



**Kencont Logistics Services Limited v Kenya Railways Corporation (Environment and Land Case E058 of 2025) [2026] KEELC 297 (KLR) (29 January 2026) (Ruling)**

Neutral citation: [2026] KEELC 297 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA  
ENVIRONMENT AND LAND CASE E058 OF 2025**

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

**BETWEEN**

**KENCONT LOGISTICS SERVICES LIMITED ..... PLAINTIFF**

**AND**

**KENYA RAILWAYS CORPORATION ..... DEFENDANT**

**RULING**

1. By the Notice of Motion dated 4<sup>th</sup> June 2025, Kencont Logistics Services Limited (the Plaintiff/Applicant) prays for orders that:
  - (iii) Philip J. Mainga, the Defendant's Managing Director and Hussein Yusuf, the Defendant's Security Officer - Eastern jointly and severally be summoned by this Court to show cause why they should not be committed to civil jail for up to six (6) months for disobeying this Honourable Court's order made on 19<sup>th</sup> May 2025;
  - (iv) The Inspector General of Police either directly and/or through the Mombasa County Police Commander to ensure compliance with this Court's order and the Court's order made on 19<sup>th</sup> May 2025 and that peace, law and order is maintained at all time when the said orders are in force; and
  - (v) Costs of this Application be paid personally by Philip J. Mainga the Defendant's Managing Director and Hussein Yusuf, the Defendant's Security Officer – Eastern jointly and severally.
2. The application is supported by an Affidavit sworn by Evalyne Odongo, the Plaintiff's Group Legal Manager and is premised on the grounds inter alia that:
  - i. This Court issued an Order on 19<sup>th</sup> May 2025 restraining the Defendant from evicting the Plaintiff, its employees and agents from all those properties known as Mombasa/Block XLVIII/171, Mombasa/Block XLVIII/172 and Mombasa/Block XLVIII/180;



- ii. Despite service of the said order upon the Defendant on 22<sup>nd</sup> May 2025, the Defendant has blatantly and fragrantly violated, disobeyed and deliberately refused to comply therewith;
- iii. The Defendant has disobeyed the order by:
  - a. Locking the gate of the suit premises with a chain and padlock thereby denying access to the Plaintiff, the Plaintiff's employees, clients, customers, agents: and
  - b. Posting uniformed and armed police officers and security guards from a private firm to man, guard and protect the suit premises and to block the Plaintiff from accessing the same.
3. The Kenya Railways Corporation (the Defendant/Respondent) is opposed to the application. In a Replying Affidavit sworn on its behalf on 8<sup>th</sup> July 2025 by its General Manager Legal Services, Stanley Gitari, the Defendant avers that the area where the suit properties sit was earmarked for railway operations and was initially allocated to the Defendant as Mombasa/Block XLVIII 167, 168, 169 and 170; Mombasa /Block XLVIII 171 and Mombasa/Block XLVIII/172.
4. The Defendant further avers that Mombasa/Block XLVIII 167, 168, 169 and 170 were thereafter consolidated to Mombasa/Block XLVIII 180 measuring 0.866 Ha and a title issued thereafter on 19<sup>th</sup> June 1996. It is the Defendant's case that the said title was thereafter on 18<sup>th</sup> September 1996 irregularly and wrongfully transferred to an entity known as Josgid Limited while Mombasa/Block XLVIII 171 and 172 were similarly irregularly transferred to an entity known as Flagship Holdings Limited.
5. The Defendant asserts that on 16<sup>th</sup> May 2025, they did deploy officers to the suit premises for the purposes of securing the same as the property sits on an operation area for the railway. It is the Defendant's case that the use and occupation of the property by the Plaintiff is greatly prejudicial to the Defendant who is about to commence works along the railway line.
6. The Defendant avers that it did not evict the Plaintiff from the suit property and that the Plaintiff remains in occupation and continues to use the same. It denies disobeying the court's orders and avers that they have not put any padlocks on the property and have not limited the Plaintiff's access thereto.
7. I have carefully perused and considered the application by the Plaintiff as well as the responses thereto by the Defendant. I have similarly perused and considered the submissions and authorities placed before me by the Learned Counsels representing the parties.
8. By its application before the court, the Plaintiff prays for an order that Philip J. Mainga, the Defendant's Managing Director and one Hussein Yusuf described as the Defendant's Security Officer –Eastern jointly and severally be summoned by this court to show cause why they should not be committed to civil jail for up to six (6) months for disobeying this court's order issued on 19<sup>th</sup> May 2025.
9. That prayer arises from the Plaintiff's position that it holds a current valid lease with the registered proprietors of the two properties known as Mombasa/Block XLVIII/171 and 172 and Mombasa/Block XLVIII 182. The Plaintiff told the court that the suit properties adjoin each other and that it is currently using the same as a single block storage yard.
10. It is the Plaintiff's case that on Friday 16<sup>th</sup> May 2025, the Defendant's employees and agents accompanied by a large contingent of armed police officers descended upon the suit premises and demanded that the Plaintiff demolishes the perimeter wall thereof and hands over vacant possession of the said premises forthwith.



11. Some three days after the alleged invasion, the Plaintiff moved to this court and instituted this suit together with a Notice of Motion seeking a raft of orders. Having considered the said application ex-parte, this court did on 19<sup>th</sup> May 2025 issue orders as follows:
  1. This Application be and is hereby certified urgent and service of the same be dispensed with in the first instance;
  2. Pending the hearing and determination of this Application, there be and is hereby issued an order of injunction to restrain the Defendant either directly or through its employees, agents, assigns and/or representatives from demolishing the perimeter wall of the properties known as Mombasa/Block XLVIII/171, Mombasa/Block XLVIII/172 and Mombasa/Block XLVIII/180 from evicting the Plaintiff, the Plaintiff's employees, agents and/or any other person authorized by the Plaintiff to occupy and use the said properties and from generally interfering with the Plaintiff's lease ownership, occupation and use of the suit properties situate in Mombasa County; and
  3. The application be served for inter partes hearing on 1<sup>st</sup> July 2025.
12. On 1<sup>st</sup> July 2025 when the application came up for hearing, Mr. Akach Learned Counsel for the Defendant applied for 14 days to respond to the application after indicating to the court that the Defendant's Managing Director had been away from the office. The Defendant's request was granted and the application was re-scheduled for hearing on 10<sup>th</sup> July 2025.
13. Subsequently in response to the Plaintiff's application, the Defendant's General Manager Legal Services Stanley Gitari did on 8<sup>th</sup> July 2025 swear an Affidavit indicating that the suit properties were initially allocated to the Defendant Corporation and that it had been issued with title deeds therefore on 19<sup>th</sup> June 1996.
14. The Defendant asserted that thereafter on 18<sup>th</sup> September 1996 through an instrument of transfer, the two properties had been wrongfully and irregularly transferred to two different private entities that had thereafter proceeded to lease the same to the Plaintiff. On that basis, the Defendant's General Manager Legal Services asserted as follows at Paragraphs 14 to 17 of the Replying Affidavit:
  - “ 14. I confirm that the Pre-requisites for the disposal of the Defendant's/ Respondent's assets were not complied with in the alleged sale of the suit properties and the transactions were entirely fraudulent;
  15. I confirm that the suit properties are necessary for the operation of the railway and I am aware that on 16<sup>th</sup> May 2025, the Defendant deployed officers to the suit properties for the purpose of securing the premises considering that the property sits on an operations area for the railway and a railway line passes right in front of the suit properties;
  16. I confirm that the Defendant herein is obligated under Section 16 of the [Kenya Railways Corporation Act](#) to secure the railway lines and to prevent accidents. A railway line passing right in front of the Plaintiff's gate is a gross safety nightmare and warranted the posting of security officers on the property to control movement and ensure security; and



17. The continued use and occupation of the suit property by the Plaintiff is greatly prejudicial to the Defendant who is in the process of commencing works along the railway line.”
15. As to whether the Defendant was in contempt of the orders issued on 19<sup>th</sup> May 2025, the General Manager Legal Services depones as follows at Paragraphs 22 to 26 of the Replying Affidavit as follows:
- “ 22. I am further advised that for the Defendant to be found to be in contempt of these orders, the Plaintiff must demonstrate that: (i) the terms of the order were clear, unambiguous and binding on the Defendant; (ii) knowledge of these terms by the Defendant; (iii) failure by the Defendant to comply with the terms of the order; and (iv) deliberate conduct by the Defendant to disobey the said orders;
23. I confirm that there has been no disobedience whatsoever by the Respondent since the Applicant is occupation (sic) and the allegations of denial of access are total fabrications aimed at pushing the issue of contempt;
24. I confirm that the Plaintiff’s lessors have never reached out to the Defendant at all in regard to the allegations of denial of entry and use. In any event, from the photos annexed by the Plaintiff, it is evident that their employees are in the premises and that vehicles are parked therein contrary to the allegations;
25. The Defendant has not put any lock nor padlock on the Plaintiff’s premises or otherwise limited its access to the suit premises; and
26. I confirm that the security guards and police officers placed on the property are for the purpose of facilitating the operations of the Defendant and are in no way interfering with the Plaintiff’s operations.”
16. As it were, Black’s Law Dictionary 11<sup>th</sup> Edition defines contempt 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.”
17. Considering the issue of contempt of Court in Republic –vs- Ahmad Abolfathi Mohamed & Another (2018) eKLR, the Supreme Court of Kenya held that:
- “The 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 Applicants 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.”
18. In case of disobedience of this court’s orders, Section 29 of the *Environment and Land Court Act* provides as follows:
- “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.”



19. In the matter before me, it was apparent that the Defendant was of the view that the suit properties belonged to itself and that the same had been irregularly and wrongfully registered in the name of Messrs Josgid Limited and Flagship Holdings Limited on 18<sup>th</sup> September 1996. It was not clear from the Replying Affidavit what action the Defendant had taken for the 29 or so years preceding 16<sup>th</sup> May 2025 when in its own words it decided to deploy officers to the suit properties for the purposes of “securing” the same on account that a railway line passes in front thereof. Indeed, from their Statement of Defence and Counterclaim dated 8<sup>th</sup> July 2025, it is apparent that they had never sued the two registered proprietors before and that it was only in the Counterclaim now filed that they claim the suit properties from the said entities on account of fraud.
20. Be that as it may, there was no dispute that following the unilateral deployment of the police and other security officers by the Defendant upon the suit premises on 16<sup>th</sup> May 2025, this court did on 19<sup>th</sup> May 2025 issue orders of injunction restraining the Defendant from interfering with the Plaintiff’s lease ownership, occupation and use of the suit properties.
21. From a perusal of Paragraphs 14 to 26 of the Replying Affidavit sworn on behalf of the Defendant, I was left with no doubt in my mind that the Defendant was served with the interim orders and was aware of the tenor and effect thereof. The Defendant while confirming what would constitute contempt of court at Paragraph 22 of the Replying Affidavit does not purport that the terms of the order were unclear or ambiguous, instead it goes ahead to affirm at paragraph 26 that it continued to retain its security guards and police officers in the suit premises for the purposes of facilitating its operations.
22. As Lord Denning did state in the English case of *Hadkinson –vs- Hadkinson* (1952) All E.R. 567:

“It is the plain and unqualified obligation of every person against, or in respect of, whom an order is made by a court of competent jurisdiction to obey it unless and until that order is discharged. The uncompromising nature of this obligation is shown by the fact that it extends even to cases where the person affected by an order believes it to be irregular or even void. Lord Cottenham, L.C., said in *Chuck –vs- Cremer* (1) (1 Coop. temp. Cott 342):

“A party, who knows of an order, whether null or void, regular or irregular, cannot be permitted to disobey it... It would be most dangerous to hold that the suitors, or their solicitors, could themselves judge whether an order was null or valid- whether it was regular or irregular. That they should come to the court and not take upon themselves to determine such a question. That the course of a party knowing of an order, which was null or irregular, and who might be affected by it, was plain. He should apply to the court that it might be discharged. As long as it exists it must not be disobeyed.”
23. While the Defendant denies locking the gate of the suit premises with a chain and padlock, the Plaintiff has exhibited photos of the gate from which it is apparent that at least as at 4<sup>th</sup> June 2025, the gate was welded with a chain and locked with a padlock. Again while the Defendant asserts that it posted security officers inside the suit premises for purposes of facilitating its operations, it was not apparent to me what operations the Defendant had inside the suit premises and how the Plaintiff was supposed to go about its operations in such circumstances.
24. The act of locking the Plaintiff’s business premises with a chain and padlock and posting armed police officers therein was clearly aimed at interrupting and interfering with the Plaintiff’s operations contrary to the orders that had been issued by this court on 19<sup>th</sup> May 2025.



25. Considering such a matter in *Econet Wireless Kenya Limited –vs- Minister for Information and Communication Authority of Kenya (2005) eKLR*, Justice Mohamed Ibrahim (as he then was) stated as follows:

“It is essential for the maintenance of the rule of law and order that the authority and the dignity of our courts are upheld at all times. The Court will not condone deliberate disobedience of its orders and will not shy away from its responsibility to deal firmly with proved contemnors. It is the plain and unqualified obligation of every person against whom an order is made by a court of competent jurisdiction, to obey it unless and until the order is discharged. The uncompromising nature of this obligation is shown by the fact that it extends even to cases where the person affected by the order believes it to be irregular or void.”

26. When this court issued the orders of 19<sup>th</sup> May 2025, the Defendant was under an obligation to obey the same even if it was of the view that the Plaintiff’s Landlords did not acquire their titles procedurally from itself. The Defendant did not do so and continues to keep its uniformed and armed police officers and security guards on the suit premises.

27. Accordingly, I am persuaded that there is merit in the Motion dated 4<sup>th</sup> June 2025. I hereby allow the same in terms of prayer No. 3 thereof. In the premises, summons are hereby issued to Philip J. Mainga, the Defendant’s Managing Director and Hussein Yusuf, the Defendant’s Security Officer, Eastern Region to appear before this court on 25<sup>th</sup> February 2026 to show cause why they should not be committed to civil jail or fined for the said contempt.

28. The costs of this application shall be borne by the Defendants.

**RULING DATED, SIGNED AND DELIVERED IN OPEN COURT AND VIRTUALLY AT MOMBASA THIS 29<sup>TH</sup> DAY OF JANUARY, 2026**

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**J.O. OLOLA**

**JUDGE**

In the presence of:

Ms. Firdaus Court Assistant.

Mr. Oluga Advocate for the Plaintiff/Applicant

Mr. Akach Advocate for the Defendant/Respondent

