



Alem & another (Suing on Behalf of Themselves and on Behalf of the Landlord and Tenants Of Migadini Kipebu at Chaani) v Focus Container Freight Stations Limited; National Environment Management Authority (Interested Party) (Environment and Land Case E016 of 2024) [2026] KEELC 298 (KLR) (29 January 2026) (Ruling)

Neutral citation: [2026] KEELC 298 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
ENVIRONMENT AND LAND CASE E016 OF 2024**

**JO OLOLA, J
JANUARY 29, 2026**

BETWEEN

AMON OCHIENG ALEM 1ST PLAINTIFF

MIRIAM KAZUNGU 2ND PLAINTIFF

**SUING ON BEHALF OF THEMSELVES AND ON BEHALF OF THE
LANDLORD AND TENANTS OF MIGADINI KIPEBU AT CHAANI**

AND

FOCUS CONTAINER FREIGHT STATIONS LIMITED DEFENDANT

AND

**NATIONALENVIROMENT MANAGEMENT AUTHORITY INTERESTED
PARTY**

RULING

1. By a Notice of Motion dated 1st January 2025, Amon Ochieng Alem and Miriam Kazungu (suing on behalf of themselves and on behalf of the Landlord and Tenants of Migadini Kipebu at Chaani) (the Plaintiffs/Applicants) pray for the following:
 1. Spent;
 2. That the Honourable Court do find, hold and declare that Faisal A. Abass, the Chairman of the Board of Directors at Focus Container Freight Station Ltd is in contempt of Court order dated 4th December, 2024 issued by Hon L.L Naikuni (Mr.) Justice;



3. That this Honourable Court commit Faisal A. Abass, the Chairman of the Board of Directors at Focus Container Freight Station Ltd to civil jail for the term of 6 months for contempt of Court for having deliberately disobeyed orders of the Court dated 4th December, 2024 issued by Hon L.L Naikuni (Mr.) Justice;
 4. That upon grant of prayer (2) and (3) above, the Honourable Court be pleased to impose a penalty of a fine of Kshs 1,000,000/= against Faisal A. Abass, the Chairman of the Board of Directors at Focus Container Freight Station Ltd and in default of payment thereof all its movable and immovable assets including but not limited to land and buildings be attached and sold to satisfy the penalty for contempt of Court;
 5. Any further orders of the Court towards protecting the dignity and honour of this Court; and
 6. That costs of this Application be provided for.
2. The application is supported by an Affidavit sworn by Amon Ochieng Alem (the 1st Plaintiff) and premised on the grounds inter alia that:
- i. On 4th December 2024 this Court ordered that the prevailing status quo be maintained pending the hearing and determination of the Notice of Motion dated 2nd December 2024;
 - ii. The aforementioned order, the Application and all pleadings were served upon all the parties to the suit; and
 - iii. The Defendant has violated the said orders by conducting meetings meant for public participation; and
 - iv. It is a settled principle of law that orders of court are never issued in vain and as such if the court does not stamp its authority by punishing the Defendant for violation of the Court's orders then it will set the ground for future deliberative violations without any fear or any sanctions.
3. Focus Container Freight Stations Ltd (the Defendant/Respondent) is opposed to the application. In a Replying Affidavit sworn on its behalf on 22nd January 2025 by its Manager Dalib Abdirahman, the Defendant avers that Faisal Abass is not a party to the proceedings and that the company is a legal entity capable of being sued. The Defendant further avers that the Plaintiffs have not proved service of the orders upon the alleged contemnor nor provided any evidence that he is the Chairman of the Defendant Company.
4. It is further the Defendant's case that the Plaintiffs have not proved that a meeting was held by the Defendant in violation of the court orders. The Defendant asserts that it only became aware of the suit herein on 16th December 2024 and learnt about the orders when the issue was raised by the Plaintiffs on 19th December 2024.
5. The Defendant further avers that there was no order specifically or explicitly prohibiting the Defendant from holding any meetings and that at any rate, the invitation documents were sent out on 2nd December 2024 prior to the issuance of the court orders.
6. I have carefully perused and considered the Plaintiffs' application as well as the response thereto by the Defendant. I have similarly perused and considered the submissions and authorities placed before me by the Learned Advocates representing the parties herein.
7. By their application before the court, the Plaintiffs pray for an order that one Faisal A. Abass who is described as the Chairman of the Board of Directors of the Defendant Company be cited for contempt



for violating the orders issued by this court on 4th December 2024. In addition, the Plaintiffs have asked the court to impose a penalty of a fine of Kshs. 1,000,000/= against the said Faisal A. Abass to satisfy the penalty for the contempt of court.

8. The basis for those prayers is the Plaintiffs' contention that contrary to the orders of status quo issued on 4th December 2024, the Defendant Company had gone ahead to hold meetings with residents of Migadini area meant to persuade them to accede to the Defendant's quest to set up a Liquefied Petroleum Gas Plant within the area.

9. The Defendant denies that it was made aware of the court orders and/or that it had deliberately violated the same.

10. Contempt of court has been defined as:

“Conduct that defies the authority or dignity of a court or legislature. Because such conduct interferes with the administration of justice, it is punishable usually by fine or imprisonment.” [See Black's Law Dictionary 11th Edition].

11. The Environment and Land Court (ELC) has the inherent and statutory power to punish for contempt of court to uphold its authority and ensure compliance with its orders. In that respect, Section 29 of the *Environment and Land Court Act* provides as follows:

“29. 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.”

12. As was stated by Mativo J., (as he then was) in *Samuel M. N. Mweru & Others v National Land Commission & 2 Others* (2020) eKLR:

“It is an established principle of law that in order to succeed in civil contempt proceedings, the applicant has to prove:

- (i) the terms of the order;
- (ii) Knowledge of these terms by the Respondent; and
- (iii) Failure by the Respondent to comply with the terms of the order.

Upon proof of these requirements the presence of wilfulness and bad faith on the part of the Respondent would normally be inferred, but the Respondent could rebut this inference by contrary proof on a balance of probabilities...”

13. A perusal of the record herein reveals that on 4th December 2024, the Plaintiff's Notice of Motion dated 2nd December 2024 was placed before the Honorable Justice Naikuni under Certificate of Urgency. Upon perusal of the application, the Leaned Judge granted orders as follows:

1. That the Notice of Motion Application dated 2nd December 2024 be and is hereby certified as urgent.
2. That the Plaintiffs/Applicants (are) directed to serve the Defendants/Respondents with the application and all pleadings and file proof of service under the provisions of Order 5 Rule 15 of the Civil Procedure Rules, 2010.



3. That upon effecting service, the Defendants/ Respondents granted 14 days leave to file and serve their Replies accordingly.
 4. That there shall be “Inter Parte” hearing on 19th December 2024 before the ELC No. 3.
 5. That in the meantime let the status quo to be maintained. Meaning that the situation to remain as it is currently until 19th December 2024. However, these orders are subject to review on 19th December 2024 depending on any emerging facts and circumstances arising thereon.”
14. It was the Plaintiff’s position that they did serve the Defendant with the Court Order. In support of that contention, the Plaintiffs’ Advocate Edwin Yose has sworn an Affidavit of Service on 9th December 2024 in which he deposes as follows at the relevant Paragraphs 2 to 5 thereof:
- “2. That on the 6th December 2024 I proceeded to Changamwe within Mombasa County where the offices of the Defendant herein are located.
 3. That I arrived at around 10.30 a.m. and was received by the receptionist. I introduced myself and the purpose of my visit demanding to see the Directors for service of Court documents.
 4. That the receptionist ushered me to the Directors’ office and upon introducing myself, I tendered the copies of the Plaint accompanied by an application brought under a Certificate of Urgency all dated 2nd December 2024 together with the Court order dated 4th December.
 5. That the Director spent a long time perusing and reading through my documents and in the end told me verbally that she had received the documents but would not sign on my principal copies.”
15. Arising from the foregoing, it was apparent that counsel did not consider it wise to let the court know the name of the receptionist who ushered him into the offices and the name of the Defendant’s director that he purports to have served. In a situation like this where the Defendant contested service and knowledge of the orders issued, such an omission was not only costly but fatal.
16. As the Court of Appeal did state in the case of *Mutitika v Baharini Farm Limited* (1985) KLR 229, 234:
- “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. 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 wilfully acted in a manner that flouted the Court Order.”
17. In the matter before me, I was being asked to cite one Faisal A. Abass for contempt. While the said Abass was purported to be the Chairman of the Defendant’s Board of Directors, there was nothing placed before the court in support of that contention. There was no evidence that the said Abass had been served with the said orders or was aware of the same and there was certainly nothing placed before the court to demonstrate how he had violated the said orders.



18. While the Plaintiffs had gone to court seeking to stop the Defendant from conducting any further assemblies meant for settling up the Liquefied Petroleum Gas Plant in Migadini area pending the hearing and determination of the suit, it was apparent to me that the orders of maintenance of status quo had not stopped the Defendant from conducting the assemblies and meetings. That must be the reason that the Court explained that the situation was to remain as it was until 19th December 2024 when the court would review the same.
19. In the premises, I was not persuaded that there was any merit in the Plaintiffs' Notice of Motion dated 1st January 2025. The same is misconceived and unwarranted. It is dismissed with costs to the Defendant.

RULING DATED, SIGNED AND DELIVERED IN OPEN COURT AND VIRTUALLY AT MOMBASA THIS 29TH DAY OF JANUARY, 2026

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J.O. OLOLA
JUDGE

In the presence of:

- a. Ms. Firdaus Court Assistant.
- b. Mr. Yose Advocate for the Plaintiff/Applicant
- c. Mr. Mutei holding brief for Abdi Advocate for the Defendant/ Respondent

