



**Gatonye & another v City Council of Nairobi & another; Kibera & another (Interested Parties)  
(Environment and Land Case 579 of 2009) [2025] KEELC 5949 (KLR) (26 August 2025) (Ruling)**

Neutral citation: [2025] KEELC 5949 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT AND LAND CASE 579 OF 2009**

**CG MBOGO, J  
AUGUST 26, 2025**

**BETWEEN**

**JOSEPH GATONYE ..... 1<sup>ST</sup> PLAINTIFF**

**DAVID MUCHIRI GIKONYO ..... 2<sup>ND</sup> PLAINTIFF**

**AND**

**CITY COUNCIL OF NAIROBI ..... 1<sup>ST</sup> DEFENDANT**

**JENIFFER WANGARI KAMAU ..... 2<sup>ND</sup> DEFENDANT**

**AND**

**LAWRENCE WAMANDA KIBERA ..... INTERESTED PARTY**

**HENRY MUTURI MBUGUA ..... INTERESTED PARTY**

**RULING**

1. Before this court for determination is the notice of motion dated 7<sup>th</sup> March, 2025 filed by the plaintiffs/ applicants and it is expressed to be brought under Section 5(1) of the *Judicature Act*, Part 81.1 Rule 81.1 of the English Civil Procedure Rules (Amendment No. 3) Rules, 2020 and Part 81.1,2,3,4,5,6 & 7 thereof, and Section 29 of the *Environment and Land Court Act* seeking the following orders:-

1. This honourable court be pleased to cite the 1<sup>st</sup> defendant, Jennifer Wangari Kamau for being in continuous contempt of the judgment and orders dated 1<sup>st</sup> October, 2019 and decree dated 9<sup>th</sup> May, 2023 and punish her as per Section 29 of the *Environment and Land Court Act* and Section 5 of the *Judicature Act* for having deliberately disobeyed the order of this honourable court.
2. This honourable court be pleased to cite the 1<sup>st</sup> and 2<sup>nd</sup> interested parties, Lawrence Wamanda Kibera and Henry Muturi Mbugua respectively for being in contempt of court of the



judgment and orders dated 1<sup>st</sup> October, 2019 and decree dated 9<sup>th</sup> May, 2023 and punish them as per Section 29 of the *Environment and Land Court Act* and Section 5 of the *Judicature Act* for having deliberately disobeyed the orders of this honourable court.

3. Summons be issued against the said Jennifer Wangari Kamau, Lawrence Wamanda Kibera and Henry Muturi Mbugua to appear physically before this court and show cause why they should not be committed to jail.
  4. The OCS, Soweto Police Station do enforce the judgment and orders dated 1<sup>st</sup> October, 2019 and the decree dated 9<sup>th</sup> May, 2023.
  5. The costs of this application be provided for.
2. The application is premised on the grounds on its face. The application is further supported by the affidavit of Sarah Namayanja Gatonye, the legal representative ad litem of the estate of the 1<sup>st</sup> plaintiff/applicant sworn on even date. The plaintiffs/applicants deposed that judgment was delivered in this matter on 1<sup>st</sup> October, 2019 and a decree issued on 9<sup>th</sup> May, 2023. Further, that the 1<sup>st</sup> defendant/respondent and the interested parties have been in contempt of this court's order by continuing to retain physical possession and occupation of the 1<sup>st</sup> plaintiff's plot no. C9 Komarock Phase II (HFCK) Shopping Centre (Nairobi/ Block 133 parcel no. 292 and the 2<sup>nd</sup> plaintiff's plot no. Nairobi/ Block 133/291. The plaintiffs/applicants deposed that despite being found guilty of contempt on 3<sup>rd</sup> October, 2024 the 1<sup>st</sup> defendant/respondent and the interested parties are in continuous contempt of the court orders which is an open challenge to the honour and dignity of this court. The plaintiffs/applicants deposed that it is in the interest of justice that the 1<sup>st</sup> defendant/respondent and the interested parties are committed to civil jail.
  3. The 1<sup>st</sup> defendant/respondent filed her replying affidavit sworn on 10<sup>th</sup> April, 2025. The 1<sup>st</sup> defendant/respondent deposed that prayers 1 and 3 are res judicata having been heard vide application dated 9<sup>th</sup> August, 2024 where a ruling was delivered on 3<sup>rd</sup> October, 2024. She further averred that vide her affidavit and supplementary affidavit sworn on 7<sup>th</sup> February, 2025, she informed the court that she had purged contempt as directed by the court and vacated the suit premises. Further, that all tenants vacated the suit property, and that the same was acknowledged by the plaintiffs/ applicants. Further, that on 11<sup>th</sup> February, 2025 she attended court where it was confirmed that the orders were complied with including payment of fine.
  4. The 1<sup>st</sup> defendant/respondent deposed that the plaintiffs/applicants have not indicated the manner in which contempt has been committed and that the application is misleading which paints her in a bad image. Further, that there is no evidence of breach of the court order, and the requirement of enforcement of the orders by the OCS Soweto police station has not been demonstrated.
  5. The 1<sup>st</sup> defendant/respondent filed a notice of preliminary objection dated 10<sup>th</sup> April, 2025 challenging the application on the following grounds: -
    1. The application herein is misconceived, misdirected, bad in law and an abuse of the due process of this honourable court.
    2. That prayers 1 and 3 of the application are res judicata having been heard and determined vide application dated 09/08/2024 and court pronounced itself vide its ruling dated 03/10/2024. Thus, application offends Section 7 of the Civil Procedure Rules.
    3. The application herein offends the doctrine of finality. Thus, abuse of the court process.



4. That this honourable court having pronounced itself on prayers lacks jurisdiction to entertain the said prayers and the only remedy available is on appeal.
6. The 1<sup>st</sup> plaintiff/applicant filed a supplementary affidavit sworn on 14<sup>th</sup> May, 2025. They reiterated the averments raised in their application and there is no need to rehash the same, save to note its contents.
7. The application was canvassed by way of written submissions. The plaintiffs/applicants filed their written submissions dated 23<sup>rd</sup> May, 2025 where they raised two issues for determination as follows:-
  - a. Whether the 1<sup>st</sup> defendant and the interested parties are in continuous contempt of the orders of the court dated 1<sup>st</sup> October, 2019 and 9<sup>th</sup> May, 2023, and if so, whether they ought to be cited and punished.
  - b. Whether the honourable court should direct and order the OCS Soweto Police Station to enforce the judgment dated 1<sup>st</sup> October, 2019.
8. On the first issue, the plaintiffs/applicants submitted that the continued occupation and possession of the suit property by the 1<sup>st</sup> defendant/respondent and the interested parties is contrary to the clear terms of the judgment of the court. Reliance was placed in the cases of *Hadkinson v Hadkinson* [1952] ALL ER 567, and *Wildlife Lodges Limited v Narok County Council and another* [2023] KEELC 20538 (KLR). The plaintiffs/applicants further submitted that a payment of fine by a party after being found guilty of disobeying court orders does not grant them immunity from being cited for contempt if there is continuous disobedience of court orders.
9. On the second issue, the plaintiffs/applicants submitted that based on the challenges experienced in recovering possession and use of the suit property, it is incumbent that the OCS Soweto Police Station to enforce the judgment and orders of the court. In conclusion, they submitted that the application ought to be allowed as prayed.
10. The 1<sup>st</sup> defendant respondent and the interested parties did not file their written submissions. Be that as it may, I have considered the application, the replies thereof, the notice of preliminary objection and the written submissions filed by the plaintiffs/applicants. In my view, the issue for determination is whether the 1<sup>st</sup> defendant/respondent and the interested parties are in contempt of the court orders.
11. The Black's Law Dictionary (Ninth Edition) defines contempt of court as: -
 

“Conduct that defies the authority or dignity of a court. Because such conduct interferes with the administration of justice, it is punishable usually by fine or imprisonment.”
12. 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.”
13. In the case of *Samuel M. N. Mweru & Others versus National Land Commission & 2 others* [2020] eKLR the court held that: -
 

“A court without contempt power is not a court. [30] The contempt power (both in its civil and criminal form) is so innate in the concept of jurisdictional authority that a court that could not secure compliance with its own judgments and orders is a contradiction in terms, an “oxymoron.” Contempt power is something regarded as intrinsic to the notion of court;



even obvious, I would say. In the common lawyer's eye, the power of contempt "is inherent in courts, and automatically exists by its very nature..."

If courts are to perform their duties and functions effectively and remain true to the spirit which they are sacredly entrusted with, the dignity and authority of the courts has to be respected and protected at all costs. Otherwise the very cornerstone of our constitutional scheme will give way and with it will disappear the Rule of Law and a civilized life in the society. It is for this purpose that courts are entrusted with the extraordinary power of punishing those who indulge in acts whether inside or outside courts which tend to undermine their authority and bring them in disrepute and disrespect by scandalizing them and obstructing them from discharging their duties. When the court exercises this power, it does so to uphold the majesty of the law and of the administration of justice. The foundation of judiciary is the trust and confidence of the people in its ability to deliver fearless and impartial justice. When the foundation itself is shaken by acts which tend to create disaffection and disrespect for the authority of the court by creating distrust in its working the edifice of the judicial system gets eroded.

33. It is essential for the maintenance of the Rule of Law and order that the authority and the dignity of courts is upheld at all times. The court will not condone deliberate disobedience of its orders and will not shy away from its responsibility to deal firmly with proved contemnors. It is the plain and unqualified obligation of every person against, or in respect of whom, an order is made by a court of competent jurisdiction, to obey it unless and until that order is discharged. The uncompromising nature of this obligation is shown by the fact that it extends even to cases where the person affected by an order believes it to be irregular or void.<sup>[32]</sup>

34. It is the duty of the court not to condone deliberate disobedience of its orders nor waiver from its responsibility to deal decisively and firmly with contemnors.<sup>[33]</sup> The court does not, and ought not be seen to make orders in vain; otherwise the court would be exposed to ridicule, and no agency of the constitutional order would then be left in place to serve as a guarantee for legality, and for the rights of all people.<sup>[34]</sup>"

14. In the case of *Exparte Langely* 1879, 13 Ch D/10 (CA) Thesiger L.J stated at P. 119 as follows:-

"...the question in each case, and depending upon the particular circumstances of each case, must be, was there or was there not such a notice given to the person who is charged with contempt of court that you can infer from the facts that he had notice infact of the order which has been made" And, in a matter of this kind, bearing in mind that the liberty of the subject is to be affected, I think that those who assert that there was such a notice ought to prove it beyond reasonable doubt."

15. The plaintiffs/applicants contended that the 1<sup>st</sup> defendant/respondent and the interested parties are in continuous contempt of court orders dated 1<sup>st</sup> October, 2019 and 9<sup>th</sup> May, 2023. They argued that they continue to retain physical possession and occupation of the suit properties thus making repossession difficult. They argued that they need the enforcement of the OCS Soweto police station owing to the challenges in recovering and using the same. The 1<sup>st</sup> defendant/respondent argued that she has purged contempt and confirmed the same through her affidavit and by appearing in court where she was fined



Kshs. 200,000/-. She contended that she is not in occupation and neither is anyone claiming to be under her authority.

16. For record purposes, on 03<sup>rd</sup> October, 2024 this court found the 1<sup>st</sup> defendant/respondent in contempt and issued orders accordingly. Thereafter, the parties appeared in court on 03<sup>rd</sup> October, 2024 where the plaintiffs/applicants confirmed that contempt was purged. For the court to be indeed satisfied that there is contempt, there is need to demonstrate willful disobedience of the court orders which was obviously in the knowledge of all the parties herein. I have carefully perused the application, and the affidavit evidence. The continuous act of disobedience has not been demonstrated and the difficulty in repossession the suit has not been shown. The plaintiffs/applicants attached images, and while at it, failed to interpret the same. This court is unable to discern contemptuous acts from the images/pictures. The term 'continuous' is also relative to justify contempt. Could it be that every single day, the plaintiffs/applicants attempted to repossess their properties in vain?
17. From the above, I find that the instant application lacks merit, without evidence, and bearing in mind the proceedings of this court on 03<sup>rd</sup> December, 2024 when contempt was confirmed to have been purged by the interested parties and the 1<sup>st</sup> defendant having been fined Kshs.200,000/= on 11<sup>th</sup> February, 2025, the notice of motion dated 7<sup>th</sup> March, 2025 lacks merit and it is hereby dismissed with costs to the 1<sup>st</sup> defendant/respondent.

Orders accordingly.

**DATED, SIGNED & DELIVERED VIRTUALLY THIS 26<sup>TH</sup> DAY OF AUGUST, 2025.**

**HON. MBOGO C.G.**

**JUDGE**

**26/08/2025.**

In the presence of:

Mr. Benson Agunga - Court assistant

Mr. Kagongo for the Plaintiff/Applicant

Ms. Atieno holding brief for Mr. Koceyo for the 2<sup>nd</sup> Defendant

Mr. Mugo for the 1<sup>st</sup> Defendant

