



Getecha v Hydro Developers Limited (Environment & Land Case E011 of 2023) [2025] KEELC 721 (KLR) (20 February 2025) (Ruling)

Neutral citation: [2025] KEELC 721 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE E011 OF 2023
CG MBOGO, J
FEBRUARY 20, 2025**

BETWEEN

FRANCIS WANJIRU GETECHA APPLICANT

AND

HYDRO DEVELOPERS LIMITED RESPONDENT

RULING

1. Before this court is a Notice of Motion application filed by the Plaintiff/Applicant dated 19th December, 2024 pursuant to Section 5(1) of the [Judicature Act](#) Cap Laws of Kenya. The Applicant has sought the following orders:
 - i. Spent.
 - ii. That the Defendant/Respondent is in contempt of the orders granted on the 26th day of September 2023.
 - iii. That the contempt has caused and continues to cause great prejudice to the Applicant/Plaintiff.
 - iv. That the Defendant/Respondent is penalized for contempt.
 - v. That penal consequences issue against the Defendant/Respondent herein.
 - vi. Any further orders that this Honourable Court may deem fit and just to grant.
2. This application is premised on the grounds on its face and in the supporting affidavit sworn by the Applicant, Francis Wanjiru Getecha. These grounds are that the Plaintiff/Applicant has at all material times to this suit been in possession of the suit properties and had developed and operated a school, Royal International Academy, which has a population of 200 children.



3. It is the Plaintiff's/Applicant's assertion that vide an application dated 13th July 2023, he sought injunctive orders from court against the Defendant/Respondent. The court then ordered that the status quo be maintained pending the hearing and determination of the suit. They state that the Defendant/Respondent has now proceeded to erect a permanent perimeter wall around LR No. 29123/284 despite there being in force a court order stopping the parties from interfering in whatever way with the said property pending the hearing and determination of the suit herein.
4. The Plaintiff/Applicant avers that the Defendant/Respondent offered to sell him the suit property, LR No. 29123/284 and the Plaintiff/Applicant executed the Letter of Offer dated 7th February, 2019. He has since paid 75% of the purchase price, despite never being issued a sale agreement. According to the Plaintiff/Applicant, despite payment of the deposit and further sums, and despite his willingness to complete the transaction, the Defendant has declined, without any color of right, to complete the transaction and purported to terminate the transaction.
5. The Defendant/Respondent has opposed this application through a replying affidavit dated 14th January, 2025 and sworn by Mohamed Tahir, the Defendant's Finance Manager. He asserted that this application and this suit are incurably defective and amounts to abuse of court process, as it offends Section 3(3) of the Law of Contract Act as read with Section 38 of the Land Act, and that this court lacks jurisdiction to entertain this suit. According to the Defendant/Respondent, the nature of the dispute between the parties is purely commercial and outside the jurisdictional ambit of the Honourable court. They contend that the Plaintiff/Applicant is a trespasser upon the Respondent's land, and that he has no actual or equitable interest in the land and is using this court to sanctify their illegal and irregular claim to the Respondent's property.
6. While the Defendant/Respondent acquiesced that it had sent a Letter of Offer invitation to the Plaintiff/Applicant, they aver that the Plaintiff/Applicant was required to acknowledge acceptance of the terms of the offer by executing the letter of offer and by paying an initial deposit of 50% of the tentative purchase price within 7 days. They assert that the Plaintiff/Applicant failed to heed to the terms of the offer letter, as he paid the initial deposit on 3rd July, 2019, roughly 138 days after the lapse of the 7-day window provided in the offer letter. They contend that any perceived or imaginary obligations owed to the applicant vis-à-vis the said offer letter was extinguished on account of effluxion of time.
7. The deponent agreed that the Plaintiff/Applicant indeed paid 75% of the purchase price, but they claim that the Plaintiff/Applicant refused to execute the sale agreement. The Defendant/Respondent averred that it issued a completion notice dated 24th February, 2022 and upon non-compliance on 14th June, 2022, it issued a cancellation notice repudiating the oral agreement between the parties. Mohamed Tahir stated that the Respondent through its advocates drew cheques totalling Kshs.3,900,000 to the Plaintiff/Applicant's benefit, but he refused to cash in the cheque and opted to persist in his claim over the property.
8. The deponent also invited this court to take judicial notice of the fact that the present suit was lodged over a year after the cancellation of the transaction. They depone that the applicant is guilty of laches and undeserving of the audience of the court.
9. This application has been canvassed by way of written submissions.
10. Counsel for the Plaintiff/Applicant filed written submissions dated 22nd January, 2025. Counsel asserted that the issues for determination are whether the order was clear, unambiguous and unequivocal, and whether there was compliance with the same.



11. Counsel relied on Section 5 of the *Judicature Act* on contempt of court, as well as Rule 81.5 and Rule 81.6 of the Civil Procedure Rules on service of the order, which must be done personally.
12. Plaintiff's/Applicant's Counsel submitted that the Respondent, in total disregard of the court, went ahead and fenced off the suit property during the pendency of the status quo order. They assert that there was nothing ambiguous about the order and it should have been complied with. They therefore submit that the Respondent was in contempt of the court order of 26th September, 2023 and should face the consequences for the same.
13. Counsel relied on the case of *Hadkinson v Hadkinson* (1952) All ER 567 as referenced in the case of *Ramesh Popatlal Shah & 2 others v National Industrial Credit Bank Limited* [2005] eKLR and the case of *Refrigeration and Kitchen Utensils Ltd v Gulabchand Popatlal Shah & another* as referenced in *Viktar Maina Ngunjiri v Jack & Jill Supermarkets Ltd* [2018] eKLR.
14. Counsel for the Respondent filed written submissions dated 29th January, 2025. It was their submission that there are three issues for determination: whether the court has jurisdiction to hear and determine the present application and the substantive suit whether the Respondent is in contempt of the orders issued on 26th September, 2023 and who bears the costs of the suit.
15. With respect to the issue of whether this court has jurisdiction, Counsel submitted that this court lacks the pecuniary jurisdiction to hear and determine this suit, as the value of the suit property falls below the jurisdiction of this court. It is their claim that the suit property was negotiated for a sum of Kshs. 6,000,000/- and that the matter ought to have been lodged before the Chief Magistrates Court, whose jurisdiction is capped at Kshs. 20,000,000/- in line with Section 7 of the Magistrates Court Act 2015. They relied on the case of *Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Limited* [1989] KLR 1 as well as on Sections 11 and 4 of the *Civil Procedure Act*.
16. Counsel affirmed that under Section 9 of the Magistrates Court Act, the magistrates court has jurisdiction to hear and determine disputes relating inter alia to land use planning, title, land administration and management and public, private and community land and contracts, leases in action or other instruments granting any enforceable interests in land. Counsel relied on the cases of *Edward Mwaniki Gaturu & another v Hon. Attorney General & 3 others* [2013] eKLR and *Law Society of Kenya Nairobi Branch v Malindi Law Society, Attorney General, Chief Justice and President of the Supreme Court, the National Assembly, Law Society of Kenya, National Land Commission & Parliamentary Service Commission* [2017] KECA 231 (KLR).
17. On the Second issue of whether the Respondent is in contempt of the orders issued on 26th September, 2023, Counsel submitted that this application is incompetent as there are no orders subsisting that would inform a finding of contempt against the Respondent. They argue that the subject orders were issued on 26th September, 2023 and that the orders lapsed on 25th September, 2024. Counsel relied on Order 40 Rule 6 of the Civil Procedure Rules which prescribes that interlocutory injunction orders lapse after a period of twelve months from the date of the grant.
18. It is Counsel's submission that at the time the application was brought, the orders had lapsed and thus there was no order subsisting capable of disobedience. They argue that holding otherwise would amount to aiding an indolent litigant and considering the equitable nature of the relief granted, equity must never aid the indolent litigant.
19. They relied on the case of *Barclays Bank of Kenya Limited v Henry Ndungu Kinuthia & Terracraft (K) Limited* [2018] KECA 213 (KLR) and *Erick Kimingichi Wapang'ana & Magharibi Machineries Limited v Equity Bank Limited & Antique Auctioneers Agencies* [2015] KECA 205 (KLR).



20. It was Counsel's further submission that the standard of proof in proceedings in the nature of contempt is beyond the civil balance of probabilities. They relied on *Shimmers Plaza Limited v National Bank of Kenya Limited* [2015] KECA 945 (KLR). Counsel has submitted that the Plaintiff/Applicant has not placed any material before this court evidencing the existence of the said wall or any nexus between the wall and the Defendant/Respondent.
21. On the third issue on costs, Counsel submitted that costs follow the event and as a general rule, they should be awarded to the successful party to compensate for the trouble taken to prosecute or defend a claim. They submit that the Applicant has not proven his claim against the Respondent to the required standard and it would be just that it be compensated for its industry in defending and prosecuting this application with costs.
22. This court has considered the application, the Respondent's Replying Affidavit and the submissions filed by the parties. The issues for the determination of this court are as follows:
- i. Whether this court has jurisdiction to determine this dispute.
 - ii. Whether the Defendant/Respondent is in contempt of court orders.
23. As asserted by the Defendant/Respondent, jurisdiction is everything and without it, this court cannot make one more step. It is then critical that this be the first issue that this court disposes of. This is in line with the determination of the Court of Appeal in *Owners of the Motor Vessel Lillian 'S' v Caltex Kenya Limited* (1989) KLR 1 where it held that:
- “...it is reasonably plain that a question of jurisdiction ought to be raised at the earliest opportunity and the court seized of the matter is then obliged to decide the issue right away on the material before it. Jurisdiction is everything. Without it, a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence...”
24. The Defendant/Respondent has raised two grounds on the basis of which this court lacks jurisdiction. The first ground they claim is that the subject matter of this dispute is commercial in nature and is therefore not within this court's subject matter jurisdiction. The second ground is that this court lacks pecuniary jurisdiction as the suit property was sold at Kshs. 6,000,000/- which is below the jurisdiction of this court.
25. It is well established that a court can only exercise the jurisdiction that flows from *the Constitution* and from legislation. This was stated by the Supreme Court in *Samuel Kamau Macharia v KCB & Others* [2012] eKLR where the Apex court stated as follows:
- “A court's jurisdiction flows from either *the Constitution* or legislation or both. Thus a court can only exercise jurisdiction as conferred by *the Constitution* or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law.....the court must operate within the constitutional limits. It cannot expand jurisdiction through judicial craft or innovation.”
26. The jurisdiction of the Environment and Land Court is set out under Article 162(2)(b) of *the Constitution*, where the Supreme Law provides for the establishment of a court with the status of the High Court to hear and determine disputes relating to the environment and the use and occupation of, and title to, land.



27. The Environment and Land Court was thereafter legislated through the [Environment and Land Court Act](#) 2011. Section 13(2) of the ELC Act comprehensively elucidates the jurisdiction of this court in the following words:-

- (2) In exercise of its jurisdiction under Article 162(2)(b) of [the Constitution](#), the Court shall have power to hear and determine disputes—
- a. relating to environmental planning and protection, climate issues, land use planning, title, tenure, boundaries, rates, rents, valuations, mining, minerals and other natural resources;
 - b. relating to compulsory acquisition of land;
 - c. relating to land administration and management;
 - d. relating to public, private and community land and contracts, choses in action or other instruments granting any enforceable interests in land; and
 - e. any other dispute relating to environment and land.

28. The Plaintiff's/Applicant's dispute in this suit, as set out in their Plaint dated 13th July, 2023, concerns the purchase of the properties known as LR 29123/254, 29123/283 and 29123/284 from the Defendant. The Plaintiff also asserts that the Defendant on 2nd July 2023, caused destruction of a fence and gate on the suit land, as the Defendant's/Respondent's employees dug a road. It is then on this basis that the Plaintiff/Applicant has made a claim for general damages for destruction of property, and has also sought an order for specific performance, directing the Defendant/Respondent to take the purchase price and complete the transaction.

29. It is clear that the dispute concerns a contract relating to land and a claim of title over the suit properties, which issues fall well within the jurisdiction of this court as articulated under [the Constitution](#) and the [Environment and Land Court Act](#).

30. The Defendant/Respondent has asserted that this suit offends Section 3(3) of the [Law of Contract Act](#), which prescribes that:

- (3) No suit shall be brought upon a contract for the disposition of an interest in land unless—
- (a) the contract upon which the suit is founded—
 - (i) is in writing;
 - (ii) is signed by all the parties thereto; and
 - (b) the signature of each party signing has been attested by a witness who is present when the contract was signed by such party:

Provided that this subsection shall not apply to a contract made in the course of a public auction by an auctioneer within the meaning of the [Auctioneers Act](#) (Cap. 526), nor shall anything in it affect the creation of a resulting, implied or constructive trust.

31. They further contend that it offends Section 38 of the [Land Act](#) which provides as follows:

- (1) Other than as provided by this Act or by any other written law, no suit shall be brought upon a contract for the disposition of an interest in land—
- (a) the contract upon which the suit is founded—
 - (i) is in writing;



- (ii) is signed by all the parties thereto; and
 - (b) the signature of each party signing has been attested to by a witness who was present when the contract was signed by such party.
- (2) Subsection (1) shall not apply to—
- (a) a contract made in the course of a public action;
 - (b) the creation or operation of a resulting, implied or a constructive trust; or
 - (c) any agreement or contract made or entered into before the commencement of this Act, provided that—
 - (i) the verbal contracts shall be reduced to writing within two years from the date of enactment of this Act; and
 - (ii) the Cabinet Secretary shall put a notice of the requirement to reduce the contracts in writing, in a newspaper of nationwide circulation.
32. The question of whether this suit is barred under Section 3(3) of the *Law of Contract Act* as read with Section 38 of the *Land Act* can however only be determined upon the production of evidence and the merited hearing of this suit. This court cannot make such a determination at this juncture.
33. There is then the question of whether the suit falls within the pecuniary jurisdiction of this court. Under Section 26(4)(b) of the *Environment and Land Court Act*, magistrates courts have the jurisdiction to handle matters of civil nature involving occupation, title to land, provided that the value of the subject matter does not exceed the pecuniary jurisdiction as set out in the Magistrates' Courts Act.
34. The pecuniary jurisdiction of magistrate's courts is provided for under Section 7 the Magistrates Court Act. It provides:
1. A magistrate's court shall have and exercise such jurisdiction and powers in proceedings of a civil nature in which the value of the subject matter does not exceed—
 - a. twenty million shillings, where the court is presided over by a chief magistrate;
 - b. fifteen million shillings, where the court is presided over by a senior principal magistrate;
 - c. ten million shillings, where the court is presided over by a principal magistrate;
 - d. seven million shillings, where the court is presided over by a senior resident magistrate; or
 - e. five million shillings, where the court is presided over by a resident magistrate.
35. According to the Defendant/Respondent, in 2019 the suit property was offered for sale at the cost of Kshs. 6 million, which is far below the pecuniary jurisdiction of this court. Neither the Plaintiff/Applicant nor the Defendant/Respondent have annexed any valuation reports to satisfy this court as to the value of the suit property as it was in 2023, when this suit was filed.
36. In any case, the jurisdiction exercised by Magistrate's court is not exclusive and the Environment and Land Court is not expressly barred from determining disputes whose value falls within the limits of the Magistrates Court. Accordingly, nothing bars this court from determining this suit.



37. This court thereby finds that it has the requisite jurisdiction to hear and determine this application and this suit.
38. There is then the second issue of whether the Defendant/Respondent is in contempt of the orders of this court. It is a tenet of the rule of law that the orders of a court must be obeyed. It is for this reason that courts punish for contempt or disobedience of court orders: to uphold the dignity and authority of the court, ensure compliance with directions of the court, to preserve an effective and impartial system of justice, and maintain public confidence in the administration of justice by courts.
39. The substantive law governing contempt proceedings in Kenya is found in Section 5 of the *Judicature Act*, which 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 such power shall extend to upholding the authority and dignity of subordinate courts.
2. An order of the high court made by way of punishment for contempt of court shall be appealable as if it were a conviction and sentence made in the exercise of the ordinary original criminal jurisdiction of the high court.”
40. The English law that is applicable is Part 81 of the English Civil Procedure (Amendment No 3) Rules 2020. Section 81. 4 (2) requires that a contempt application includes statements of the following:-
- a. the nature of the alleged contempt (for example, breach of an order or undertaking or contempt in the face of the court);
 - (b) the date and terms of any order allegedly breached or disobeyed;
 - b. confirmation that any such order was personally served, and the date it was served, unless the court or the parties dispensed with personal service;
 - (d) if the court dispensed with personal service, the terms and date of the court’s order dispensing with personal service;
 - (e) confirmation that any order allegedly breached or disobeyed included a penal notice;
 - (f) the date and terms of any undertaking allegedly breached;
 - (g) confirmation of the claimant’s belief that the person who gave any undertaking understood its terms and the consequences of failure to comply with it;
 - (h) a brief summary of the facts alleged to constitute the contempt, set out numerically in chronological order;
 - (i) that the defendant has the right to be legally represented in the contempt proceedings;
 - (j) that the defendant is entitled to a reasonable opportunity to obtain legal representation and to apply for legal aid which may be available without any means test;
 - (k) that the defendant may be entitled to the services of an interpreter;
 - (l) that the defendant is entitled to a reasonable time to prepare for the hearing;
 - (m) that the defendant is entitled but not obliged to give written and oral evidence in their defence;



- (n) that the defendant has the right to remain silent and to decline to answer any question the answer to which may incriminate the defendant;
 - (o) that the court may proceed in the defendant's absence if they do not attend but (whether or not they attend) will only find the defendant in contempt if satisfied beyond reasonable doubt of the facts constituting contempt and that they do constitute contempt;
 - (p) that if the court is satisfied that the defendant has committed a contempt, the court may punish the defendant by a fine, imprisonment, confiscation of assets or other punishment under the law;
 - (q) that if the defendant admits the contempt and wishes to apologise to the court, that is likely to reduce the seriousness of any punishment by the court;
 - (r) that the court's findings will be provided in writing as soon as practicable after the hearing; and
 - (s) that the court will sit in public, unless and to the extent that the court orders otherwise, and that its findings will be made public.
41. In *Cecil Miller v. Jackson Njeru & Another* [2017] eKLR the court outlined the ingredients for contempt of court orders as follows:-
- a. The terms of the order/or injunction or undertaking, were clear and unambiguous and were binding on the defendants;
 - b. The Defendant has knowledge of or proper notice of the terms of the order;
 - c. The Defendant has acted in breach of terms of the order and;
 - d. The Defendant's conduct was deliberate.
42. The Plaintiff/Applicant contends that the Defendant/Respondent is in contempt of the orders of this court which were issued on 26th September, 2023. These orders are that:
- i. That there be and is hereby granted an order of status quo be maintained over and in respect of the suit properties and in particular, in terms of title, occupation, possession and current use thereof.
 - ii. That for good measure, the Plaintiff/Applicant shall remain in possession and occupation pending the hearing and determination of the suit herein and/or until further orders of the court.
 - iii. That in any event, the defendant/respondent shall stop and abate the excavation and activities that are complained of by the Plaintiff/ Applicant.
 - iv. That costs of the application shall abide in the outcome of the suit.
43. The Defendant/Respondent contends that the orders of this court lapsed within twelve months of their issue on 25th September, 2024 and were therefore not binding upon them They have relied on Order 40 Rule 6 of the Civil Procedure Rules, which states that:-
- Where a suit in respect of which an interlocutory injunction has been granted is not determined within a period of twelve months from the date of the grant, the injunction shall lapse unless for any sufficient reason the court orders otherwise.



44. There is no contention that the subject matter orders of this court were issued on 26th September, 2023, and the Plaintiff/Applicant has not claimed nor has he established that he sought extension of the said orders. By operation of law, the said orders accordingly lapsed within 12 months of their issue. In any case, the Plaintiff/Applicant has not indicated when the alleged contemptuous acts were committed by the Defendant/Respondent. This court can therefore not determine whether such acts took place during the pendency of the status quo orders.
45. Even if this court were to find that the status quo orders had not lapsed, the Plaintiff/Applicant has failed to discharge the burden of proving that the Defendant/Respondent had knowledge of the said orders, as the Plaintiff/Applicant has not adduced any evidence of service upon the Defendant/Respondent. Furthermore, the Plaintiff/Applicant has failed to present any evidence of the alleged acts of contempt committed by the Defendant/Respondent.
46. It is trite that the standard of proof in contempt matters is higher than that of ordinary civil matters. In the case of Mutitika vs Baharini Farm Limited [1985] KLR 229, 234 the Court of Appeal held that:-
- “In our view, the standard of proof in contempt proceedings must be higher than proof on the balance of probabilities, almost but not exactly, beyond reasonable doubt...The standard of proof beyond reasonable doubt ought to be left where it belongs, to wit, in criminal cases. It is not safe to extend it to an offence which can be said to be quasi-criminal in nature. The rationale for this standard is that if cited for contempt, and the prayer sought is for committal to jail, the liberty of the contemnor will be affected. As such, the standard of proof is higher than the standard in civil cases. This power, to commit a person to jail, must be exercised with utmost care, and exercised only as a last resort. It is of utmost importance, therefore, for the respondents to establish that the alleged contemnor’s conduct was deliberate, in the sense that he or she willfully acted in a manner that flouted the Court Order.”
47. On consideration of the Plaintiff’s/Applicant’s application and the annexures thereto, this court finds that the same lacks merit as it has fallen short of the established standard of proof. It is therefore for dismissal. Same is hereby dismissed.
48. Costs of this application shall be borne by the Plaintiff/Applicant.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 20TH DAY OF FEBRUARY, 2025.

HON. MBOGO C.G.

JUDGE

20/02/2025

In the presence of:

Mr. B. Agunga – court assistant

Ms. Nkatha for the Defendant/Respondent

Ms. Obworo for the Plaintiff/Applicant

