



REPUBLIC OF KENYA



KENYA LAW
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**Ibrahim v Muhsin & 3 others (Civil Case E051 of 2021)
[2025] KEHC 4028 (KLR) (13 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 4028 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
CIVIL CASE E051 OF 2021
F WANGARI, J
MARCH 13, 2025**

BETWEEN

NEDIM MOHAMMED IBRAHIM PLAINTIFF

AND

ABDULKARIM SWALEH MUHSIN 1ST DEFENDANT

ZUMZUM INVESTMENT LIMITED 2ND DEFENDANT

AKABA INVESTMENT LIMITED 3RD DEFENDANT

ACIENT INLAND SEAS LIMITED 4TH DEFENDANT

RULING

1. This is a ruling in respect to a chamber summons application dated 11th July, 2024 and filed by the Plaintiff seeking the following: -
 - a. The Applicant be granted leave to initiate contempt proceedings against the Respondents and in particular, Abdulkarim Swaleh Muhsin, Zumzum Investment Limited, Abdulbasit Swaleh Muhsin, Abdurasul Saleh Muhsin and Mahsen Abdulkarim Swaleh; and
 - b. The court issue an order preventing and/or stopping and/or battling the Respondents from purporting to or actually transacting, conducting and/or selling any such properties including shares belonging to Zumzum Investment Limited or actually transacting, conducting and/or executing any such documents, passing any such resolutions or undertaking any such resolutions or undertaking such business and activities under or on behalf or for Zumzum Investment Limited.
2. The grounds in support of the application are that on 24th November, 2023, this court rendered a judgement in favour of the Plaintiff and went ahead to issue several orders among them specific performance of the Mediation Agreement and Resolution dated 7th May, 2017. Being dissatisfied with



the judgement, the Defendants lodged an appeal before the Court of Appeal but this court's orders were not stayed by the Court of Appeal.

3. The Plaintiff contends that the Defendants have started a deliberate initiative to frustrate its efforts towards enjoyment of the fruits of the judgement and thus undermining the court's honour, dignity and authority. The Plaintiff thus invites the court's intervention as it states that there is imminent danger of the Defendants illegally disposing off its property and those of Zumzum Investment Limited in order to defeat this court's orders.
4. It states that it has made several attempts towards execution of the judgement but the same have been frustrated by the 1st and 2nd Defendants thus the need for the court's intervention. According to the Plaintiff, the 1st and 2nd Defendants are undermining the court's dignity and prejudicing and interfering with the due course of judicial proceedings by undertaking acts aimed at interfering and obstructing the administration of justice and defeating the enforcement of this court's orders issued on 24th November, 2023 by purporting to settle debts of Zumzum Investment Limited by disposing of its properties.
5. It is said that the 1st Defendant after constituting a new board of directors for Zumzum Investment Limited, he procured the said board to pass a resolution to sell and dispose Zumzum's under full knowledge of this court's orders with the intention to ensure Zumzum will never be able to comply with the court orders hence defeating the course of justice. Accompanying the chamber summons is a statutory statement and a verifying affidavit sworn by the Plaintiff and dated 10th July, 2024.
6. It restates more or less what is in the application and I therefore do not see the need to rehash the same.
7. The application is opposed. Two replying affidavits under protest dated 20th August, 2024 have been filed. They are sworn by Abdulrasul Swaleh Mohsin and Mahsen Abdulkarim Saleh. They confirm being directors and shareholders of the 2nd Defendant. In their protest, they aver that they are not parties to the proceedings individually and only learnt of the proceedings herein due to their adverse mentioning in the present application.
8. They aver that the judgement dated 24th November, 2023 did not issue any orders against them as it was only limited to the Plaintiff and the 1st Defendant. That to date, no orders have been served on them in the suit that can form a basis for contempt proceedings. They further aver that the Plaintiff has failed to disclose the existence of a decree in High Court Case No. 116 of 2016, Regional Container Freight Station Limited & 2 Others v Zumzum Limited and which has not been stayed or set aside.
9. It is their averment that their actions as directors are in complying with court orders in Case 116 of 2016 arising from their duty as directors to the company to protect the company's interests. They state that their actions as directors arise from High Court Petition E001 of 2023, Abdulkarim Saleh Muhsin v Nedim Mohamed Ibrahim & Sara Abdalla Abdusemed that authorized their appointment.
10. They therefore state that the application is not only misconceived but irretrievably bad in law and should be struck out appropriately.
11. Directions to have the application canvassed by way of written submissions were taken. Both parties duly complied with the directions. I am grateful for the industry the parties have applied. The submissions filed are detailed and each party has cited authorities in support of their rival positions. The Plaintiff's submissions are dated 31st October, 2024 while those of the Defendants are dated 13th November, 2024.



Analysis and determination

12. I have carefully considered the application, responses, submissions filed, the authorities referred to as well as the law and I discern the following as issues for determination are: -
- i. Whether the application is properly before court;
 - ii. If the answer to (i) above is in the affirmative, whether the orders sought are merited; and
 - iii. Who bears the costs of the application?
13. Both parties have substantially submitted on whether the court has been properly moved. On the face of the application, sections 3, 3A and 63 of the Civil Procedure Act, section 5 of the Judicature Act and Order 52 of the Supreme Court of England Rules have been cited as the relevant sections anchoring the application.
14. The repeal of the Contempt of Court Act, 2016 reverted matters contempt to section 5 of the Judicature Act and this is the provision cited by the Plaintiff. In Samuel M. N. Mweru & Others v National Land Commission & 2 others [2020] eKLR, the court (Mativo, J) (as he then was) observed as follows: -
- “...I agree with the above reasoning that since the Act that repealed section 5 of the Judicature Act has been declared unconstitutional, the effect is that section 5 of the Judicature Act still stands...”
15. Having concluded as aforesaid, I find it fit to examine the procedure for instituting contempt of court proceedings under section 5 of the Judicature Act. It provides as follows: -
- “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 that power shall extend to upholding the authority and dignity of subordinate courts.”
16. In John Mugo Gachuki v New Nyamakima Co. Ltd [2012] eKLR, the court observed as follows: -
- “.... It is unfortunate and regrettable that nearly 50 years after independence our procedure, with respect to punishment for contempt in our Court is referable to the procedure in the High Court of Justice in England. It is saddening that the entities entrusted with updating and drafting our laws have not seen the urgency of enacting our own law relating to such an important aspect of the Rule of Law. That being the position, ours is not to enact the law but to interpret the law as enacted. Therefore, the law that governs contempt of court proceedings is the English law applicable in England at the time the contempt was committed. The procedure in the High Court of Justice in England, is that the court comprises three (3) divisions – the Chancery, the Queens Bench and the Family Division. The jurisdiction of the High Court of Justice in England in matters of contempt of court is provided for in the Rules of the Supreme Court. Order 52 rule 2 of these Rules provides an elaborate procedure for the institution and prosecution of contempt of court applications. Under rule 2 sub rule (3) of the Order 52 of the said Rules, it is stated, in mandatory language, that the notice of the application for leave is to be given to the Crown Office not later than the preceding day and the applicant must at the same time lodge in that office copies of the statement and affidavit. It is settled that the equivalent of the Crown Office in Kenya is the Office of the Attorney General. Order 52 rule 2(1) of the Rules of the Supreme Court of England provides that no application to a Divisional Court for an order



of committal against any person may be made unless permission to make such an application has been granted in accordance with the rule. Sub rule (2) provides that an application for such permission must be made ex parte to a Divisional Court except in vacation when it may be made to Judge in Chambers and must be supported by a statement setting out the name and description of the applicant, the name, description and address of the person sought to be committed and the grounds on which his committal is sought and by an affidavit to be filed before the application is made verifying the facts relied on...”

17. The Court of Appeal in Christine Wangari Gachege v Elizabeth Wanjiru Evans & 11 others [2014] eKLR held as follows: -

“...The emphasis imposes a duty on the High Court, the Court of Appeal and law practitioners to ascertain the applicable law of contempt in the High Court of Justice in England, at the time an application is brought. This duty was noted by H.G. Platt J. and D.C. Porter, Ag J. (as they then were) In the Matter of an Application by Gurbareh Singh & Sons Ltd Misc. Civil Case No. 50 of 1983, where they said: -

“...The second aspect concerns the words of section 5 – “for the time being”, which appear to mean that this Court should endeavor to ascertain the law in England at the time of the trial, or application being made. Sometimes it is not known, or may not be known exactly, what powers the court may have. It seems clear that the Contempt of Court Act 1981 of England is the prevailing law and that the procedure is still that set out in order 52 of the Supreme Court Rules...”

Order 52 RSC, until 2012 as alluded to earlier provided the procedure of commencing contempt of court proceedings. The procedure may be summarized as follows, in so far as it relates to the High Court of Justice: -

- i. An application to the High Court of England for committal for contempt of court will not be granted unless leave to make such an application has been granted.
- ii. An application for leave must be made ex parte to a judge in chambers and be supported by a statement setting out the particulars of the applicant as well as those of the person sought to be committed and the grounds on which his committal is sought, and by an affidavit verifying the facts relied on.
- iii. The applicant must give notice of the application for leave not later than the preceding day to the Crown Office.
- iv. Where an application for leave is refused by a judge in chambers the applicant may apply afresh to a divisional court for leave within 8 days after the refusal by the Judge.
- v. When leave has been granted, the substantive application by a motion would be made to a divisional court.
- vi. The motion must be entered within 14 days after the granting of leave; if not, leave shall lapse.
- vii. The motion together with the statement and affidavit must be served personally on the person sought to be committed, unless the Court thinks otherwise...”



18. In the end, the court concluded thus: -

“...The only consistent feature in the decided cases we have read is the requirement that leave to bring contempt of court proceedings must be obtained prior to the bringing of the substantive committal application. From the provisions of Order 52 RSC, it is clear that such leave in the High Court of Justice in England would be obtained on an application to a judge in chambers...”

19. This being the case, I find that the requirement for leave prior to commencing contempt proceedings is not an idle one. I am satisfied that the Plaintiff has complied with the law on contempt. I thus find that the application is properly before court.

20. Having found as above, the Plaintiff is seeking for leave to commence contempt proceedings against the individuals named. At this juncture, I need not discuss the issue of whether any party is in contempt since permission to proceed must first be granted in order to fully hear the contempt application as decreed under Part 81.3 (6) and (7) of the English Civil Procedure Rules (Amendment No.3), 2020.

21. Both parties have submitted as though leave was granted at the ex-parte stage. I am not aware of any order that has been granted prior to this ruling. This being the case, I find the application dated 11th July, 2024 merited to the extent of grant of leave to now fully hear and consider the contempt application.

22. Since the application is not fully spent, I hold the issue of costs in abeyance pending determination of contempt proceedings.

23. Following the foregone discourse, the upshot is that the following orders do hereby issue;

- a. That leave is hereby granted to the Plaintiff to prosecute the contempt application;
- b. That since parties have submitted on the issue of whether the named individuals are in contempt of the court's orders of 24th November, 2023, I allow parties to file supplementary submissions if need be; and
- c. The issue of costs to be determination upon full hearing of the contempt application.

Orders accordingly.

DATED, SIGNED AND DELIVERED AT MOMBASA, ON THIS 13TH DAY OF MARCH, 2025.

.....
F. WANGARI

JUDGE

In the presence of;

Mr. Paul Mwangi Advocate for the Plaintiff

Mr. Muchoki Advocate for the Defendants

Ndambuki Advocate h/b for Wafula Advocate for Directors of the 2nd Defendant (Save for 1st Defendant and Saleh)

M/S Salwa, Court Assistant

