



**Abdalla & 6 others v Khansa Developers Limited & 3 others (Constitutional
Petition 16 of 2022) [2025] KEELC 6219 (KLR) (25 September 2025) (Ruling)**

Neutral citation: [2025] KEELC 6219 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
CONSTITUTIONAL PETITION 16 OF 2022**

**JO OLOLA, J
SEPTEMBER 25, 2025**

BETWEEN

**MOHAMED AHMED ABDALLA 1ST PETITIONER
SALIM SAID 2ND PETITIONER
AMIN S SALIM 3RD PETITIONER
ADBULLAZIZ ABBAS 4TH PETITIONER
RISHAD AS 5TH PETITIONER
BHARAT DEVIDAS VAITHA 6TH PETITIONER
KETAN DOSHI 7TH PETITIONER**

AND

**KHANSA DEVELOPERS LIMITED 1ST RESPONDENT
RAMESH CHANDRA HARIA 2ND RESPONDENT
COUNTY GOVERNMENT OF MOMBASA 3RD RESPONDENT
NATIONAL ENVIRONMENT MANAGEMENT AUTHORITY 4TH
RESPONDENT**

RULING

1. By the Notice of Motion dated 26th February 2025, the seven (7) Petitioners herein pray for orders:-
 1. Spent
 2. Spent



3. That a temporary injunction be issued restraining the 1st Respondent from proceedings with any further developments until full compliance with the conditions set out by this Honorable Court in its ruling dated 30th April 2024, including:
 - a. Conducting a fresh Environmental Impact Assessment (EIA) Report in accordance with the Section 58(1) of EMCA, 1999, to be prepared by the 4th Respondent;
 - b. Preparing new development plans by the 3rd Respondent to address concerns related to dust prevention, traffic impact, demand for utilities, solid waste management, occupational safety and privacy infringement;
 - c. Applying for fresh development approvals from the 3rd and 4th Respondents in compliance with Articles 10, 40, 42, 67 and 69 of the Constitution;
 4. That this Honorable Court be pleased to cite the directors of Khansa Developers Limited, the Director of Physical Planning at the County Government of Mombasa and the Director General of the National Environment Management Authority for contempt of Court for willfully disobeying the ruling and orders issued by this Honorable Court on 30th April 2024; and
 5. That the costs of this application be provided for.
2. The application is supported by an Affidavit sworn by the 1st Petitioner on 26th February 2025 as well as Supplementary one sworn on 24th March 2025 and is premised on the grounds inter alia that:-
- a. On 30th April, 2024, in the presence of all the Respondents, this court issued orders requiring: A fresh EIA Report in compliance with Section 58(1) of EMCA, 1999; The preparation of new development plans addressing environmental, infrastructural and privacy concerns; The 1st Respondent to apply for fresh development approvals in compliance with constitutional and environmental requirements.
 - b. The 3rd and 4th Respondents, in total disregard of the court's directive, have allowed the 1st Respondent to commence erecting a 16th – Floor development on the suit property without complying with the court's orders;
 - c. The ongoing construction has already caused massive structural cracks in the Petitioner's residences, posing an imminent risk of collapse and unless this court intervenes, the damages may become irreversible, endangering lives and property;
 - d. By failing to comply with the court's orders, the Respondents have not only willfully engaged in contempt of court but have also fundamentally violated the Petitioner's constitutional right to a clean and healthy environment as enshrined in Article 42, read together with Articles 69 and 70 of the Constitution; and
 - e. It is in the interest of justice that the prayers be granted.
3. Khansa Developers Limited (the 1st Respondent) is opposed to the application. In a Replying Affidavit sworn on its behalf by one of its directors Sammy Kamui Mukiri the 1st Respondent avers that the Applicants have never proven their ownership of the properties surrounding the development and are only consumed with vendetta and ready to use all means possible to stop the development.
 4. The 1st Respondent further avers that the Applicants have moved to the Court of Appeal seeking a stay of the orders that were granted by this Court on 30th April 2024. It is further the 1st Respondent's



case that the Applicants have failed to provide the terms of the alleged order made by this court and to provide how the 1st Respondent has failed to comply therewith.

5. The 1st Respondent further avers that it has always acted in good faith and adhered to the directions given by the court on the said 30th day of April, 2024 and urges the court to dismiss the application herein with costs.
6. I have carefully perused and considered the Petitioners' application and the response thereto by the 1st Respondent. I have similarly perused and considered the submissions and authorities placed before me by both the Petitioners on the one hand and the 1st Respondent on the other. The 2nd, 3rd and 4th Respondents did not respond to the application.
7. By their application before the court, the Petitioners pray for a temporary order of injunction to issue restraining the 1st Respondent from proceeding with any further developments until full compliance with the conditions set out by the Honorable Court in its Ruling dated 30th April 2024. In addition, the Petitioners urge the court to be pleased to cite the directors of the 1st Respondent, the Director of Physical Planning at the County Government of Mombasa and the Director General of the National Environment Management Authority for contempt of court for willfully disobeying the Ruling and Orders issued by this Court on 30th April 2024.
8. I think it is now widely accepted that if courts are to perform their duties and functions effectively, the dignity and authority of the courts has to be respected and protected at all costs. For this reason, Courts are entrusted with the extraordinary power of punishing those who, whether inside or outside Court precincts, indulge in acts or omissions which tend to undermine their authority and thereby bring them to disrepute and disrespect.
9. It is equally accepted that the application for committal for contempt is a peculiar amalgam, for it is a civil proceeding that invokes a criminal sanction or its threat. While the litigant seeking its enforcement has a manifest private interest in securing its compliance, the court enforces compliance because of the broader public interest in obedience to its orders as any disregard thereof sullies the authority of the courts and detracts from the rule of the law.
10. Arising from the foregoing, it is an established principle of law that in order to succeed in civil contempt proceedings, the applicant has to prove not only the terms of the order said to have been disobeyed but also the Respondent's knowledge of those terms. Having proved the two and even more significantly, the applicant must then demonstrate that the respondent failed willfully to comply therewith.
11. Considering the standard of proof in cases of Contempt of Court in *Mutitika –vs- Baharini Farm Limited* (1985) KLR 229, the Court of Appeal held as follows:

“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.”
12. Explaining that rationale in *Republic –vs- Ahmad Aboltathi Mohamed & Another* (2019) eKLR, the Supreme Court of Kenya observed thus:

“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.”

13. In the matter before me, the Petitioners accuse the 1st and 2nd Respondents of resuming construction on the suit property without complying with the orders issued by this court on 30th April 2024. In addition, it is the Petitioners case that rather than enforcing the said orders as would be expected of them, the County Government of Mombasa and the National Environment Management Authority (the 3rd and 4th Respondent respectively) facilitated the continuation of the construction by purporting to regularize the approvals which had been revoked by the court.
14. From the record, it was evident that following a judgment delivered herein on 22nd February 2023, the 1st Respondent instituted a Notice of Motion application dated 26th July 2023 urging the court to review vary and/or set the same aside. In a Ruling delivered on 30th April 2024 in the presence of the Learned Advocates representing the Petitioners as well as the 1st and 2nd Respondents, the court did set aside the judgment on the following conditions:
 - i. That a declaration be and is hereby issued that the proposed development of 18 floors storey building plot Number Mombasa/Block XXVI/595 be reduced to 16 floors and to be in compliance with the provisions of Articles 10, 40, 42 and 69 of the Constitution of Kenya. That there be a fresh Environmental Impact Assessment Report in accordance with the provisions of Sections 58 (b) of EMCA, 1999 to be prepared and issued by NEMA within the next 30 days from this date and that there shall be a new development plan prepared by the County Government of Mombasa Physical Planner to ensure that there are stringent Environmental and construction safety precautionary measures stipulated clearly ensuring that the following are undertaken:-Prevention of dust and noise disturbance caused; There will be no increase of vehicular traffic. There will be no increased demand for water and electricity supply There will be effective impacts on solid waste from the buildings upon occupancy; There will be no occupational injuries; and There should be decrease in privacy to immediate neighbors; and
 - ii. That a declaration be and is hereby issued that the 1st Respondent to apply afresh for development approvals by the 3rd and 4th Respondents for the proposed development of 16 floors storey building on plot Number Mombasa/Block XXVI/595 upon compliance with the provisions of Article 10, 40, 42, 47 and 69 of the Constitution of Kenya, 2010.
15. At paragraph 8 of the Replying Affidavit of Sammy Kimuio Mukiri, the 1st Respondent's director avers as follows:

“ 8. That the 1st Respondent has always acted in good faith and adhered to the directions given by the court on 30th April, 2024.”
16. From the record however, there was nothing to back that assertion. The 1st Respondent has not exhibited any fresh EIA Report obtained from the 4th Respondent as directed by the court. Neither has the Respondent exhibited any fresh application that it made to the 3rd and 4th Respondents for development approvals for the proposed development of the 16 storey building as ordered by the court.
17. It was telling from the 1st Respondent's Replying Affidavit that the Company does not deny that it had resumed construction on the suit property. It was indeed clear from the suspension of Work Order issued to the company on 7th February 2025 by the National Construction Authority (Petitioner's Exhibit 7) that indeed as at that date, construction was on-going and that the same was stopped by the Authority after the works were found to be “Non-Complaint” with the provisions of the National Construction Authority Act.



18. It follows that I was persuaded that the 1st Respondent was undertaking construction on the suit property in total and willful disregard of the orders issued by the court on 30th April 2024.
19. While I was persuaded that that 3rd and 4th Respondents had equally not done their part, there was no evidence placed before the court to demonstrate that they were aware of the orders issued by the court in their absence and following an application in which they did not participate.
20. Given that the Petitioners have clearly demonstrated that the 1st and 2nd Respondents had contravened the orders issued by the court in regard to the resumption of construction on the suit property, I was equally persuaded that the two Respondents should be restrained from proceeding with any further development on the said property until such a time that they shall fully comply with the conditions set out by the court in its Ruling of 30th April 2024.
21. Accordingly, I hereby allow the Motion dated 26th February 2025 and hereby make the following orders:
 - i. A temporary order of injunction is hereby issued restraining the 1st and 2nd Respondents from proceeding with any further developments on the parcel of land known as Mombasa/Block XXVI/595 until full compliance with the conditions set out by this Honorable Court in its Ruling dated and delivered on 30th April, 2024.
 - ii. The directors of the 1st Respondent are hereby found guilty of willful disobedience of this court's orders dated and delivered on 30th April, 2024.
 - iii. Summons are hereby issued to the said directors to appear before this court on 22nd October 2025 for purposes of mitigation and sentencing.
 - iv. The costs of this application shall be borne by the 1st Respondent.
 - v. It is so ordered.

RULING DATED, SIGNED AND DELIVERED IN OPEN COURT AND VIRTUALLY AT MOMBASA THIS 25TH DAY OF SEPTEMBER, 2025

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J.O. OLOLA

JUDGE

In the presence of:

- a. Ms. Firdaus Court Assistant.
- b. Ms. Indesia Advocate for the Petitioners
- c. Mr. Makau Advocate for the 1st Respondent
- d. No Appearance for the 2nd Respondent
- e. No Appearance for the 3rd Respondent

