



**Philip & 22 others v National Housing Corporation & another (Environment and Land Petition E006 of 2023) [2025] KEELC 5451 (KLR) (23 July 2025) (Ruling)**

Neutral citation: [2025] KEELC 5451 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA  
ENVIRONMENT AND LAND PETITION E006 OF 2023  
SM KIBUNJA, J  
JULY 23, 2025**

**BETWEEN**

**JOYCE WANZIA PHILIP & 22 OTHERS ..... PETITIONER**

**AND**

**NATIONAL HOUSING CORPORATION ..... 1<sup>ST</sup> RESPONDENT**

**ATTORNEY GENERAL ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. Through the notice of motion dated the 6<sup>th</sup> November 2023, and filed on 7<sup>th</sup> November 2023, the petitioners seek for orders that:
  - a. Spent.
  - b. That the 1<sup>st</sup> respondent and its managing director David Mathu Njuguna be committed to jail for contempt of court for defiance of the orders for maintenance of status quo granted by this court on 19<sup>th</sup> October 2023.
  - c. That after the committing for contempt, the 1<sup>st</sup> respondent and its Mr. David Mathu Njuguna be sentenced to jail for a term of two years and a fine to the tune the court may decide and be compelled to purge their contempt by restoring the petitioners premises to the status they were on before the day the contempt was committed.
  - d. Costs of this application.”

The application is premised on the four (4) grounds on its face marked (i) to (iv) respectively, and supported by the affidavits of Joyce Wanzia Philip, the 1<sup>st</sup> petitioner, and Morris Mwasagua, licensed process server, sworn on the 6<sup>th</sup> November 2023 and 23<sup>rd</sup> October 2023 respectively. Briefly stated, the petitioners’ case is that the court issued an injunction against the 1<sup>st</sup> respondent on 19<sup>th</sup> October 2023 requiring the status quo to be maintained until 2<sup>nd</sup> November 2023; that the order with a



penal notice was served on the 1<sup>st</sup> respondent on the same date, 19<sup>th</sup> October 2023, but the 1<sup>st</sup> respondent has shamelessly been in breach of the said order; that the 1<sup>st</sup> respondent has continued through their agents, servants, proxies, employees, acolytes, and or accomplices to interfere with, forcefully evicting, demolishing, causing damages, obstructing and or in any other way interfering with the petitioners continued occupation of the National Housing Corporation rental estate as per the attached photographs contrary to the status quo order; that as Mr. David Mathu Njuguna is the managing director of the 1<sup>st</sup> respondent with executive authority, and ultimately in charge of all activities and omissions of the 1<sup>st</sup> respondent, then he should be held responsible for the said disobedience of the court order.

2. The application is opposed by the 1<sup>st</sup> respondent through the replying affidavit of Bernadette Karanja, 1<sup>st</sup> respondent's Coast Region's in charge, sworn on the 9<sup>th</sup> November 2023, inter alia deposing that the application is another classic example of what abuse of court process is as it is based on falsehood, non-disclosure of material facts and orchestrated to vex the 1<sup>st</sup> respondent and should be dismissed with costs; that the 1<sup>st</sup> respondent's 84 housing units in the area measuring approximately 5acres are earmarked for re-development, following the issuance of notice to vacate dated 24<sup>th</sup> January 2018, to all the 84 tenants; that a total of 65 tenants have since vacated and the site where the 65 houses are located was handed over to the contractor for redevelopment on 29<sup>th</sup> September 2023; that by the time the status quo order of 19<sup>th</sup> October 2023 was issued, the status quo on the ground was that the houses that had been vacated had been handed over to the contractor for redevelopment, and the remaining 19 tenants who had not vacated were to continue occupying the 19 remaining houses; that the said houses numbers 669, 670, 671, 673, 675, 698, 705 to 707, 709, 710, 712, 715, 720, 729, 740 to 742, 746 and 751 are still intact as seen on the attached photographs; that none of the petitioners has specifically stated who among them has had their houses demolished and therefore, there is no evidence tendered to prove the status quo order of 19<sup>th</sup> October 2023 has been violated, and the application should be dismissed with costs.
3. The court issued directions on the 6<sup>th</sup> May 2024 on filing and exchanging submissions and subsequently, the learned counsel for the petitioners and 1<sup>st</sup> respondent filed their submissions dated 22<sup>nd</sup> May 2024 and 7<sup>th</sup> June respectively, which the court has considered.
4. The issues for determinations by the court are as follows:
  - a. Whether the petitioners have established disobedience or breach of the status quo court order issued on the 19<sup>th</sup> October 2023.
  - b. If the petitioners have proved breach or disobedience of the said order by the 1<sup>st</sup> respondent, whether the named managing director should be held responsible, and what sanctions to issue.
  - c. Who pays the costs?
5. The court has carefully considered the grounds on the notice of motion, affidavit evidence, submissions by the learned counsel, superior courts decisions cited thereon, and come to the following determinations:
  - a. That the application has invoked Order 40 Rule 3(1) to (3) of the Civil Procedure Rules and sections 1A, 1B, & 3A of the *Civil Procedure Act*. The learned counsel for the petitioners inter alia submitted that the status quo orders of 19<sup>th</sup> October 2023, were issued pursuant to their application dated 18<sup>th</sup> October 2023, and despite being served on the 19<sup>th</sup> October 2023, the 1<sup>st</sup> respondent continued with the demolition of the petitioners' premises and interfering with their right to quiet possession and occupation, by forceful eviction, demolishing and



causing damage to their houses. The learned counsel cited the following superior courts decisions; Econet Wireless Kenya Limited versus Minister for Information & Communication of Kenya & Another [2005] 1 KLR, Republic versus Ahmad Abolfathi Mohammed & Another (2018) eKLR, Attorney General versus Times Newspaper Limited (1974) A. C. 273, A. B. & Another versus R. B.(2016) eKLR, R versus Attorney General [2004] 1 KLR 431, and Mutika versus Baharini Farm Limited [1985] KLR 234, and submitted that they have proved the 1<sup>st</sup> respondent and its managing director, have disobeyed the court order and should be dealt with firmly for contempt of court.

- b. The learned counsel for the 1<sup>st</sup> respondent referred to the following superior courts decisions; Supreme Court cases of Bia Tosha Distributors Limited versus Kenya Breweries Limited & 6 Others (Petition 15 of 2020) (2023) KESC 14 (KLR), Githiga & 5 Others versus Kiru Tea Factory Company Limited (Petition No. 13 of 2019) [2023] KESC 41 (KLR), and Tom Ojienda & Associates versus County Secretary, Nairobi City County & Another (Application 312 of 2019) [2022] KESC 10705 (KLR), and Court of Appeal cases of Saroj K. Shah versus Naran Mani Patel & 2 Others (2015) eKLR, and Jennifer Nyambura Kamau versus Humphrey Mbaka Nandi [2013] eKLR, and submitted inter alia that there was doubts as to the status to be maintained under the order and there is no evidence of personal service of the application upon the alleged contemnor and the application should be dismissed with costs.
- c. The I have perused the court record and there is no doubt that on the 19<sup>th</sup> October 2023, the court issued an order that “status quo be maintained” till the 2<sup>nd</sup> November 2023 when inter parties hearing of the petitioners’ application dated the 18<sup>th</sup> October 2023 was to take place. That application had sought for inter alia review of the orders of 17<sup>th</sup> October 2023, and in its place prayer 2 of the motion dated 31<sup>st</sup> August 2023 be granted pending the hearing and determination of the said application or alternatively the “court to order the status quo be maintained pending the hearing and determination of the application;” and upon the inter parties hearing of the applications dated 18<sup>th</sup> October 2023 and 31<sup>st</sup> August 2023, the court “to issue a conservatory order in terms of prayer 2 restraining the respondents either by themselves or through their agents, servants, proxies, employees, acolytes and or accomplices from in any way interfering with, forcefully evicting, demolishing, causing damage, obstructing and or in any other way interfering with the petitioners continued occupation of the National Housing Corporation Changamwe Rental Estate, within Mombasa County and or buildings or causing the amelioration or negative waste degradation and damage to their environment and structures in purported implementation of the forceful eviction of the petitioners pursuant to the letter/notice dated 10<sup>th</sup> August 2023 or any other letter or notice serving the same purposes and after the hearing of the application inter parties pending the hearing and determination of the constitutional petition herein.” The evidence available, especially the affidavit of service of Morris Mwasagua, sworn on the 23<sup>rd</sup> October 2023, confirms that the order of 19<sup>th</sup> October 2023 was among the documents served upon “Fausta Mghendi” at the National Housing Corporation offices at Changamwe, Mombasa County. The process server continued to depose that though the said lady received the documents, she “declined to acknowledge receipt on my principal copy”. This being a contempt application, it was incumbent upon the petitioners to ensure it was personally served upon the named Managing Director for them to succeed to cite him for contempt should there be disobedience.
- d. The status quo order granted on the 19<sup>th</sup> October 2023 is definitely in terms of the petitioners’ alternative prayer that the “court to order the status quo be maintained pending the hearing and determination of the application.” That alternative prayer and the order as phrased did



not give specifics on what status quo was to be maintained. While the petitioners have strongly claimed the 1<sup>st</sup> respondent has disobeyed the status quo order, the latter has deposed attaching photographs of standing houses that it had obeyed the said order. It has specifically deposed that as of 19<sup>th</sup> October 2023, when the status quo order was issued, a total of 65 tenants had vacated and the site where the 65 houses were located had been handed over to the contractor for redevelopment on 29<sup>th</sup> September 2023. That the remaining 19 tenants who had not vacated were continuing occupying the 19 remaining houses, that are numbers 669, 670, 671, 673, 675, 698, 705 to 707, 709, 710, 712, 715, 720, 729, 740 to 742, and 746. That though the tenant for house number 751 had vacated, the house was still intact as he/she had not surrendered the keys. I have perused the deposition in support of the application and agree with the 1<sup>st</sup> respondent's deposition that none of the petitioners has specifically stated who among them has had their houses demolished for there to be evidence of breach or disobedience of the status quo court order. I have also noted that the petitioners did not find it necessary to seek for the court's leave to respond to the 1<sup>st</sup> respondent deposition on new matters of facts. Therefore, the inference the court draws from the 1<sup>st</sup> respondent's deposition that is not rebutted by the petitioners is that by the time the status quo order was granted on 19<sup>th</sup> October 2023, only those listed houses above were being used by the respective 19 tenants. The 1<sup>st</sup> respondent's deposition that the tenants of the other 65 houses had vacated and those houses handed over to the contractor for redevelopment on 29<sup>th</sup> September 2023 also remains unchallenged. That as the photographs attached to the supporting affidavit have not been specified they belong to which specific tenant or house numbers, unlike the replying affidavit which has the house number below each photograph, I find the petitioners have failed to prove their claim of disobedience of court order on the 1<sup>st</sup> respondent and its managing director.

- e. Furthermore, the court has noted that the application dated the 18<sup>th</sup> October 2023, upon which the status quo order of 19<sup>th</sup> October 2023 was predicated on, and that dated 31<sup>st</sup> August 2023, have since been heard inter parties and dismissed through the ruling delivered on the 13<sup>th</sup> December 2023. The status quo order of 19<sup>th</sup> October 2023, is therefore no more. Therefore, upon finding that the petitioners have failed to prove that the status quo order of 19<sup>th</sup> October 2023 has been violated, the application dated the 6<sup>th</sup> November 2023, is for dismissal.
  - f. That under section 21 of the *Civil Procedure Act* chapter 21 of Laws of Kenya, costs should follow the event unless where for good reasons the court directs differently. In this application, I find no good cause to order otherwise and the petitioners will pay the 1<sup>st</sup> respondent's costs.
6. Flowing from the above conclusions on the petitioners' contempt of court application dated the 6<sup>th</sup> November 2023, the court finds and orders as follows:
- a. That the said notice of motion dated 6<sup>th</sup> November 2023 is without merit.
  - b. The said application is dismissed with costs to 1<sup>st</sup> respondent.

It is so ordered.

**DATED, SIGNED AND VIRTUALLY DELIVERED ON THIS 23RD DAY OF JULY 2025.**

**S. M. KIBUNJA, J.**

**ELC MOMBASA.**

In the presence of:

Petitioners : Mr. Jengo



Respondents: Mr. Wafula For 1<sup>st</sup> Respondent

Shitemi-court Assistant.

**S. M. KIBUNJA, J.**

**ELC MOMBASA.**

