



REPUBLIC OF KENYA



Keesi & 2 others (Suing as Administrator of the Estate of Jonathan Keesi Ngunzi - Deceased) v Keesi & 9 others (Environment and Land Case 337 of 2017) [2025] KEELC 5458 (KLR) (23 July 2025) (Ruling)

Neutral citation: [2025] KEELC 5458 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MAKUENI
ENVIRONMENT AND LAND CASE 337 OF 2017**

**EO OBAGA, J
JULY 23, 2025**

BETWEEN

**ALICE MBESA KEESI 1ST PLAINTIFF
JUSTUS KYALO KEESI 2ND PLAINTIFF
LILIAN NTHAMBI KEESI 3RD PLAINTIFF
SUING AS ADMINISTRATOR OF THE ESTATE OF JONATHAN KEESI
NGUNZI - DECEASED**

AND

**BENJAMIN MUTUA KEESI 1ST DEFENDANT
KINYAMBU KEESI 2ND DEFENDANT
KYAMA KEESI 3RD DEFENDANT
IGNATIUS KINYAMBU 4TH DEFENDANT
ROSE NGINA 5TH DEFENDANT
MUSAU MASOKA 6TH DEFENDANT
MUTUKU SILINGI 7TH DEFENDANT
PATRICK NZOMO 8TH DEFENDANT
JOHN KATO 9TH DEFENDANT
MBITHE SILINGI 10TH DEFENDANT**



RULING

1. This is a ruling in respect of a Notice of Motion dated 11th February, 2025 in which the 9th Defendant/Applicant seeks the following orders:
 1. Spent.
 2. That the ruling and/order made herein on 29th January, 2025 be reviewed and/or set aside.
 3. Spent
 4. That the costs of this application be provided for.
2. The Applicant contends that on 3rd May, 2024, he made an application in which he sought among other orders that the application be certified as raising serious and fundamental constitutional issues of great public importance. He in the alternative sought that he be allowed 120 days to look for alternative settlement and surrender the subject matter of the suit.
3. The court ordered him to first purge the contempt before he could be heard on his application. He states that by consent he purge the contempt by leaving his house and relocated to a small space in the church where he stays to date. The court upon being satisfied that he had purged the contempt allowed him to proceed with the application.
4. The Applicant further states that on 29th January, 2025, the court delivered a ruling in which only one aspect of his application was addressed but the other one was not addressed. The Judge who delivered the ruling on 29th January, 2025 and was on transfer directed that the Applicant appears before me for purposes of sentencing.
5. The Applicant contends that the Judge did not take into account in her ruling that he had by consent purged the contempt by moving out of his home; that by staying away from his home, he has already suffered and to sentence him again would make him suffer twice for the same cause against the principle of double jeopardy; that the contempt for which he is being prosecuted is that of completing the construction of his house and moving in when a court order was allegedly in force; that the court failed to consider whether Mr. Hassan Advocate had served him with the impugned order and that the Judge failed to consider the practical impact or effect of an order where stay of proceedings had been issued.
6. The Applicant's application was opposed by the Plaintiffs/Respondents through a replying affidavit sworn on 12th March, 2025. The Respondents contend that the Applicant's application is an abuse of the process of court as it seeks to review a decision arising from another application for review which amounts to inviting the court to sit on appeal on its own decision which jurisdiction this court does not have.
7. The Respondents further contend that the Applicant had failed to disclose to court that he had made an application before the Court of Appeal seeking stay of execution of the ruling of 6th March, 2024 which application was argued before the court of Appeal which reserved a ruling for 23rd May, 2025 and that the Applicant's application for stay of execution of ruling was declined by the Court of Appeal.
8. The Respondents state that the order to purge contempt was not by consent as alleged by the Applicant. The Respondents further state that when this matter was for mention on 30th May, 2024, the counsel for the Applicant had purged the contempt which paved the way for directions on disposal of the Notice of Motion of 3rd May, 2024.



9. The Respondents provided evidence to show that the Applicant had not purged the contempt as claimed in their replying affidavit to the Applicant's Notice of Motion dated 3rd May, 2024 which evidence was considered by the court in its ruling of 29th January, 2025 where the court dismissed the application of 3rd May, 2024 and upheld the conviction through ruling of 6th March, 2024. The Respondents argue that if the Applicant had purged the contempt by leaving the house, he would not have been aggrieved by the court's failure to grant him 120 days within which to purge the contempt and move out.
10. The Respondents state that the court considered the application by the Applicant and found it to be lacking merit and dismissed the same. The Applicant cannot be heard to say that his prayer for 120 days to move out of the house was not considered. The Applicant was the author of his suffering for failure to obey the court orders issued on 30th January, 2019.
11. The Respondents further contend that an order of stay of proceedings takes effect from the date it is issued and does not affect any orders which were in force before the order of stay was given. The injunctive orders which had been given were to last until hearing and determination of the suit. The advocate who served the Applicant with court orders is authorized to do so by law and in any case the Applicant had confirmed through a replying affidavit in opposition to the application for contempt that his advocate had informed him that Justice Mbogo had issued an order restraining him from dealing with the suit property.
12. The Respondents deny that by punishing the Applicant for contempt, it will imply that the main suit has been determined before hearing. The punishment for contempt will not determine the suit as the orders issued on 30th January, 2019 were not for vacant possession but only restraining the Applicant from interfering with the suit property.
13. The parties were directed to file written submissions. The Applicant filed his submissions dated 9th April, 2025. As at 3rd June, 2025 when writing this ruling, I could not see the Respondents' submissions in the Case Tracking System (CTS).
14. I have considered the Applicant's application, the opposition to the same by the Respondents as well as the submissions filed herein. The only issue for determination is whether the Applicant has met the threshold for review of the ruling of 29th January, 2025.
15. The grounds upon which a review can be considered are contained in Order 45 Rule (1) of the Civil Procedure Rules. Firstly, there has to be discovery of new evidence, secondly, there has to be an error apparent on the face of the record. Thirdly, a review can be made on any other sufficient reason.
16. The Applicant submitted that this court should review the ruling of 29th January, 2025 based on sufficient reasons. The Applicant submits that this court should await the ruling from the Court of Appeal before sentencing the Applicant. He submits that if he is sentenced and the Court of Appeal sets aside the conviction the Applicant would have suffered and the damage caused will not be restored.
17. The Applicant submits that there was no service of the order issued by Justice Mbogo; that proceedings had been stayed and the Applicant would not have been in contempt and that an injunction cannot last for more than twelve months. He submits that these are points he raised before the Court of Appeal and that this court should wait until the Court of Appeal determines the application before it.
18. There is absolutely no sufficient reason which has been shown to warrant this court to review the ruling of the court which was delivered on 29th January, 2025. It was an abuse of the process of the court to file



an application for review before the court and at the same time file an application for stay of execution of the ruling of 6th March, 2024.

19. What the Applicant is deponing to in paragraphs 10, 11, 12 13 and 14 of the supporting affidavit are not grounds for review. These are grounds for appeal which this court has no jurisdiction to entertain. The Applicant is asking the court to hold on and wait for the decision of the Court of Appeal. This is what the Applicant would have achieved by not filing the present application for stay of execution of the application which found him in contempt of court. The Judge clearly stated that the application by the Applicant had no merit and proceeded to dismiss it. Even if she had overlooked one of the prayers, that is not a ground for review but can be a ground for appeal. I therefore find that the Applicant's application lacks merit. The same is hereby dismissed with costs to the Respondents.

It is so ordered.

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HON. E. O. OBAGA

JUDGE

RULING DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS THIS 23RD DAY OF JULY, 2025.

In the presence of:

Ms. Kyato for Mr. Muinde for Defendant/Applicant.

Mr. Mungai for Ms. Aomo for Plaintiffs/Respondents.

Court assistant - Steve Musyoki

