



Mwembelegeza Community Residents v County Government of Mombasa & 3 others (Environment and Land Judicial Review Case E002 of 2024) [2025] KEELC 8603 (KLR) (10 December 2025) (Ruling)

Neutral citation: [2025] KEELC 8603 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
ENVIRONMENT AND LAND JUDICIAL REVIEW CASE E002 OF 2024
SM KIBUNJA, J
DECEMBER 10, 2025**

BETWEEN

MWEMBELEGEZA COMMUNITY RESIDENTS APPLICANT

AND

COUNTY GOVERNMENT OF MOMBASA 1ST RESPONDENT

NATIONAL ENVIRONMENT MANAGEMENT AUTHORITY 2ND RESPONDENT

SECRETARY, COUNTY GOVERNMENT OF MOMBASA 3RD RESPONDENT

DIRECTOR GENERAL, NATIONAL ENVIRONMENT MANAGEMENT AUTHORITY (NEMA) 4TH RESPONDENT

RULING

[NOTICE OF MOTION DATED 24TH JULY 2025]

1. The 1st respondent moved the court through the notice of motion dated 24th July 2025, seeking for orders *inter alia* that:
 - a. That the ruling of 29th January 2025 and subsequent orders of 4th February 2025 be set aside, varied and or reviewed; and
 - b. That in the interest of the public and good order, the court to issue any other order that may balance the interest of religion, public interest and betterment of the Mwembelegeza residents.

The application is based on the thirteen (13) grounds on its face marked (a) to (m) respectively, and supported by the affidavit of Jeizan Faruk, County Secretary, sworn on the 24th July 2025, in which he deposed among others that he has been made aware of ELCPET No. 35 of 2020, in which the



County was a party, and was represented by external lawyers was decided on 3rd May 2023; that he has been involved in attempts to have the judgement thereof settled out of court, but the court issued a ruling on 29th January 2025 and subsequent orders on 4th February 2025 that he wants reviewed for the benefits of all parties; that they have visited and identified several alternative sites for establishment of an ECD Centre and or nursery school; that they have also visited the suit property and found the parties may not have disclosed to the court that there exists a structure that was being utilized as an educational institution for Islamic studies, that is under the Mosque Committee; that they have asked the Mosque Committee to consider handing over the educational institution to the County Government of Mombasa to be converted into an ECD Centre, and held a public participation on 9th June 2025, that approved the proposal; that the orders if implemented shall have a negative bearing in society because of the religious structure that has been in use for four years, and hence the ruling should be reviewed.

2. The application is opposed by the applicant through the grounds of opposition dated 1st August 2025, summarized as follows:
 - a. That after the applicant emerged successful in ELCPET No. 35 of 2020, and the respondents being public officers failed to comply, they sought for leave in ELCLJR No. E001 of 2024 to apply for mandamus against them.
 - b. That the leave was granted and the applicant filed ELCLJR No. E002 of 2024 seeking for an order of mandamus, which was granted on 29th January 2025.
 - c. That after the respondents failed to comply with the mandamus order, the applicant had no choice but to cite them for contempt.
 - d. That the respondents are forum shopping as they had filed an application similar to the instant one in ELCL Misc. No. E037 of 2025 before Olola J, in an attempt to see which court will give them favourable orders.
 - e. That the respondents have no rights to be heard in court before they purge the contempt and this application should be dismissed.
 - f. The applicant cited the case of *Econet Wireless Limited versus Minister for Information & Communication of Kenya & Another* [2005] eKLR, where it was held *inter alia* that the court will treat an application for contempt seriously and with urgency and more often will suspend any other proceedings until it is dealt with, and if proven the contemnor would be punished or demanded to purge the contempt or both, as the contemnor would have no right of audience in any court unless he is punished or purges the contempt.
3. The application came up for hearing on 13th October 2025, when Mr. Tajbhai, learned counsel for the 1st respondent/applicant made his oral submissions, *inter alia* asked the court not to consider the issue of contempt as that matter is pending before Olola J, of ELC 3, and added that the Court of Appeal has held that the acts of an alleged contemnor should not stop the court from hearing the contemnor. That the respondent herein is yet to be cited for contempt as the contempt application is pending before Olola J. That their application should be allowed, to protect the rights of all the people of Mombasa County, as well as Mwembelegeza Scheme members.
4. The following are the issues for the court's determinations on the 1st respondent's notice of motion dated 24th July 2025:
 - a. Whether the 1st respondent has met the threshold for the ruling of 29th January 2025 and orders of 4th February to be reviewed and or varied or set aside.



- b. Who pays the costs in the application?
5. The court has carefully considered the grounds on the notice of motion, affidavit evidence, grounds of opposition submissions, the record and come to the following conclusions:

a. Review is guided for under Order 45 Rule 1 of [Civil Procedure Rules](#) that provides as follows:

“(1) Any person considering himself aggrieved –

- a. by a decree or order from which an appeal is allowed, but from which no appeal has been preferred; or
- b. by a decree or order from which no appeal is hereby allowed, and who from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or the order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree or order, may apply for a review of the judgement to the court which passed the decree or made the order without unreasonable delay.”
- b. From the above provision, an applicant to succeed must satisfy the court of the following:
- i. That there has been a discovery of new and important matter or evidence that was not reasonably within their knowledge or access to be produced before the order was issued;
- ii. That there exists some mistake or error apparent on the face of the record; and
- iii. There exists some other sufficient reason.

I have scrutinized the 1st grounds on the 1st respondent’s application, supporting affidavit and oral submissions by their counsel, and have not seen any particulars or details of any new evidence or important matter, that the 1st respondent has discovered, that could not have been obtained and presented to the court before the ruling and order they seek to be reviewed were made. The 1st respondent has also not pointed out any mistake or error on the face of the record that could lead to the review of the said ruling and or order.

- c. What I see the 1st respondent saying through the supporting affidavit is that in ELCPET No. 35 of 2020, that was decided on 3rd May 2023, the County was represented by external lawyers. That after that judgement was delivered, the 1st respondent has *inter alia* engaged the Mosque Committee that runs an educational facility on the suit property to consider its proposal to hand it over to the County Government of Mombasa to be converted into an ECD Centre, and held a public participation on 9th June 2025, that approved the proposal. That if the orders are implemented, it shall have a negative bearing in society because of the religious structure that has been in use for four years, and for that reason, the ruling should be reviewed.



d. With due respect to the County Secretary who swore the supporting affidavit, his depositions appear to have failed to appreciate the legal responsibilities of parties to a litigation to obey court orders, whether they agree with them or not. There is no requirement in our legal system for court orders to be subjected to public participation for approval or inputs before implementation. A party not satisfied with the court orders has the recourse of moving the appellate court on appeal, but the parties herein appear not to have any. I hasten to add that it would however be okay if decree holder decides to forego execution, or the parties by consent decide to settle the decree in some other agreeable way. The steps the 1st respondent appear to have taken have not involved the applicant, who has a decree in their favour, and who after the 1st respondent failed to comply with the judgement of 3rd May 2023, followed with the mandamus application that was granted on 29th January 2025. The court was told that the 1st respondent failed to comply with the order of 29th January 2025, and that the applicant has filed a contempt application that is pending before ELC 3. That while the steps taken by the 1st respondent are otherwise laudable, they do not amount to sufficient reasons for the ruling and orders of 29th January 2025 and 4th February 2025 to be reviewed, as they occurred after the said orders. The said steps did not involve the decree holder, who has through the grounds of opposition dated 1st August 2025 opposed the application.

e. I am in agreement with the decision he cited on the case of *Econet Wireless Limited versus Minister for Information & Communication of Kenya & Another* [2005] eKLR, where it was held that:

“Where an application for committal for contempt of court orders is made, the court will treat the same with a lot of seriousness and urgency and more often will suspend any other proceedings until the matter is dealt with and if contempt is proven to punish the contemnor or demand it be purged or both, the reason being that a contemnor would have no right of audience in any court unless he is punished or purges the contempt.”

When the instant application was filed and came up for directions before me on the 24th July 2025, I ordered *inter alia* that:

“1. That no urgency has been shown, and this application should not be a bar for the contempt application mentioned from being heard to its logical conclusion.”

That order was in respect of prayer (2) that sought for the court to stay proceedings in ELC Misc. Appl. No. E027 of 2025, contempt application, and other consequential proceedings pending the hearing of this application. Had the applicant herein sought for the court to stay this proceeding awaiting the hearing and determination of the contempt application, this court would probably have readily obliged him in view of the above decision. The 1st respondent's has a legal duty to obey the court orders just like any other party,



otherwise risks being cited for contempt of court. The application dated 24th July 2025 is without merit and is for dismissal.

- f. That as the 1st respondent has failed in their application, they will pay the applicant costs in obedience to section 27 of the *Civil Procedure Act* Chapter 21 of Laws of Kenya, that provides that costs follow the event unless where for good reasons ordered otherwise.

6. In view of the foregoing conclusions, the court finds and orders as follows on the 1st respondent's Notice of Motion dated 24th July 2025:

- a. That the said application has no merit and is dismissed.
- b. The 1st respondent to pay the applicant's costs.

It is so ordered.

DATED, SIGNED AND VIRTUALLY DELIVERED ON THIS 10TH DAY OF DECEMBER, 2025.

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S. M. KIBUNJA, J.

ELC, MOMBASA

In the presence of:

Applicant : Mr Ainea Ragen

Respondents : Mr Tajbhai for 1st and 3rd Respondents

Kalekye - Court Assistant.

