corroborative material have been tendered.
56. More fundamentally, even assuming for argument's sake that there was an eviction or disturbance, the order in force restrained construction and transfer. It did not expressly state the party who was in possession of the suit property, and further did not contain an express prohibition against change of possession or physical occupation.
57. In the Court's view, registration of a restriction, without more, does not amount to construction or transfer. The Applicant has not demonstrated how the act of registering a restriction contravened the specific terms of the injunction.
58. In the Court's further view, contempt cannot be founded on implication or inference. It must be founded upon a clear breach of a specific command of the Court. Where ambiguity exists, the benefit of doubt must be resolved in favour of the alleged contemnor.
59. The caution expressed in *Perna v Foss* (2015 ONSC 5636) (*supra*), though persuasive, reflects a universal principle: contempt is a remedy of last resort and must be exercised with restraint.
60. In the circumstances of this case, the Court is not satisfied, to the required standard, that there has been willful and deliberate disobedience of the precise orders issued on 26th September 2024.
61. The determination of the Court is that the Applicant has failed to demonstrate that the alleged acts complained of fell within the specific prohibitions contained in the order of 26th September 2024; and that there was deliberate and willful breach of a clear and unambiguous directive of this Court.
62. Accordingly, the Notice of Motion dated 31st October 2025 lacks merit and is hereby dismissed. Costs of the application shall be borne by the Applicant.

DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS AT NAIROBI, THIS 5TH DAY OF MARCH 2026

HON. LADY JUSTICE L.G. KIMANI

JUDGE

In the Presence of:-

Oduk together with M/S Wanjiru for the 5th Defendant/Applicant



Ngeno holding brief for Nyaundi for the 1st to 4th Defendant

Mugo holding brief for Mrs Wambugu for the Respondents.

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