

KENYA / JUDGMENT

Ouko v Ogam [2026] KEELC 5452 (KLR)

[2026] KEELC 5452 (KLR)**COURT**

Environment and Land Court

CASE / FILE NUMBER

Environment and Land Appeal E037 of 2026

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REPUBLIC OF KENYA IN THE ENVIRONMENT AND LAND COURT OF KENYA AT KISUMU ELCA
NO. E037 OF 2026 CHARLES OWUOR OUKO.....APPLICANT/APPELLANT =VERSUS= JOY
ACHIENG OGAM.....RESPONDENT R U L I N G

1. Before me for determination is the Notice of Motion dated 1st July 2026 taken out by the applicant, Charles Owuor Ouko, who appears in person. The motion is expressed to be brought under sections 1A, 1B, 3A and 63(e) of the Civil Procedure Act, Order 40 rule 3 of the Civil Procedure Rules, section 5 of the Judicature Act and Articles 10, 48, 50 and 159 of the Constitution of Kenya, 2010.
2. The motion seeks the following orders:
 - a. That this Honourable Court be pleased to cite the Respondent/Contemnor for contempt of court for knowingly, deliberately and wilfully disobeying, frustrating and refusing to comply with and/or enforce the lawful court orders issued on 25th May 2026; RULING ELCA E037 OF 2026 1
 - b. That upon being found guilty of contempt, the Respondent/Contemnor be arrested and committed to civil jail for a term not exceeding six (6) months or for such period as this Honourable Court may deem fit and just; and
 - c. That the costs of this application be borne personally by the Respondent/Contemnor.
3. The motion is premised on the grounds set out on its face and is supported by the affidavit of the applicant together with a further supporting affidavit sworn by Michael Victor Omondi on 22nd July 2026. It is opposed by way of a replying affidavit sworn by the respondent, Joy Achieng Ogam, on 4th August 2026.
4. A brief background is necessary. Judgment was delivered against the applicant on 2nd November 2023 by Hon. K. Cheruiyot, Senior Principal Magistrate, in Kisumu CMCEL No. 295 of 2018. By a Notice of Motion under certificate of urgency taken out in Kisumu ELCPMISC No. E002 of 2026, the applicant sought leave to appeal against that judgment out of time. RULING ELCA E037 OF 2026 2

5. On 23rd March 2026, Asati, J. gave directions that the application be served for hearing on 25th May 2026, granted an interim stay of execution of the judgment in Kisumu CMCELC No. 295 of 2018 and restrained the applicant from selling, alienating or disposing of the suit land parcel No. KISUMU/KASULE/4037 pending the hearing and determination of the application. That order bore a penal notice.
6. On 25th May 2026, upon hearing the application, the court (Asati, J.) ordered as follows: that the applicant be granted leave to file an appeal against the judgment in Kisumu MCELC No. 295 of 2018 out of time; that the appeal be filed within fourteen (14) days thereof; that an order of temporary injunction do issue restraining the respondent from further constructing on the suit land pending the hearing and determination of the appeal; that the applicant be equally restrained from selling, alienating or disposing of the suit land parcel No. KISUMU/KASULE/4037 pending the hearing and determination of the appeal; that there be no order as to costs; and that a new file be opened upon the filing of the appeal. That order likewise RULING ELCA E037 OF 2026 3 bore a penal notice. It is the alleged breach of the third of those orders that has given rise to the present motion. The Applicant's case
7. The applicant deposes that, having obtained the orders of 25th May 2026, he complied with the directions of the court by filing his memorandum of appeal and causing the same, together with the court order, to be served upon the respondent's advocates on record, who acknowledged service. He annexes the order of 23rd March 2026, the order of 25th May 2026 and affidavits of service sworn by Meshack Okeyo Baraza on 31st March 2026 and 10th June 2026.
8. He further deposes that, notwithstanding her clear knowledge of the orders, the respondent has deliberately continued with construction works on the suit parcel; that she retorted that court orders are mere papers meant for the poor and that she has the means to pay judges to rule in her favour; and that she has brought workmen onto the suit parcel and is engaged in a continuous process of construction. RULING ELCA E037 OF 2026 4
9. In support of that account the applicant annexes a certificate of production of electronic photographic evidence dated 1st July 2026, in which he states that the photographs were taken on his Nokia C32 handset and printed in colour at a cyber café without alteration, together with photographs marked C.O.O-3(b) to (m) bearing dates and times running from 18th January 2026 to 26th June 2026.
10. The applicant characterises the respondent's conduct as blatant contempt, ridicule and undermining of the authority, dignity and supremacy of this court; he says he has been reduced to a laughing stock; and he urges that unless punitive sanctions are imposed the respondent will continue to act with impunity.

11. By the further supporting affidavit, Michael Victor Omondi, who describes himself as a son of the applicant acting under an authority to act given on account of the applicant's health, deposes that the respondent has since erected containers on the suit parcel, has rented them out and that business activities are being carried on from RULING ELCA E037 OF 2026 5 them. He annexes photographs marked M.V.O-2a and 2b taken on 16th and 17th July 2026. The Respondent's case
12. The respondent denies each and every allegation save as expressly admitted. Her answer is short and, if made good, complete.
13. She deposes that she is the registered proprietor of Land Parcel No. KISUMU/KASULE/4039, having purchased the same in the year 2008. She annexes as JAO-1 a title deed issued at the Kisumu District Land Registry on 23rd October 2008 in respect of that parcel, measuring approximately 0.10 hectares on Registry Map Sheet No. 5, and as JAO-2 a copy of the green card relating thereto. She states that prior to purchase she carried out due diligence at the Lands Registry and confirmed that the title was valid.
14. She further deposes that a boundary dispute previously existed between Land Parcels Nos. KISUMU/KASULE/4038 and 4039, which dispute was resolved by the Land Registrar and the District Surveyor and culminated in the RULING ELCA E037 OF 2026 6 rectification of the registry map to reflect the correct positions of the parcels; and that before undertaking any development she sought and obtained clarification from the District Surveyor, who confirmed that she was at liberty to utilise and develop Land Parcel No. KISUMU/KASULE/4039.
15. Her case, in terms, is that she neither owns, occupies nor carries out any development upon Land Parcel No. KISUMU/KASULE/4037; that all developments undertaken by her have at all material times been confined to her own parcel, No. 4039, which is a separate and distinct parcel; that she has never wilfully disobeyed any order of this court; and that the applicant has placed before the court no credible evidence, whether by way of a survey report or other expert evidence, demonstrating that the construction complained of stands on Land Parcel No. KISUMU/KASULE/4037. She contends that the applicant has conflated two distinct parcels of land and that the application is misconceived, bad in law and an abuse of the process of the court. RULING ELCA E037 OF 2026 7

Submissions

16. The motion was canvassed by way of written submissions and both parties have filed. The applicant's submissions are undated and are drawn and signed by Michael Victor Omondi "on behalf of Charles Owuor Ouko, the Appellant/Applicant". The respondent's submissions are dated 14th August 2026 and are drawn and filed by M/s Otieno, Yogo, Ojuro & Company Advocates. I have considered both, together with the authorities annexed to each.
 - (a) The applicant's submissions

17. The applicant traces the antecedents of the matter to the judgment of Hon. K. Cheruiyot, S.P.M., delivered on 2nd November 2023 in Kisumu MCELC No. 295 of 2018, and to the grant of leave to appeal out of time in Kisumu Misc. ELC No. E002 of 2026. He reproduces the orders made on 25th May 2026 and submits that the order was served upon the respondent, as evidenced by the return of service filed electronically in the court's case tracking system on 15th July 2026. RULING ELCA E037 OF 2026 8
18. Upon the merits he submits that the respondent, notwithstanding her knowledge of the orders, evicted the tenants who were peaceably occupying the suit premises, demolished the rental houses earlier erected by the applicant, put up a permanent brick fence, container stalls and a car wash bay, and continues to collect rent therefrom to his detriment. He identifies the elements of contempt as the existence of a lawful order, the contemnor's knowledge of it and the contemnor's failure to comply, and he relies upon Michael Sistu Mwaura Kamau v Director of Public Prosecutions & 4 others
- [2018] eKLR for the proposition that the order alleged to have been disobeyed must be clear and precise so as to leave no doubt as to what a party was to do or to refrain from doing. The order in the present case, he submits, was not ambiguous; it was framed in seriatim and was self-explanatory.
19. As to the identity of the land, the applicant submits that from the inception of these proceedings the court was cognisant that the suit parcels are Land Parcels Nos. KISUMU/KASULE/4037, KISUMU/KASULE/4038 and RULING ELCA E037 OF 2026 9 KISUMU/KASULE/4039, and that the orders of 25th May 2026 were conservatory orders cautioning and directing both parties to refrain from any activities whatsoever upon the suit parcels pending the hearing and determination of the appeal. Upon that footing he submits that the respondent's assertion that she is developing parcel No. 4039 affords her no answer, and amounts instead to non-disclosure and misrepresentation calculated to lead the court into a wrong decision.
20. He submits that disobedience is established by the photographs annexed to the supporting affidavit and to the further affidavit filed on 22nd July 2026, each bearing the date upon which it was taken; that the disobedience was wilful, the respondent having known of the orders and of what was required of her; and that a party is bound to obey an order of the court even where she believes it to be irregular or void, unless and until it is set aside. He relies upon Nyandarua Progressive Agency Limited v Njoroge & another (Civil Suit E029 of 2022) [2026] KEHC 2564 (KLR) and Makokha v Mwananchi Credit Limited & another (Miscellaneous Civil Application E152 of 2024) RULING ELCA E037 OF 2026 10
- [2025] KEHC 7919 (KLR), and he urges the court not to shy away from dealing firmly with contemnors, to stamp its authority, and to award him the costs of the application.
- (b) The respondent's submissions

21. The respondent frames two issues: whether she has any proprietary or possessory interest in Land Parcel No. KISUMU/KASULE/4037, and whether the applicant has established a case for contempt.
22. Upon the first, she submits that she has no proprietary, possessory or other legal interest in parcel No. 4037; that her uncontroverted evidence is that she is the registered proprietor of parcel No. 4039, having lawfully acquired it in 2008 after conducting due diligence at the Lands Registry; and that the applicant has neither challenged the authenticity of her title deed and green card nor tendered any evidence linking her to parcel No. 4037. She relies upon sections 24(a), 25(1) and 26(1) of the Land RULING ELCA E037 OF 2026 11 Registration Act and upon *Doshi v Chemutut & 7 others* [2025] KECA 776 (KLR) for the proposition that a certificate of title is prima facie evidence of absolute and indefeasible ownership save where impeached for fraud, misrepresentation or illegality, and upon sections 107 and 109 of the Evidence Act for the proposition that he who alleges must prove.
23. She points to the resolution of the earlier boundary dispute by the Land Registrar and the District Surveyor and to the consequent rectification of the registry map as official confirmation that the parcels are separate and distinct, and she submits that in the absence of a survey report, a registry index map, a report from the Land Registrar or any expert evidence, the applicant has failed to establish the factual premise upon which the motion is founded.
24. Upon the second, she submits that contempt proceedings are quasi-criminal and that the standard of proof is proof beyond reasonable doubt, relying upon *Sam Nyamweya & 3 others v Kenya Premier League Limited & 2 others* [2015] eKLR and *Lorkoyo & another v Lorkoyo* RULING ELCA E037 OF 2026 12 (Environment and Land Appeal E002 of 2024) [2025] KEELC 4835 (KLR), and upon the three-limb test in *Samuel M. N. Mweru & others v National Land Commission & 2 others* [2020] eKLR as adopted in *Lorkoyo*.
25. Her central submission is that *Lorkoyo* is on all fours with the present case. There, a finding of contempt made at first instance was set aside upon appeal because two adjoining parcels were in issue, the alleged contemnors maintained that their activities were confined to their own parcel, and the applicant had failed to avail the report of the Land Registrar or of the Surveyor, or any independent evidence, to establish that the impugned activities were carried out upon the protected parcel. Where there is a genuine dispute as to the identity or location of the land upon which the alleged breach occurred, and where the alleged contemnor claims to be upon her own distinct land, the element of wilful disobedience is not made out; and a bona fide belief that one is upon one's own land negatives deliberate defiance. She prays that the motion be found to be without merit and dismissed with costs. RULING ELCA E037 OF 2026 13 Issues for determination
26. Having considered the motion, the affidavits filed by both sides and the annexures thereto, and the rival submissions and the authorities cited, I am of the view that the following issues fall for determination:

- (i) Whether the further supporting affidavit sworn by Michael Victor Omondi is properly before the court; (ii) Whether the applicant has established, to the standard required in proceedings of this nature, that the respondent is in contempt of the order issued on 25th May 2026; and (iii) What orders ought to issue, and who should bear the costs of the application.

Analysis and Determination

- (i) Whether the further supporting affidavit sworn by Michael Victor Omondi is properly before the court
27. The further supporting affidavit is sworn not by the applicant but by Michael Victor Omondi, who describes RULING ELCA E037 OF 2026 14 himself as a son of the applicant. He deposes that, owing to the applicant's health, he has been given authority to prosecute the matter to its conclusion, and he annexes a document headed "Authority to Act" bearing what are said to be the signatures of the applicant and of himself.
28. Two observations arise. First, the "Authority to Act" is drawn in the form of an affidavit it opens with the words "do hereby make oath and state" but it bears no jurat and has not been commissioned. It is therefore not an affidavit at all, and it is not a power of attorney. Secondly, and more fundamentally, an authority of that character does not confer upon its holder a right of audience. Order 9 rule 1 of the Civil Procedure Rules provides that any application to or appearance or act in any court required or authorised by law to be made or done by a party may, save where otherwise expressly provided, be made or done by the party in person or by an advocate duly appointed to act on his behalf. The exceptions to that rule are narrow and do not extend to a relative acting on the strength of a private authority. RULING ELCA E037 OF 2026 15
29. That said, a distinction must be drawn between the conduct of proceedings on the one hand and the deposition of facts on the other. Order 19 rule 3(1) of the Civil Procedure Rules permits an affidavit to be confined to such facts as the deponent is able of his own knowledge to prove. To the extent that Mr. Omondi deposes to what he himself observed upon the ground on 16th and 17th July 2026, his affidavit is receivable as evidence of those facts. To the extent that it purports to substitute him for the applicant in the conduct of the appeal, it is of no effect.
30. The respondent has taken no objection to the affidavit and I discern no prejudice to her. I accordingly admit the further supporting affidavit as evidence of the facts within the deponent's own knowledge, whilst recording that the applicant remains the party on the record and that any representation of him by another must be regularised in the manner the law provides. I note in passing, and without more, that the electronic mail address appearing on the applicant's own pleadings is that of the said deponent. RULING ELCA E037 OF 2026 16

31. The same difficulty attends the written submissions filed on the applicant's behalf, which are likewise drawn and signed by Mr. Omondi and not by the applicant. Submissions, however, are not evidence, and the irregularity does not go to the reception of argument in the way that it goes to the reception of testimony. Guided by Article 159(2)(d) of the Constitution, and the applicant being a lay litigant said to be in ill health, I have read and considered those submissions in full, and the respondent has suffered no prejudice thereby. I record the irregularity so that it may be regularised before the appeal itself is heard.
32. One further matter falls to be noticed here. The applicant's submissions assert, as facts, that the respondent evicted tenants in peaceable occupation, demolished rental houses erected by the applicant and now collects rent from container stalls. Those assertions travel some distance beyond what is deposed to in the affidavits, and to that extent they are made from the bar. It is elementary that submissions, however emphatic, are not evidence and cannot supply what the affidavits do not. RULING ELCA E037 OF 2026 17 contain. I therefore confine myself to the deposed evidence. (ii) Whether contempt has been established
33. The Contempt of Court Act, 2016 having been declared unconstitutional in *Kenya Human Rights Commission v Attorney General & another*
- [2018] eKLR, the jurisdiction of this court to punish for contempt rests upon section 5 of the Judicature Act, Cap. 8, and, more particularly for this court, upon section 29 of the Environment and Land Court Act, 2011, which provides that any person who refuses, fails or neglects to obey an order or direction of the court given under that 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. The applicant's invocation of Order 40 rule 3 of the Civil Procedure Rules is apt, the order said to have been disobeyed being an order of temporary injunction. RULING ELCA E037 OF 2026 18
34. Proceedings for committal are quasi-criminal in character. The respondent submits, upon the authority of *Sam Nyamweya & 3 others v Kenya Premier League Limited & 2 others* [2015] eKLR, that the standard of proof is proof beyond reasonable doubt. That submission puts the matter a little too high. The settled position is that the standard is higher than that which obtains in ordinary civil proceedings but stops short of proof beyond reasonable doubt, the guilt requiring to be proved with such strictness as is consistent with the gravity of the charge: *Gatharia K. Mutitika v Baharini Farm Limited*
- [1985] KLR 229. It is right to record that *Lorkoyo & another v Lorkoyo* (Environment and Land Appeal E002 of 2024) [2025] KEELC 4835 (KLR), upon which the respondent principally relies, itself adopts the Mutitika formulation. Nothing in this case turns upon the difference, for the reasons which follow.

35. It follows also that the order alleged to have been breached must be construed strictly and, where it is genuinely ambiguous, in favour of the alleged contemnor; for what is at stake is the liberty of the subject: see *Kenya Airports RULING ELCA E037 OF 2026 19 Authority v Mitu-Bell Welfare Society & 2 others*

[2016] eKLR.

36. The ingredients which an applicant must establish are settled, and both parties are agreed upon them. They are, in substance, that the terms of the order were clear and unambiguous and were binding upon the alleged contemnor; that the alleged contemnor had knowledge of, or proper notice of, the terms of the order; that the alleged contemnor acted in breach of those terms; and that the breach was deliberate: *Samuel M. N. Mweru & others v National Land Commission & 2 others*

[2020] eKLR; *Sheila Cassatt Issenberg & another v Antony Machatha Kinyanjui* [2021] eKLR. I take each in turn. (a) Were the terms of the order clear and unambiguous?

37. The third of the orders of 25th May 2026 restrains “the respondent from further constructing on the suit land pending hearing and determination of the appeal”. It does not, in terms, identify the suit land by title number, *RULING ELCA E037 OF 2026 20* whereas the fourth order, which is directed at the applicant, expressly identifies parcel No. KISUMU/KASULE/4037.
38. The applicant now submits that “the suit land” comprehends three parcels Nos. 4037, 4038 and 4039 and that the orders of 25th May 2026 were conservatory orders binding both parties in respect of all three. That submission, if accepted, would dispose of the respondent’s entire answer, for it would render it immaterial that her works stand upon parcel No. 4039. It therefore requires to be met directly. I am, with respect, unable to accept it, for three reasons.
39. First, it is unsupported by the material before me. Neither the extracted order of 23rd March 2026 nor that of 25th May 2026 makes any mention of parcels Nos. 4038 or 4039, and nothing else placed before me upon this motion identifies either of them as a suit parcel. The proposition is advanced from the bar and, as I have already observed, submissions are not evidence. *RULING ELCA E037 OF 2026 21*
40. Secondly, the order must be read as a whole. Where, in the very same order, the court intended to identify land by its title number it did so, and it identified one parcel only, namely No. KISUMU/KASULE/4037. The expression “the suit land” in the third order and the expression “the suit land parcel No. KISUMU/KASULE/4037” in the fourth stand within a few lines of one another. The natural and, to my mind, the only sensible reading is that each refers to the same land. Had the court intended to restrain dealings with three parcels, and to bind the parties in respect of land which the fourth order did not touch, it would have said so.

41. Thirdly, and decisively, the submission is self-defeating. An order which is to found committal must be clear and precise, so as to leave the person bound in no doubt as to what she is to do or to refrain from doing. That is the effect of *Michael Sistu Mwaura Kamau v Director of Public Prosecutions & 4 others* [2018] eKLR, the very authority upon which the applicant relies. If the expression “the suit land” is genuinely capable of bearing the extended meaning now contended for, then the order is RULING ELCA E037 OF 2026 22 ambiguous; and an ambiguous order cannot ground committal, the ambiguity falling to be resolved in favour of the alleged contemnor because it is her liberty which is at stake. The applicant cannot have it both ways. Either the order is clear, in which event it protects parcel No. 4037 and no other; or it is unclear, in which event no committal can issue upon it at all.
42. I hold that the order is clear, and that “the suit land” in the third order of 25th May 2026 means Land Parcel No. KISUMU/KASULE/4037. To that extent the first ingredient is established, and I so find.
43. The point is not, however, without consequence. An injunction which restrains construction upon a defined parcel of land is breached only by construction upon that parcel. It is for the applicant to prove that the acts complained of took place there. I return to that below.
- (b) Did the respondent have knowledge of the order?
44. Both the order of 23rd March 2026 and that of 25th May 2026 bear penal notices in the terms ordinarily required. That requirement is satisfied. RULING ELCA E037 OF 2026 23
45. As to service, the record discloses three affidavits of service. The first, sworn by Meshack Okeyo Baraza on 31st March 2026, relates to service of the Notice of Motion and its annexures in Kisumu ELCPMISC No. E002 of 2026; it does not relate to the order presently said to have been breached. The second, sworn by the same deponent on 10th June 2026, relates to service of the memorandum of appeal upon the respondent's advocates. Neither establishes service of the order of 25th May 2026.
46. The affidavit which matters is that of Cosmas Oyoo Laja, a licensed court process server, sworn on 15th July 2026. He deposes that on 3rd July 2026 he received the extracted order of 25th May 2026 from the applicant and, on the same day, transmitted it to the respondent by WhatsApp upon her known mobile number 0721536816; that the message bore two blue ticks; and that the respondent replied. The screenshot annexed bears out that account. A document titled “Court Order.pdf” was delivered at 10.41 hours with a covering message invoking Order 5 rule 22B of the Civil Procedure Rules, and the respondent replied at 11.20 hours directing that documents be sent to her RULING ELCA E037 OF 2026 24 advocates, M/s Otieno, Yogo, Ojuro & Company Advocates, whose full particulars she supplied.

47. Two matters call for comment. First, Mr. Laja himself deposes, at paragraph 4 of his affidavit, that the order being injunctive in nature the respondent “also needed to be served personally”. He nowhere deposes that personal service was in fact effected. As a general rule, personal service of an order which is to found committal proceedings is required, and for the obvious reason that liberty is at stake.
48. Secondly, however, the rule is one of evidence rather than of ritual. Its object is to establish that the alleged contemnor knew of the order and of its terms. Where actual knowledge is otherwise proved, the absence of personal service is not necessarily fatal: *Shimmers Plaza Limited v National Bank of Kenya Limited* [2015] eKLR. Order 5 rule 22B of the Civil Procedure Rules further permits service by electronic means. Here the respondent's own reply, sent within the hour and referring the process server to her advocates, is cogent evidence RULING ELCA E037 OF 2026 25 that the order came to her attention; and she has not, in her replying affidavit, denied receiving it. I am satisfied that the respondent had knowledge of the order of 25th May 2026 with effect from 3rd July 2026. That is, indeed, the applicant's own case: his submissions rest the question of knowledge upon the return of service filed in the court's case tracking system on 15th July 2026, and upon no earlier service of that order.
49. That finding has an immediate consequence for the evidence relied upon. The photographs annexed to the supporting affidavit as C.O.O-3(b) to (m) bear dates and times running from 18th January 2026 to 26th June 2026. Every one of them predates 3rd July 2026. Several of them those of 18th January 2026 predate even the interim order of 23rd March 2026, and in any event that interim order restrained the applicant, not the respondent, from dealing with the land. Conduct occurring before a party has notice of an order cannot constitute contempt of that order. It follows that only the photographs annexed to the further supporting affidavit, taken on 16th and 17th July 2026, fall RULING ELCA E037 OF 2026 26 within the period during which the respondent is shown to have had the requisite knowledge.
- (c) Was there a breach of the terms of the order?
50. This brings me to what is, in my judgment, the determinative question. The order restrains construction upon the suit land, that is to say, upon Land Parcel No. KISUMU/KASULE/4037. The respondent's answer is not that she has ceased construction. It is that she has never constructed upon that parcel at all, her developments being confined to her own registered parcel, No. KISUMU/KASULE/4039.
51. In support of that answer she produces a title deed in her name issued on 23rd October 2008 in respect of parcel No. 4039 and a copy of the green card relating thereto, and she deposes to a previous boundary dispute between parcels Nos. 4038 and 4039 resolved by the Land Registrar and the District Surveyor with a consequent rectification of the registry map, and to a confirmation obtained from the District Surveyor before she commenced development. RULING ELCA E037 OF 2026 27

52. I should say at once that the respondent's reliance upon sections 24(a), 25(1) and 26(1) of the Land Registration Act and upon *Doshi v Chemutut & 7 others* [2025] KECA 776 (KLR) is, in one respect, wider than the occasion demands. The indefeasibility of her title to parcel No. 4039 is not in issue upon this motion; no one has sought to impeach it, and nothing in this ruling touches it. What is of assistance in *Doshi* is a different and narrower point: the weight which the court attaches to authenticated survey plans and registry records in fixing the distinct identity and geographical position of parcels upon the ground. Documents of that character are precisely what is absent here.
53. For, against the respondent's answer, what has the applicant placed before the court? He has placed photographs, accompanied by a certificate under section 106B of the Evidence Act. I accept that certificate as sufficient to render the images admissible. But admissibility is one thing; probative value is quite another. RULING ELCA E037 OF 2026 28
54. The photographs show demolition rubble against a standing wall; brickwork under construction; a red-roofed structure; workmen at a site; and blue shipping containers set upon a plinth and subsequently in use. What they do not show and what nothing else upon this record shows is that any of this stands upon Land Parcel No. KISUMU/KASULE/4037. There is no survey report. There is no report of the County Surveyor or of the Land Registrar. There is no site plan, no mutation, no registry index map, no identification of beacons and no fixed point of reference of any kind by which the images may be tied to a particular parcel. There is not even a copy of the title, or a certified official search, in respect of parcel No. 4037.
55. The photographs are, in the result, pictures of building works at a location which the court cannot identify. Where two adjoining parcels are in issue, and where the alleged contemnor holds a registered title to one of them and asserts that her works stand upon it, photographs of construction cannot by themselves tell the court upon which side of the boundary those works lie. The complaint made at paragraph 12 of the replying affidavit, and RULING ELCA E037 OF 2026 29 pressed in the respondent's submissions, is therefore well founded.
56. The respondent's reliance upon *Lorkoyo & another v Lorkoyo* (Environment and Land Appeal E002 of 2024)
- [2025] KEELC 4835 (KLR) is, in my view, well placed. In that case the appellants had been found in contempt at first instance for activities said to have been carried out upon the respondent's parcel, Cis Mara/Empatipat/555; they answered that their activities were confined to their own adjoining parcel, No. 558, and pointed to a report of the Land Registrar recommending amendment of the registry index map. Upon appeal, Gacheru, J. set the finding aside, holding that where the alleged contemnor denies that the impugned acts were done upon the protected parcel, the party alleging contempt must go further and avail the report of the Land Registrar or of the Surveyor, together with independent evidence, to establish that the activities were carried out upon the one parcel and not the other; and that photographs of works at an unconfirmed location will not suffice. The

parallel with RULING ELCA E037 OF 2026 30 the present case is close, and I respectfully adopt that reasoning.

57. The applicant's authorities do not carry him further. In *Nyandarua Progressive Agency Limited v Njoroge & another* (Civil Suit E029 of 2022) [2026] KEHC 2564 (KLR) the order required the delivery of specifically enumerated company records and instruments, and the answer was one of factual impossibility and of a pending appeal. In *Makokha v Mwananchi Credit Limited & another* (Miscellaneous Civil Application E152 of 2024) [2025] KEHC 7919 (KLR) the order required the release of a motor vehicle identified by its registration number. In each case the subject matter of the order was incontestably identified and the only question was whether there had been compliance. Neither decision speaks to the situation which arises here, where the very question is whether the acts complained of were done upon the land which the order protects. The principle for which the applicant cites them that an order of court must be obeyed unless and until it is set aside is undoubtedly sound and is not in dispute. It simply does not answer the case. RULING ELCA E037 OF 2026 31
58. The burden of proof lay upon the applicant, and, these being proceedings of a quasi-criminal character, it lay upon him at an elevated standard. He has not discharged it. He would not have discharged it upon a balance of probabilities. I say nothing as to where the truth of the boundary question ultimately lies; that is not what I have been asked to decide, and it could not properly be decided upon this material. I hold only, and it is sufficient for present purposes, that the applicant has failed to prove that the acts complained of were committed upon the land to which the order of 25th May 2026 relates.
- (d) Was any breach deliberate?
59. Strictly, the fourth ingredient does not arise for decision. Were it necessary to decide it, I would observe that a person who develops a parcel of land to which she holds a registered title, having first sought and obtained the confirmation of the District Surveyor, does not exhibit the contumacious state of mind which committal requires. A bona fide belief and upon this record an unrebutted one that one is building upon one's own land is inconsistent RULING ELCA E037 OF 2026 32 with deliberate defiance of an order of the court: see *Wildlife Lodges Limited v County Council of Narok & another* [2005] 2 EA 344; and see also *Lorkoyo* (supra), where the same consideration told against a finding of wilfulness.
- (e) The allegation touching upon the integrity of the court
60. Before leaving the matter I must address paragraph 5 of the supporting affidavit, in which the applicant deposes that the respondent said that the court's orders are "just papers meant for the poor" and that she has the money to pay the judges to rule in her favour. That is a grave allegation. It is also entirely bare. The applicant does not say when the words were spoken, where, in whose presence, or to whom. He produces no recording, no message and no witness. The respondent has not been confronted with any particulars capable of being answered, and the allegation is not pursued in the applicant's written submissions. RULING ELCA E037 OF 2026 33

61. Allegations that judicial officers are open to purchase strike at the very foundation of the administration of justice. They are not to be made lightly, still less upon oath and without a shred of support. I disregard the averment entirely, and I caution the applicant that the repetition of unsubstantiated allegations of that character may attract consequences of its own. (iii) Disposal and costs
62. For the reasons given, the application must fail. It fails not because the court is indifferent to the observance of its orders orders of this court bind all to whom they are directed and will be enforced but because the applicant has not proved, to the standard which the law demands before a citizen may be deprived of liberty, that the conduct complained of occurred upon the land which the order protects. I would add that the submissions filed since the affidavits closed have not altered that conclusion; if anything, they have sharpened it, the RULING ELCA E037 OF 2026 34 applicant's own principal authority upon the requirement of clarity telling against the construction of the order for which he now contends.
63. I add this. The question which lies at the heart of this dispute the position upon the ground of the boundary between Land Parcels Nos. KISUMU/KASULE/4037 and 4039, and the location of the developments relative to it is one capable of ready and objective resolution by a surveyor. It cannot be resolved by photographs and assertion. Nothing in this ruling precludes a fresh application founded upon proper survey evidence, and should either party wish to have that question determined, the appropriate course is an application for directions in that behalf, for which liberty to apply is reserved.
64. As to costs, these ordinarily follow the event under section 27 of the Civil Procedure Act, and each party has prayed for them. I have weighed, on the same and it is hereby directed that each party bears own costs of the application.

Disposition

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65. In the premises, I make the following orders:
- i. The Notice of Motion dated 1st July 2026 is hereby dismissed. ii. For the avoidance of doubt, the orders issued herein on 25th May 2026 remain in full force and effect pending the hearing and determination of the appeal, and both parties are bound to obey them. iii. Liberty is reserved to either party to apply for directions for the determination, by the County Surveyor, Kisumu or such other surveyor as the court may appoint, of the position upon the ground of the boundary between Land Parcels Nos. KISUMU/KASULE/4037 and KISUMU/KASULE/4039 and of the location of the developments relative thereto. iv. Each party shall bear own costs of the application. DATED, SIGNED AND DELIVERED AT KISUMU THIS 17TH DAY OF SEPTEMBER 2026. RULING ELCA E037 OF 2026 36 E. K. WABWOTO JUDGE In the presence of:- Applicant; Charles Owour Ouko acting in person. For the Respondent; Mr. Yogo h/b for Ms. Anyango. Court Assistant; Joanne Omondi. RULING ELCA

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Prepared on 29 October 2026 · Esheria