



REPUBLIC OF KENYA



**KENYA LAW**  
THE NATIONAL COUNCIL FOR LAW REPORTING  
Where Legal Information is Public Knowledge

**Kiniu v Ndungu and Murigi both t/a Annrose Nursery and Primary School & another; Ndung'u (Objector) (Environment & Land Case 179 of 2009) [2024] KEELC 13995 (KLR) (17 December 2024) (Ruling)**

Neutral citation: [2024] KEELC 13995 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND CASE 179 OF 2009  
LN MBUGUA, J  
DECEMBER 17, 2024**

**BETWEEN**

**JOSEPH NDICHU KINIU ..... PLAINTIFF**

**AND**

**ANN WAIRIMU NDUNGU AND STANLEY NDUNGU MURIGI BOTH T/A  
ANNROSE NURSERY AND PRIMARY SCHOOL ..... 1<sup>ST</sup> DEFENDANT**

**EMBAKASI RANCHING COMPANY LIMITED ..... 2<sup>ND</sup> DEFENDANT**

**AND**

**SUSAN NDUNG'U ..... OBJECTOR**

**RULING**

1. This ruling relates to the punishment of the contemnors following the Notice to Show Cause proceedings in respect of the 1<sup>st</sup> defendant Ann Wairimu Ndungu and the Objector Susan Ndungu who were found to be in contempt of court's orders vide the ruling delivered on 30.10.2024. During the Notice to show cause proceedings, the contemnors proffered their defences to the case, a maneuver that has persisted post judgment and captured in the courts ruling of 30.10.2024.
2. In essence, the 1<sup>st</sup> defendant contends that her school is at Utawala and not on the suit land, plot A69 and A70 or Nairobi Block 105 Embakasi/1917, 1916, 1927 or 1928. She therefore contends that she is not in contempt of court, adding that she is an old sickly lady. On the case of Susan, it was argued that she was never served with a notice of penal consequences or any pleadings. She proffered an argument that plaintiff's land is different from her land, adding that she suffers from severe ulcers.
3. The contemnors also argue that it would be a miscarriage of justice if the contempt orders are allowed, yet they are waiting orders from the Court of Appeal.



4. In response, it was argued for the plaintiff that the structures in question are on plaintiff's land and that there are photographs availed in the various applications depicting the status on the ground. He maintains that the contemnors were establishing another school on plaintiff's land in year 2009, and that the defendant was deliberately misleading the court by mixing numbers.
5. I have considered all the arguments raised herein. For the record, the contemnors have already been found guilty of contempt of court orders vide the courts' ruling of 30.10.2024. They have been given adequate time and opportunity to purge the said contempt, but instead, they appear to be relentless in their quest to defy the court's judgment. There is not the slightest evidence of purging the contempt, instead, they are still advancing defences post judgment, an issue captured at paragraph 50 in the ruling delivered on 30.10.2024. However, once a court has determined a case to finality and has performed all its duties, it cannot review or alter its judgment and any challenge thereto must be taken up by the higher Court, See - *Brian Muchiri Waihenya v Jubilee Hauliers Ltd & Another; Geminia Insurance Co. Ltd (Interested Party)* [2018] eKLR. Thus this court is *functus officio* and cannot delve into the merits of the dispute all over again.
6. In the circumstances, the court will proceed to punish the contemnors accordingly. To this end, the court invokes the provisions of Section 29 of the *Environment and Land Court Act* which stipulates 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”.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 17<sup>TH</sup> DAY OF DECEMBER 2024 THROUGH MICROSOFT TEAMS.**

**LUCY N. MBUGUA**

**JUDGE**

In the presence of:

Ng'ang'a for Plaintiff

Outa for 1<sup>st</sup> Defendant and Objector

Mogeni holding brief for Gakuo for 2<sup>nd</sup> Defendant

Court Assistant: Vena

