



**Kanee v Birdi & 2 others; Narayan Autocare Garage Limited & another (Interested Parties)
(Environment and Land Case E228 of 2020) [2026] KEELC 2655 (KLR) (5 May 2026) (Ruling)**

Neutral citation: [2026] KEELC 2655 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND CASE E228 OF 2020**

MN KULLOW, J

MAY 5, 2026

BETWEEN

PETER MWANGI KANEE PLAINTIFF

AND

JASPAL SINGH BIRDI 1ST DEFENDANT

DAVINDER SINGH VIRDI 2ND DEFENDANT

JASMIDER SINGH 3RD DEFENDANT

AND

NARAYAN AUTOCARE GARAGE LIMITED INTERESTED PARTY

INNOCENT MUGANDA ODHIAMBO INTERESTED PARTY

RULING

Application

1. Before this Court is the Notice of Motion dated 5th August 2025 filed by the Plaintiff/Applicant, Peter Mwangi Kanee. The application is expressed to be brought under Order 40 Rule 4 and Order 51 of the Civil Procedure Rules, Sections 1A, 1B and 3A of the *Civil Procedure Act*, Section 5 of the *Judicature Act*, as well as Articles 41, 47 and 50 of *the Constitution* of Kenya, 2010, and all other enabling provisions of the law. The Applicant invokes the Court's jurisdiction to grant injunctive, enforcement and contempt-related reliefs arising from alleged disobedience of prior court orders.
2. The Application is premised on the grounds set out on its face and is supported by the Applicant's affidavit sworn on 5th August 2025. The Applicant avers that this Court issued orders on 21st July 2022 restraining any development, leasing, transfer or other dealings with the suit property known as Land Reference Number LR No. 12458/8 situated along Enterprise Road within the Industrial



Area of Nairobi County. He contends that despite knowledge of the said orders, the Respondents have remained in occupation of the suit property and have continued to carry on business activities thereon in violation of the court order.

3. Consequently, the Applicant seeks, inter alia, an order of eviction against the 1st, 2nd and 3rd Respondents together with the 1st Interested Party from the suit property; that the Respondents and the Director of the 1st Interested Party be cited and punished for contempt of court; and that this Court be pleased to impose sanctions including a fine not exceeding Kshs. 20,000,000/= or imprisonment for a term not exceeding two (2) years, or both.
4. The Applicant further seeks orders directing the Nairobi Regional Police Commander, the OCPD Makadara Division, and the OCS Kwa Reuben Police Station to provide security during enforcement, including demolition and removal of structures on the suit property, and that the Respondents be ordered to bear the costs of removal, damages, and the costs of the application.

Response

5. In response to the application, the 2nd Defendant/Respondent, Davinder Singh Viridi, swore a Replying Affidavit on 29th August 2025 on his own behalf and on behalf of the 1st and 3rd Respondents. He avers that the Respondents are aware of the orders issued by this Court on 21st July 2022, which prohibited any development, sale, transfer, leasing or charging of the suit property known as Land Reference No. 209/12458/8 situated along Enterprise Road, Industrial Area, Nairobi County, and denies that the Respondents have disobeyed the said orders.
6. He further avers that the 1st Interested Party, Narayan Autocare Garage Limited, has been in occupation of the suit property pursuant to a lease agreement dated 17th August 2021, executed prior to the issuance of the said court orders, and that no developments have been undertaken on the property since 21st July 2022. He also depones that a similar application for contempt dated 6th October 2022 was dismissed by this Court in a ruling delivered on 18th January 2024 for failure to establish contempt, and contends that the present application is frivolous, an abuse of the court process, and devoid of merit. He further asserts that the Plaintiff has no proprietary interest in the suit property and that the alleged parcel LR No. 209/12458/8 is non-existent following the revocation of its subdivision, and urges the Court to dismiss the application with costs.

Submissions

7. The Plaintiff/Applicant filed written submissions in which he reiterates that this Court issued orders on 21st July 2022 restraining any development, leasing, sale, transfer or alienation of the suit property LR No. 12458/8, and contends that the Respondents have acted in breach of the said orders by continuing to occupy and carry on business activities on the property.
8. He submits that the lease agreement relied upon by the Respondents is false and misleading, as it purports to relate to LR No. 12458/5 while in actual fact the Respondents are in occupation of LR No. 12458/8, which he claims belongs to him. He further submits that the Court has previously acknowledged the existence of LR No. 12458/8 and urges the Court to find the Respondents in contempt, relying on the legal position on contempt of court and the Court's power to punish for disobedience of its orders. Consequently, he prays for orders of eviction, removal of all structures on the suit property with police assistance, and payment of damages and costs, and urges the Court to allow the application as prayed.



9. The Defendants/Respondents in their written submissions oppose the application and contend that the same is frivolous, misleading and devoid of merit. They identify the sole issue for determination as whether the Defendants/Respondents are in contempt of the court orders issued on 21st July 2022. They submit that the allegation of contempt is unfounded, as the lease agreement between the 2nd and 3rd Defendants and the 1st Interested Party was executed on 17th August 2021, prior to the issuance of the said court orders, and therefore cannot amount to disobedience.
10. They further submit that contempt proceedings require proof of willful and deliberate disobedience of a court order and rely on the decision in *Gatharia K. Mutitika -Vs- Baharini Farm Limited* (1985) KLR 227, where the Court held that contempt of court, being quasi-criminal in nature, must be proved to a standard higher than a balance of probabilities.
11. They further rely on the case of *Oilfield Movers Limited v Zahara Oil & Gas Limited* [2020] eKLR to submit that the threshold for establishing contempt is high and requires proof that the alleged contemnor acted with full knowledge of the court order. The Respondents also submit that the suit property claimed by the Applicant, LR No. 209/12458/8, is non-existent following the revocation of its subdivision by a judgment delivered on 5th May 2020, and that the property in occupation is LR No. 209/12458/5 to which the orders do not apply. They further argue that a similar application for contempt was dismissed by this Court in a ruling delivered on 18th January 2024, and that the present application is therefore barred by the doctrine of *res judicata* under Section 7 of the [Civil Procedure Act](#). Consequently, they contend that the Applicant lacks locus standi and urge the Court to dismiss the application with costs.
12. In further submissions, the Plaintiff/Applicant reiterates his position and responds to the Defendants' by maintaining that the suit property LR No. 12458/8 exists and is clearly identifiable on the ground. He relies on a letter dated 4th October 2025 from the Nairobi City County Environment and Urban Planning Office, which he submits confirms that the property is enclosed, hosts ongoing garage operations, and is duly defined in conformity with the registered survey plan FR No. 169/68 and Registration Block No. 125/1811.
13. He further invokes the principle in *Halsbury's Laws of England*, Vol. 9(1) (Re-issue) para 463, to argue that even non-parties to a court order may be bound to obey it, and contends that the Respondents' assertion that the suit property is non-existent is erroneous and contradicted by official records. On that basis, he maintains that the Respondents are in contempt of the orders issued on 21st July 2022 and urges the Court to allow the application as prayed in the interest of justice.

Issue for Determination

14. Having considered the application, the response thereto and the parties' respective submissions, the Court is of the view that the issue for determination is:
 - a. Whether the Defendants/Respondents are in contempt of the court orders issued on 21st July 2022 and, if so, whether the Plaintiff/Applicant is entitled to the orders sought.

Analysis

15. The law on contempt of court is well settled. Section 5(1) of the [Judicature Act](#) provides as follows: "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 that power shall extend to upholding the authority and dignity of subordinate Courts."



16. Section 29 of the *Environment and Land Court Act* further provides that: “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.”
17. In *North Tetu Farmers Co. Ltd -Vs- Joseph Nderitu Wanjohi* [2016] eKLR, the Court, citing “Contempt in Modern New Zealand”, set out the essential elements that must be established in civil contempt proceedings as follows:

“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)

 - a. the terms of the order (or injunction or undertaking) were clear and unambiguous and were binding on the Defendant;
 - b. the Defendant had knowledge of or proper notice of the terms of the order;
 - c. the Defendant has acted in breach of the terms of the order; and
 - d. the Defendant’s conduct was deliberate.”
18. Further, in *Gatharia K. Mutikika -Vs- Baharini Farm Limited* [1985] KLR 227, the Court emphasized that contempt proceedings are quasi-criminal in nature and must be proved with a degree of strictness commensurate with the gravity of the charge, given that the consequences may include loss of liberty.
19. Guided by the foregoing principles, the Court has carefully considered the material placed before it. There is no dispute that this Court issued orders on 21st July 2022 restraining any development, leasing, sale, transfer or other dealings with the suit property. There is also no dispute that the Respondents had knowledge of the said orders. The first two elements of contempt are therefore satisfied.
20. The determination of this application turns on the third and fourth elements, namely whether there was a breach of the court order and whether such breach, if any, was willful and deliberate. The Applicant contends that the Respondents have continued to occupy and carry on business on LR No. 12458/8 in violation of the court orders, and challenges the lease relied upon by the Respondents as false and inapplicable.
21. The Respondents, on their part, maintain that the 1st Interested Party’s occupation is pursuant to a lease agreement dated 17th August 2021, which predates the court order, and that no development or prohibited dealings have been undertaken since the issuance of the orders.
22. In considering these competing positions, the Court notes that the order issued on 21st July 2022 restrained future acts of development, leasing, transfer and related dealings. The Respondents’ explanation that the occupation of the suit property arises from a pre-existing lease has not been displaced by cogent evidence demonstrating that any new lease, development, transfer or other prohibited act was undertaken after the issuance of the order.
23. While the Applicant disputes the validity of the lease and asserts that the Respondents are in occupation of LR No. 12458/8, that dispute, in the view of the Court, goes to the substantive question of ownership and identification of the suit property, which is a matter for determination in the main suit and not within the limited scope of contempt proceedings.



24. Further, the Court takes judicial notice of the fact that a similar application for contempt was previously dismissed by this Court in a ruling delivered on 18th January 2024 for failure to establish contempt. No new or compelling evidence has been placed before this Court to demonstrate a fresh or continuing breach of the orders issued on 21st July 2022. To the extent that the present application raises substantially the same issues, it reinforces the conclusion that the Applicant has not discharged the burden placed upon him.
25. In light of the heightened standard of proof required in contempt proceedings, and bearing in mind that such jurisdiction must be exercised with caution and restraint, this Court is not satisfied that the Applicant has demonstrated, with the requisite degree of precision and certainty, that the Respondents have acted in willful and deliberate disobedience of the court order.
26. It therefore follows that the allegation of contempt has not been established. Consequently, the foundation upon which the orders sought are premised has not been laid, and the Plaintiff/Applicant is not entitled to the reliefs sought in the Notice of Motion dated 5th August 2025.

Disposition

27. In the result, the Notice of Motion dated 5th August 2025 is hereby dismissed. Costs of the application shall be borne by the Plaintiff/Applicant.

It is so ordered!

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI ON 5TH DAY OF MAY, 2026.

MOHAMMED N. KULLOW

JUDGE

Ruling delivered in the presence of: -

N/A for the Plaintiff

Ms. Munyua for the Defendants

N/A for the Interested Parties

Philomena W. Court Assistant

