



REPUBLIC OF KENYA



**Ndambiri & another v Nairobi Metropolitan Services & 19 others (Environment & Land Petition E026 of 2022) [2025] KEELC 965 (KLR) (27 February 2025) (Ruling)**

Neutral citation: [2025] KEELC 965 (KLR)

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT NAIROBI**  
**ENVIRONMENT & LAND PETITION E026 OF 2022**  
**OA ANGOTE, J**  
**FEBRUARY 27, 2025**

**BETWEEN**

**DAVID ALFRED NJERU NDAMBIRI ..... 1<sup>ST</sup> PETITIONER**

**TITUS KITONGA ..... 2<sup>ND</sup> PETITIONER**

**AND**

**NAIROBI METROPOLITAN SERVICES ..... 1<sup>ST</sup> RESPONDENT**

**NAIROBI CITY COUNTY GOVERNMENT ..... 2<sup>ND</sup> RESPONDENT**

**LT GEN MOHAMED BADI ..... 3<sup>RD</sup> RESPONDENT**

**STEPHEN GATHUITA MWANGI ..... 4<sup>TH</sup> RESPONDENT**

**STEPHEN MWADIME ..... 5<sup>TH</sup> RESPONDENT**

**RICHARD MUMO ..... 6<sup>TH</sup> RESPONDENT**

**FREDRICK OCHANDA ..... 7<sup>TH</sup> RESPONDENT**

**THE HON ATTORNEY GENERAL ..... 8<sup>TH</sup> RESPONDENT**

**NATIONAL CONSTRUCTION AUTHORITY ..... 9<sup>TH</sup> RESPONDENT**

**ENG MAURICE AKETCH ..... 10<sup>TH</sup> RESPONDENT**

**ARCH STEPHEN MWILU ..... 11<sup>TH</sup> RESPONDENT**

**ENG BOWEN KANDA ..... 12<sup>TH</sup> RESPONDENT**

**CO-OPERATIVE SOCIETY LIMITED ..... 13<sup>TH</sup> RESPONDENT**

**SOLUTIONS LIMITED ..... 14<sup>TH</sup> RESPONDENT**

**ALI IBRAHIM HAMAMED ..... 15<sup>TH</sup> RESPONDENT**

**AMEEY HOMES LIMITED ..... 16<sup>TH</sup> RESPONDENT**



ARCH SALIM KOMORA .....	17 <sup>TH</sup> RESPONDENT
ENG WILSON LEPARTOBIKO .....	18 <sup>TH</sup> RESPONDENT
KOCH CONSTRUCTION CO LIMITED .....	19 <sup>TH</sup> RESPONDENT
CONSTRUCTIONS COMPANY LIMITED .....	20 <sup>TH</sup> RESPONDENT

## RULING

### Background

1. Vide a Motion dated the 24<sup>th</sup> May, 2024 brought pursuant to the provisions of Sections 13(1), (2), (3) and (7), 14 and 29 of the Environment and Land Court Act, Section 3(3) of the Environmental Management and Co-ordination Act, Section 5 of the Judicature Act, Section 3A of the Civil Procedure Act and Order 22 Rule 28 of the Civil Procedure Rules 2010, the Petitioners/Applicants seeks the following reliefs:
  - a. That this Honourable Court be pleased to find and hold the contemnors ie. Patrick Analo Akivaga, Stephen Gathuita Mwangi, Stephen Mwadime, Richard Mumo, Fredrick Ochanda, Ali Ibrahim Hahamed, Yusuf Asker Mohamed and Arch Salim Komora guilty of further and continuing contempt of the court orders given on the 25<sup>th</sup> May, 2023 for their continued, consistent and persistent refusal, failure and neglect to obey, enforce, respect and honor the said Orders.
  - b. That this Honourable Court be pleased to issue orders compelling the contemnors i.e Patrick Analo Akivaga, Stephen Gathuita Mwangi, Stephen Mwadime, Richard Mumo, Fredrick Ochanda, Ali Ibrahim Hahamed, Yusuf Asker Mohamed and Arch Salim Komora jointly and/or severally to immediately, and in any event within twenty four(24)hours of this Order, disconnect, detach, remove, close and demolish the concrete culvert and waste pipes sewer fittings they have built constructed and connected from L.R No 209/7549-City Park Drive, Parklands to the manholes, sewer line and storm water drainage channel that runs from L.R 209/7548 to the private septic tank on L.R No 209/7547 pending the hearing and determination of this Petition.
  - c. That in the alternative, this Honourable Court be pleased to issue orders allowing and permitting the Applicants to immediately and in any event within twenty four(24)hours of the orders, disconnect, detach, remove, close and demolish the concrete culvert and waste pipes sewer fittings built, constructed and connected from L.R 209/7549-City Park Drive Parklands by the contemnors ie. Patrick Analo Akivaga, Stephen Gathuita Mwangi, Stephen Mwadime, Richard Mumo, Fredrick Ochanda, Ali Ibrahim Hahamed, Yusuf Asker Mohamed and Arch Salim Komora to the sewer line that runs from L.R 209/7548 to the private septic tank on L.R No 209/7547.
  - d. That this Honourable Court do issue orders compelling the contemnors. i.e Patrick Analo Akivaga, Stephen Gathuita Mwangi, Stephen Mwadime, Richard Mumo, Fredrick Ochanda, Ali Ibrahim Hahamed, Yusuf Asker Mohamed and Arch Salim Komora to within thirty (30) days of the order, purge their contempt of the Court Orders given on 25<sup>th</sup> May, 2023 by restoring the building on L.R No 209/7549-City Park Drive, Parklands to the state and condition it was in as at 25<sup>th</sup> May, 2023 ie. to the skeletal super structure level 11 with no walling



or any doors, windows, tiles, electrical wiring, plumbing works, paint works, plaster, interior partition and the swimming pool.

- e. That this Honourable Court do issue temporary orders of injunction stopping, preventing and halting any occupation, residency, tenancy, use, settlement and utility of the structures constructed on L.R No 209/7549-Taza Lane, City Park Drive pending the hearing and determination of this Application and the Petition hereof.
  - f. That the OCS Parklands Police Station be and is hereby ordered to ensure compliance with any and all the orders granted in this Application and to provide full security during enforcement of the said orders.
  - g. That the costs of this Application be provided for.
2. The application is based on the grounds on the face of the Motion and supported by the Affidavit of David Alfred Njeru Ndambiri, the 1<sup>st</sup> Petitioner/Applicant of an even date, who deponed that on 25<sup>th</sup> May, 2023, the Court issued temporary injunctive orders compelling the 1<sup>st</sup> -7<sup>th</sup> Respondents to jointly and severally stop further developments on the suit property by the 1<sup>st</sup> -5<sup>th</sup> Interested Parties (12<sup>th</sup> -16<sup>th</sup> Respondents) pending determination of the Petition.
  3. The 1<sup>st</sup> Petitioner contends that despite service and knowledge of the said Orders, the named Respondents refused to comply with the same prompting him and his co-Petitioner to file a Motion for contempt on the 14<sup>th</sup> June, 2023; that the Court found merit in their Motion and in its Ruling of 25<sup>th</sup> January, 2024 held Patrick Analo Akivaga, Stephen Gathuita Mwangi, Richard Mumo, Fredrick Ochanda, Stella Nyamu, Ali Ibrahim Hahamed, Yusuf Asker Mohamed, Arch Salim Komora, Eng Wilson Lepartorbiko and Burach Koch guilty of contempt and ordered them to appear personally in Court for mitigation on the 19<sup>th</sup> February, 2024.
  4. According to Mr Ndambiri, before the date set for mitigation and sentencing, the 2<sup>nd</sup> -7<sup>th</sup> Interested Parties (13<sup>th</sup> -18<sup>th</sup> Respondents) filed applications dated 31<sup>st</sup> January, 2024 and 22<sup>nd</sup> February, 2024 seeking a review of the Ruling of 25<sup>th</sup> January, 2024 and that they also filed a review Motion dated 8<sup>th</sup> February, 2024, seeking to have Stephen Mwadime included as a contemnor in the Ruling of 25<sup>th</sup> January, 2024.
  5. It was deponed that the Motions were heard simultaneously and in a Ruling delivered on 2<sup>nd</sup> May, 2024, the Court acceded to their request to have Stephen Mwadime included among the contemnors and that the Court also ordered the 6<sup>th</sup> and 7<sup>th</sup> Interested Parties expunged from the said Ruling and Orders and dismissed the Motion of 31<sup>st</sup> January, 2024.
  6. It was deposed by the 1<sup>st</sup> Petitioner that while the aforesaid Motions were ongoing, construction continued unabated and their Counsel informed the Court of the same; that they adduced evidence of the ongoing construction in their Further Affidavits of 26<sup>th</sup> February, 2024 and 7<sup>th</sup> March, 2024 and their Replying Affidavit of 5<sup>th</sup> March, 2024 and that the Court gave the contemnors a stern warning against continuing with contempt and directed that an application be filed in case of continuing contempt.
  7. According to the 1<sup>st</sup> Petitioner, the contemnors have all jointly and severally persisted in their refusal to stop further construction and development activities on the property as ordered on the 25<sup>th</sup> May, 2023.
  8. It is his position that when the orders restraining further construction were given on the 25<sup>th</sup> May, 2023, construction was at the skeletal level of the 11<sup>th</sup> floor and there was no walling or any type of construction/building finishes including fixation of windows, doors, floor finishes or painting and



that construction of the building is now almost complete and the 2<sup>nd</sup> -5<sup>th</sup> Interested Parties(13<sup>th</sup> -17<sup>th</sup> Respondents) are involved in aggressive marketing efforts and strategies as confirmed by adverts on the 16<sup>th</sup> Respondent's Facebook page.

9. According to the 1<sup>st</sup> Petitioner, the property is being constructed in a haphazard manner without plans or drawings and the building has been constructed beacon to beacon in breach of the Local Government Adoptive By-Laws Building Order 1968 and subsequent zoning policies; that the swimming pool has been constructed on a small open area next to the entrance which facility is insecure and unsafe and that despite having been informed of the risks, the 8<sup>th</sup> Respondent has not issued any response nor taken any action.
10. Mr Ndambiri states that on or about the 20<sup>th</sup> May, 2024, owners and residents of houses erected on L.R No 209/7547 began experiencing a foul smell emanating from a septic tank located on the suit property whose source they discovered was a secretly installed concrete culvert connected to the previously unused and old underground sewer line located on L.R 209/7548.
11. On the 21<sup>st</sup> May, 2024, he averred, two of the residents of Taza Lane found the contemnors and/or their employees digging a trench on the 4.5 M wide driveway that is part of L.R 209/7548 and constructing sewer and storm water culverts and pipes and directing them to the manhole situate on L.R 209/7546 with the intent to connect it to the existing manhole and sewer line that drains into the private septic tank on L.R No 209/7547 and that the contemnors were aware that the area they were constructing and installing the concrete culverts and waste pipes solely belongs to L.R 209/7548 and they were encroaching thereon.
12. Further, he opined, the contemnors knew or ought to have known that the sewer system within the Taza Lane Area is privately owned and serves a very limited number of users and that when another alarm was raised and they converged at the construction site, they were attacked by the contemnors construction workers.
13. He stated that the 8<sup>th</sup> contemnors, Yusuf Asker Mohamed thereafter arrived at the site accompanied by officers and had him arrested and taken to Parklands Police Station where he was locked up until 7:30pm when he was released on a cash bail of Kshs 100,000/= and ordered to report back to the station on the 24<sup>th</sup> May, 2024.
14. According to him, on the 22<sup>nd</sup> May, 2024, the contemnors continued with their construction by perfecting and putting final touches on the concrete culvert and waste pipes sewer fittings on L.R 209/7548 and further reinforced the mabati hoarding walls on the property informing and warning the Petitioners and the general public against interference therewith; that on the same date, he made a report at Parklands Police Station regarding the attack and injuries he sustained on the 21<sup>st</sup> May, 2024 under OB No 43 of 21/5/2024.
15. According to the Deponent if the construction continues, the septic tank will fill up and the overflow will find its way to Mathare River which borders L.R 209/7547 on the lower side of the property; that the acts, omissions and conducts of the contemnors are undertaken in further and more sustained disregard and disrespect of the Orders of 25<sup>th</sup> May, 2023; that despite demands that they halt construction vide the letter dated the 22<sup>nd</sup> May, 2024, the contemnors continue to aggravate the breach; that in light of their conduct, payment of fines and/or sentences will not be enough to stop, alleviate the breach and continual denial of their rights to a clean and healthy environment.
16. The 1<sup>st</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> Respondents responded to the Motion vide a Replying Affidavit sworn by Fredrick Ochanda, the Assistant Director, Development Control at Nairobi City County on the 6<sup>th</sup>



- September, 2024. He deponed that he, together with the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Respondent and one Patrick Analo Akivaga appeared before the Court on the 30<sup>th</sup> July, 2024 for mitigation and sentencing.
17. He opined that shortly thereafter, the Court delivered a Ruling pardoning him, the 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup> Respondents and Patrick Analo Akivaga on the basis that the 14<sup>th</sup> and 15<sup>th</sup> Respondents had enlisted the services of armed police officers of the National Police Service who barred them from accessing the site from 25<sup>th</sup> May, 2023 when the initial temporary injunctive orders were issued and that vide the same Ruling, the Court found the 13<sup>th</sup> and 14<sup>th</sup> Respondents guilty of contempt and fined them Kshs 2,000,000/= each or a jail term of 3 months.
  18. According to Mr. Ochanda, the period between 20<sup>th</sup> May, 2024-21<sup>st</sup> May, 2024 when the Applicants allege further contemptuous acts occurred falls within the period the Court established they did not have access to the construction site; that the alleged further contemptuous acts by them have not been pleaded with particularity and that in any event in para 23 of the Affidavit in support of the Motion, the Applicants exonerate them from any error and place the blame at the door of the 13<sup>th</sup> -16<sup>th</sup> Respondents.
  19. He deponed that vide the Ruling on 30<sup>th</sup> July, 2024, the Court ordered the OCS Parklands to provide security to himself, Patrick Akivaga and the 1<sup>st</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Respondents to enable them ensure compliance with the Court orders of 25<sup>th</sup> May, 2023; that he is aware that their Counsel penned two letters to the Deputy Registrar, ELC on the 31<sup>st</sup> July, 2024 and 5<sup>th</sup> September, 2024 so as to enable them extract the orders of 30<sup>th</sup> July, 2024 and that they were informed that the file was in the Judge's chambers for purposes of writing a Ruling and would be available after the August vacation.
  20. He deponed that he, Mr. Patrick Analo and the 1<sup>st</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> Respondents are eager to procure the Orders of 30<sup>th</sup> July, 2024 so as to comply and enforce the Orders of 25<sup>th</sup> May, 2023 and that in view of the foregoing, the Motion, is, in so far as it seeks orders against himself, Mr Patrick Analo and the 1<sup>st</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> Respondents is an abuse of Court process and is intended to vex and bully the County officials.
  21. In response to the Motion, Ali Ibrahim Hahamed, for the 13<sup>th</sup> -16<sup>th</sup> Respondents filed a Replying Affidavit on 8<sup>th</sup> July, 2024. He deponed that the Motion is an attempt by the Applicants to continue harassing them and engaging in never ending litigation and that they have at all times and to the best of their abilities complied with the Orders of 25<sup>th</sup> May, 2023.
  22. He deponed that on or about the 21<sup>st</sup> May, 2024, following heavy rainfall which led to flooding on the construction site which had been laying dormant for almost a year, there was an immediate need for drainage of the storm water affecting both the inside and outside of the premises.
  23. He deponed that as an emergency response, a few masons were engaged to construct an outflow directing the runoff storm water to the already existing public storm water drainage to prevent further damage to the site and that on or about the 21<sup>st</sup> May, 2024, the 1<sup>st</sup> Petitioner/Applicant in the company of four others trespassed onto their property attacking the masons and in the process inflicting serious injury upon two of them as well as damaging a CCTV camera and generator worth approximately Kshs 2, 400,000.
  24. According to Mr. Hahamed, the 1<sup>st</sup> Applicant's conduct was reported to the police at Parklands Police Station who responded by arresting him for malicious damage; that they released him on cash bail of Kshs 100,000/=; that they have commenced civil proceedings against the 1<sup>st</sup> Applicant; that the photos, documents and adverts annexed to the Motion have never been shared with them nor originated from them and constitute fabrications and that the Motion is an abuse of process and should be dismissed.



25. On the 18<sup>th</sup> September, 2024, the 14<sup>th</sup> Respondent, on behalf of himself and the 13<sup>th</sup>, 15<sup>th</sup> and 16<sup>th</sup> Respondents filed a Further Affidavit. He deponed that on the 30<sup>th</sup> July, 2024, the Court found him and Yusuf Asker Mohamed guilty of contempt and fined them the sum of Kshs 2million which they paid.
26. He contends that the Motion having been filed prior to the Ruling on sentencing and mitigation has been overtaken by events and its determination will be tantamount to re-prosecution of the matter and breach the principle against double jeopardy.
27. Vide a Further Affidavit sworn on 2<sup>nd</sup> October, 2024, Mr. Ndambiri reiterated that the contemnors have knowingly and deliberately refused to stop further developments on the suit property as evinced by the photos of 30<sup>th</sup> June, 2024, 8<sup>th</sup> July, 2024, 27<sup>th</sup> September, 2024 and 29<sup>th</sup> September, 2024.
28. He deponed that the fact of ongoing construction is also evinced by Affidavit by the National Construction Authority sworn by Arch Stephen Mwilu on the 12<sup>th</sup> August, 2024 in which he stated that they visited the site to conduct a site inspection on 16<sup>th</sup> July, 2024 and observed inter-alia, that work on the site was largely finished.
29. According to Mr. Ndambiri, he is aware that officers from the 1<sup>st</sup> Respondent visited the site on the 20<sup>th</sup> September, 2024 at around 10:50 am and found workers on site as it has been from 25<sup>th</sup> May, 2023 and that they took no action and left after which the team from a private security firm went to the site accompanied by vehicles carrying building materials including glasses and blinders.
30. He contends that after forcefully connecting and fixing the sewer lines, the 13<sup>th</sup> -17<sup>th</sup> Respondents proceeded to erect and install mobile toilets on the suit property; that Patrick Analo Akivaga, Stephen Gathuita Mwangi, Stephen Mwadime, Richard Mumo and Fredrick Ochanda have also deliberately failed to purge the contempt as ordered on the 30<sup>th</sup> July, 2024 and that unless the Court intervenes, its Orders will continue to be disobeyed ad infinitum.
31. The Petitioners filed a Further Supplementary Affidavit on the 5<sup>th</sup> November, 2024. In it they re-asserted their allegations of continuing contempt alluded to previously cited actions and other alleged contemptuous acts, to wit, invasion of their properties by the 1<sup>st</sup> Respondent's officials on the 17<sup>th</sup> July, 2024.
32. The parties filed submissions and authorities which I have considered.

### **Analysis and Determination**

33. Upon consideration of the Motion, responses and submissions thereto, the sole issue that arises for determination is whether the named alleged contemnors are in further contempt of the court orders of 25<sup>th</sup> May, 2023 and if so, which orders should issue.
34. 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.”
35. By way of brief background, vide a Motion dated 22<sup>nd</sup> June, 2022, the Petitioners sought inter-alia, temporary injunctive orders restraining any further construction activities on the suit property. Vide its decision dated the 25<sup>th</sup> May, 2023, the Court ordered inter-alia:



- i. That an order of temporary injunction be and is hereby given compelling the 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> Respondents jointly and severally to stop and enforce development on L.R 209/7549 City Park Drive, Parklands by the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 5<sup>th</sup> Interested parties, their agents and/or servants or any other person pending the hearing and determination of this Petition.
  - ii. That cost shall be in the Petition.
36. Vide a Motion dated the 14<sup>th</sup> June, 2023, the Applicants alleged contempt of the orders of 25<sup>th</sup> May, 2023 by several Respondents and Interested Parties. The Court in its Ruling of 25<sup>th</sup> January, 2024 found Patrick Analo Akivaga, Stephen Gathuita Mwangi, Richard Mumo, Fredrick Ochanda, Stella Nyamu, Ali Ibrahim Hahamed, Yusuf Asker Mohamed, Arch Salim Komora, Eng Wilson Lepartobiko and Burach guilty of contempt.
37. Vide its Ruling of 2<sup>nd</sup> May, 2024, the Court reviewed its orders of 25<sup>th</sup> January, 2024 having Stephen Mwadime included as a contemnor therein. Vide the same Ruling, the Court expunged the names of Eng Wilson Leparbotiko and Koch Construction Limited.
38. The Applicants now come to Court alleging further contempt of the orders of 25<sup>th</sup> May, 2023. They contend that even after having been found in contempt in January, 2024, the named Respondents have in their various capacities continued with construction on the suit properties while those mandated with enforcing the Court order by ensuring construction does not continue have failed to do so.
39. In response, the 1<sup>st</sup>-6<sup>th</sup> Respondents assert that they have not continued with any contemptuous acts as alleged and that on the 30<sup>th</sup> July, 2024, shortly after mitigation, the Court pardoned the 3<sup>rd</sup>-6<sup>th</sup> Respondents and one Patrick Analo Akivaga on the basis that they did not have access to the construction site since the 13<sup>th</sup> -16<sup>th</sup> Respondents had enlisted the services of armed officers from the National Police Services who barred county officials from accessing the construction site.
40. They opined that on the 30<sup>th</sup> July, 2024, the Court ordered that they be provided with security to enable them comply with the Orders of 25<sup>th</sup> May, 2023; that they were unable to extract the same as the file was in chambers and would only be available upon the Court's return from August vacation and that subsequently, they ought not be punished for failing to comply in light of the fact that they were met with circumstances beyond their control.
41. On their part, the 13<sup>th</sup> -16<sup>th</sup> Respondents contend that they have at all times and to the best of their abilities complied with the Court orders and allegations that they have continued with construction are false and unfounded and that on the 21<sup>st</sup> May, 2024, following heavy rainfall leading to flooding in the construction site, they, as an emergency response, engaged a few masons to construct an outflow directing the runoff storm water to the already existing public storm water drainage to prevent further damage to the site.
42. Beginning with the aspect of knowledge of the Orders of 25<sup>th</sup> May, 2023, there is no contest that all the parties were aware of the Court orders and the same were clear and un-ambiguous. Speaking to this, the Court in its first Ruling on contempt dated the 25<sup>th</sup> January, 2024 noted:

“In this case, there is no contention that the orders dated 25th May 2023 were clear and unambiguous. This court issued an order of temporary injunction compelling the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> Respondents jointly and severally to stop and to enforce any further development on L.R. No. 209/7549 City Park Drive Parklands by the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Interested Parties, their agents and/ or servants or any other person pending the hearing and determination of this Petition.”



In addition, the Respondents and the Interested Parties have all conceded that the order and penal notice were duly served upon themselves. They thereby had knowledge and proper notice of the terms of the subject order.

43. Moving to whether there was contempt, noting that the Motion herein alleges further contempt, the Court is concerned with the alleged acts undertaken after those that formed the basis of the Ruling of 25<sup>th</sup> January, 2024.
44. Starting with the 13<sup>th</sup> -16<sup>th</sup> Respondents, they assert that they are not in breach of the Court orders and seek to impugn the evidence adduced in this regard by the Petitioners alleging that the same is fraudulent. They similarly claim that this Motion has been overtaken by events as their alleged contemptuous acts occurred prior to their sentencing and if the Motion is granted, it will amount to double punishment.
45. Beginning with the claim that the determination of this Motion will be tantamount to re-prosecution, the Court disagrees. Notwithstanding that it was several months later, the mitigation and sentencing was with respect to the contempt the subject of the Ruling of 25<sup>th</sup> January, 2024 and was only in respect of the acts found by the Court to be contemptuous vide the aforesaid Ruling. Any acts after the first Ruling on Contempt can be subjected to further determination by the court.
46. In support of their claims of further contempt, the Applicants have heavily relied on photographs and extracts from CCTV. Essentially, they rely on electronic evidence. The admissibility of electronic records is provided for under Section 106 B of the Evidence Act (Cap 80) Laws of Kenya in the following terms:

“106B (1) Notwithstanding, anything contained in this Act, any information contained in an electronic record which is printed on a paper, stored, recorded or copied on optical or electro-magnetic media produced by a computer (herein referred to as a computer output) shall be deemed to be also a document, if the conditions mentioned in this section are satisfied in relation to the information and computer in question and shall be admissible in any proceedings, without further proof or production of the original, as evidence of any contents of the original or of any fact stated therein where direct evidence would be admissible.”

47. Under sub-section (4), where a party seeks to give evidence by virtue of section 106B they have to, among other things, tender a certificate dealing with any matters to which the conditions above relate. The certificate should further:

- a) identify the electronic record containing the statement and describing the manner in which it was produced; and
- b) give such particulars of any device involved in the production of that electronic record as may be appropriate for the purpose of showing that the electronic record was produced by a computer.”

48. In the decision of Benson Mugatsia vs Cornel Rasanga Amater, Election Petition 2 of 2012, which relied on the decision of Republic vs Berisa Wayu Matuguda Criminal Case No.6 of 2008, the Court considered when a certificate will be admissible and it said:

“...any information stored in a computer ...which is then printed or copied.....shall be treated just like documentary evidence and will be admissible as evidence without production of



the original: However Section 106B also provides that such electronic evidence will only be admissible if the conditions laid out in that provision are satisfied.”

49. It is noted that the Petitioners have adduced the certificate of electronic evidence with respect to the photos annexed to the Affidavits of 24<sup>th</sup> May, 2024 and the Further Affidavit of 2<sup>nd</sup> October, 2024.
50. This Ruling comes against the backdrop of the Judgment of this court dated 10<sup>th</sup> December, 2024. In the Judgment, the court found and held that the impugned development on the suit property had complied with the law. The court went ahead to dismiss the Petition, thus vacating the conservatory orders, the basis of the application for contempt.
51. That being the case, and considering that other than just punishing a contemnor, the contemnor is required to purge the contempt, such an order, and especially as framed by the Petitioners in the current application cannot obtain, the Petition having been dismissed.
52. I say so because in the application, the Petitioners have prayed for orders compelling the contemnors to disconnect, detach, remove, close and demolish the concrete culvert and waste pipes sewer fittings they have constructed and connected from L.R No 209/7549-City Park Drive, Parklands to the manholes, sewer line and storm water drainage channel that runs from L.R 209/7548 to the private septic tank on L.R No 209/7547 pending the hearing and determination of this Petition.
53. The Petitioners have further prayed for an order to issue directed to the contemnors to purge their contempt of the Court Orders given on 25<sup>th</sup> May, 2023 by restoring the building on L.R No 209/7549-City Park Drive, Parklands to the state and condition it was in as at 25<sup>th</sup> May, 2023, that is to the skeletal super structure level 11 with no walling or any doors, windows, tiles, electrical wiring, plumbing works, paint works, plaster, interior partition and the swimming pool.
54. Having dismissed the Petition in its entirety, it is the finding of the court that the orders the Petitioners are seeking in the current application are moot, and cannot issue.
55. For those reasons, the application dated 24<sup>th</sup> May, 2024 is dismissed with no order as to costs.

**DATED, SIGNED AND DELIVERED VIRTUALLY IN NAIROBI THIS 27<sup>TH</sup> DAY OF FEBRUARY, 2025.**

**O. A. ANGOTE**

**JUDGE**

In the presence of;

Mr. Wageni for Petitioner

Ms Wambui for Baka for 1<sup>st</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> Respondent

Ms Njenga for 5<sup>th</sup> and 7<sup>th</sup> Interested Party

Court Assistant: Tracy

