

REPUBLIC OF KENYA
IN TH ENVIRONMENT AND LAND COURT AT SIAYA
SIAYA LAW COURTS
ELC MISC APPLICATION NO. E023 OF 2025

SELA AUMA OLIK.....
APPLICANT

-VERSUS-

SUSAN OKETCH APONDI.....1ST
RESPONDENT

OWAGO DICKSON OWAKO.....2ND
RESPONDENT

RULING

- 1 The subject of the ruling is the application dated 25/8/2025 which seek the following orders; -
 - 1) THAT this Honourable Court be pleased to declare that the 2nd Respondent, OWAGO DICKSON OWAKO, is in contempt of the orders of status quo issued on 15th July 2025 by this Court in ELC Misc. Application No. E023 of 2025.
 - 2) THAT this Honourable Court be pleased to punish the 2nd Respondent for contempt by committal to civil jail for a term not exceeding six (6) months and/or by imposition of such fine as the Court may deem just and fit.

- 3) THAT this Honourable Court do issue a mandatory order directing the demolition and removal of the illegal fence erected by the 2nd Respondent on the suit property, NORTH WEST GEM/SIREMBE/1437, and immediate restoration of the Applicant into quiet possession of the said property.
- 4) THAT the Officer Commanding Station (OCS), Gem Siremba Police Station, do supervise and ensure full compliance and enforcement of the court's orders including removal of the illegal fence and protection of the Appellants possession.
- 5) THAT the 2nd Respondent be ordered to compensate the Applicant for loss of user, wasted sorghum crop and mesne profits occasioned by her unlawful exclusion from the suit property, together with interest thereon at court rates until payment in full.
- 6) THAT pending the hearing and determination of this application, the 2nd Respondent, his agents and/or servants be restrained from fencing, cultivating, selling, transferring, leasing or otherwise interfering with the Applicant's quiet possession and use of the suit property.
- 7) THAT the costs of this application be borne by the 2nd Respondent together with interest thereon from the date of judgment until payment in full

2 The application is premised on the grounds on its face and supported by the affidavit of SELA AUMA sworn of

25/8/2025. It is averred that on 15th July 2025, this court issued orders of status quo in respect of the suit property NORTH WEST GEM/SIREMBE/1437, restraining the respondents, their servants and/or agents from evicting the applicant, demolishing structures, or otherwise interfering her occupation pending the hearing of the application dated 10th July 2025 - a copy of the Court Order dated 15th July 2025 is annexed.

- 3 It is deponed that on 26th July 2025, the 2nd Respondent was duly served with the said court order and the application, as evidenced in the affidavit of service filed in court - a copy is annexed. Despite service and full knowledge of the said order, the 2nd Respondent wilfully dismissed the court order for not bearing the signature of the judge and disregarded it by instructing his workers to fence off the preparty with corrugated poles, thereby denying the applicant access, - photos are annexed.
- 4 That at the time the 2nd respondent unlawfully fenced off the suit property, the applicant's sorghum crop had fully matured and was ready for harvest but she was deliberately denied access causing the entire crop to waste in the field resulting to irreparable loss of her labor, substantial financial investment and the livelihood the applicant depended upon.
- 5 That by wilfully disregarding the lawful court orders, the 2nd Respondent has unlawfully deprived the applicant of the use and enjoyment of the suit property, caused the

wastage of my sorghum crop which was her primary source of sustenance, and continues to subject the applicant to loss and hardship through the blatant defiance

- 6 Further that the respondent undermined the dignity and authority of this Court, the rule of law and the administration of justice. That even after the area Assistant Chief personally presented the Court Order to the 2nd Respondent's employees, they openly defied it, stating that they had been instructed to complete the fencing and did not care about any court case, further demonstrating the 2nd Respondent's wilful disobedience and blatant contempt for the authority of this Court.
- 7 The deponent states she has credible information that the 2nd Respondent is actively seeking to dispose of the suit property notwithstanding the subsisting court orders and the pendency of this suit, and that a finding of contempt is necessary both to deter further acts of disobedience and to preserve the subject property pending the final determination of this matter.
- 8 The deponent on advice of her advocate on record cites various court decisions where superior courts in Kenya have consistently pronounced themselves on the issue of disobedience of court orders and affirmed the inherent jurisdiction of the court to punish for contempt to

safeguard the authority, dignity and effectiveness of judicial processes.

- 9 The court is urged to allow the application and compel the removal of the fence including award for damages.

RESPONSE TO THE APPLICATION

- 10 The respondent responded to the application vide replying affidavit of Dickson Owako sworn on 16th December 2025. He denies the contents of the plaintiffs supporting affidavit and states he was not served with the court order in the manner alluded to in the affidavit of service. That at no time did the area assistant chief personally presented the court order to the respondent's employee. That the applicant has not present any proof that the respondent is seeking to dispose the property. That the 1st defendant has not transferred the suit property and there was no intention to do so.
- 11 It is further deponed that the photos supplied were of no probative value as there is no disclosure of by whom and when they were taken.

SUBMISSIONS

- 12 The application was heard by way of written submissions. The applicants' submissions are dated 12/01/2026 and the 2nd respondents 19/01/2026.

ANALYSIS AND DETERMINATION

13 I have read the affidavits sworn in support of the application and those sworn in reply. I have also given due consideration to the submissions of the learned counsels appearing.

14 The main issue for determination is whether the Respondents are in contempt of the court orders issued on 15/07/2025 and whether the orders sought should issue.

15 Section 5(1) of the *Judicature Act* grants the High Court and the Court of Appeal the power to punish for contempt. It provides:

(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 that power shall extend to upholding the authority and dignity of subordinate courts.

16 The **Black's Law Dictionary 9th Edition**, defines contempt as:

The act or state of despising; the conduct of being despised. Conduct that defies the authority or dignity of a court or legislature. Because such conduct interferes with the administration of justice.

17 Section 29 of the Environment and Land Court Act is clear to the effect 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’

18 The test for establishing contempt was restated by Mativo J in the case of **Samuel M. N. Mweru & Others v National Land Commission & 2 others [2020] eKLR** where he stated thus;-

“40. It is an established principle of law that in order to succeed in civil contempt proceedings, the applicant has to prove

- (i) the terms of the order,
- (ii) Knowledge of these terms by the Respondent,
- (iii) Failure by the Respondent to comply with the terms of the order.

Upon proof of these requirements the presence of wilfulness and bad faith on the part of the Respondent would normally be inferred, but the Respondent could rebut this inference by contrary proof on a balance of probabilities. Perhaps the most comprehensive of the elements of civil contempt was stated by the learned authors of the book **Contempt in Modern New Zealand** who succinctly stated: -

"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) that:

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(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.."

- 19 The nature and purpose of contempt proceedings was summarised in **Samuel M. N. Mweru & Others v National Land Commission & 2 others [2020] eKLR** where **Mativo J** stated thus;-

“Contempt of court is not merely a mechanism for the enforcement of court orders. The jurisdiction of the superior courts to commit recalcitrant litigants for contempt of court when they fail or refuse to obey court orders has at its heart the very effectiveness and legitimacy of the judicial system. That, in turn, means that the court called upon to commit such a litigant for his or her contempt is not only dealing with the individual interest of the

frustrated successful litigant but also, as importantly, acting as guardian of the public interest”.

- 20 The Constitutional Court of South Africa in the case of ***Kristen Carla Burchell vs Barry Grant Burchell, Eastern Cape Division Case No. 364 of 2005*** stated as follows: -

“Compliance with court orders is an issue of fundamental concern for a society that seeks to base itself on the rule of law. The Constitution states that the rule of law and supremacy of the Constitution are foundational values of our society. It vests the judicial authority of the state in the courts and requires other organs of state to assist and protect the courts. It gives everyone the right to have legal disputes resolved in the courts or other independent and impartial tribunals. Failure to enforce court orders effectively has the potential to undermine confidence in recourse to law as an instrument to resolve civil disputes and may thus impact negatively on the rule of law.”

- 21 It is well established that the standard of proof in contempt proceedings is higher than proof on the balance of probabilities, almost but not exactly, beyond a reasonable doubt – see ***Mutitika v. Baharini Farm Limited [1985] KLR 229, 234.***

- 22 The Supreme Court of Kenya in **Republic v Ahmad Abolfathi Mohammed & Sayeed Mansour Mousavi [2018] KESC 51 (KLR)** stated that contempt proceedings are quasi-criminal, they must be exercised with utmost care and only as a last resort and an applicant must establish that the alleged contemnor's conduct was deliberate, in the sense that he or she wilfully acted in a manner that flouted the court order.
- 23 The court will be guided accordingly.
- 24 The orders the subject of these contempt proceedings are dated 15th July 2025 and are as follows-
- a) That Owago Dickson Owako be and is hereby joined as the 2nd respondent in this suit***
 - b) That the court hereby issues orders of status quo to be maintained on the suit property NORTH WEST GEM/SIREMBE/1437. For avoidance of doubt the Respondent shall not evict the applicant from the suit property or demolishing her structures. The orders shall apply to the respondents' servants and agents.***
 - c) That the orders of status quo shall subsist pending the hearing interparties of the application dated 10.7.2025.***
- 25 The first requirement is for the applicant to prove that the said orders were served upon the alleged contemnor as this speaks to his knowledge of the existence of the court orders. The applicant has annexed Affidavit of Service

(‘SAO-1’). My perusal of the same shows that the same is sworn on 26/7/2025 by Alladin Adam Muhamed an advocate of this court appearing for the applicant then . He depones that the application dated 10/7/2025 and the court order dated 15/7/2025 were served on WhatsApp number 0702876198. Annexed is proof of service ‘AMM-1’.

- 26 Annexure ‘AMM-1’ above is a whatsapp message showing a photo of Owago Dickson with a message sent addressed to Mr. Dickson Owago Dickson attaching court order pursuant to order 5 rule 22C.
- 27 Order 5 Rule 22 C is on mobile enabled messaging. Key among the provisions is the requirement for delivery receipt of the message to be received by the sender. This has not been attached or explained in the affidavit of service. The affidavit of service does not also indicate whether the whatsapp number given is the defendants last known and used telephone number. The 2nd respondent denies service in such manner as deponed in the affidavit of service.
- 28 The applicant further states with regard to service at paragraph 8 of the supporting affidavit that the 2nd respondents’ employees were served with the court orders personally by the area Assistant Chief. However, there is no corroborating evidence to confirm such service. An affidavit or letter from the said chief and whose particulars are not disclosed may have been useful. But I must quickly add that there would still be an issue in view of the court’s

observations on the alleged service by way of whatsapp as the primary party against whom the contempt proceedings have been lodged remains unserved.

- 29 The upshot of the foregoing is that a doubt has been raised as to service of the orders upon the applicant and considering the standard of proof and the quasi-criminal nature of contempt proceedings then this doubt must be deployed in favor of the 2nd respondent.
- 30 I'm further persuaded by the dictum of Odunga J (as he then was) in **Alfred Mutua v Boniface Mwangi (Civil Case E025 of 2021) [2023] KEHC KLR** where it was held :

“22. In my view, considering the seriousness with which the Court takes contempt of court proceedings, every stage of the hearing must be expressly clear to the Defendant and any ambiguity must be resolved in favour of the Defendant since such proceedings are quasi-criminal in nature, otherwise, a benefit of doubt would inure to the benefit of the Defendant.”

- 31 The court in view of the foregoing findings does not find it necessary to delve into analysis of the other requirements.
- 32 Is the plaintiff entitled to the rest of the orders sought? The prayers sought by the applicant have already been outlined earlier in this ruling. In view of the court's findings above prayers 1,2,3 and 4 will collapse. The prayer number (5) for compensation and mesne profits is a

substantive issue which cannot be granted at interlocutory stage.

- 33 With regard to prayer 6 seeking orders of injunction, this court orders of status quo as issued in the ruling delivered on 13/11/2025 have not been vacated by the court and still subsist. The court will revisit the same outside this ruling once it appreciates the actual status on the ground owing to the passage of time.
- 34 The application dated 25/8/2026 is therefore dismissed. The costs shall abide the outcome of the main suit.

It is so ordered.

**Dated, signed and delivered at Siaya this 8th day of
May 2026**

**HON. A. E. DENA
JUDGE
8/05/2026**

**Ruling delivered virtually through Microsoft Teams
Video Conferencing Platform in the Presence of:**

Mr. Ogando for the Plaintiff

Mr. Kuyo for Defendant

Court assistant: Nelima Janepher

ORIGINAL