



Mwembelegeza Community Residents v Faruk (Secretary County Government of Mombasa) & 4 others (Environment and Land Miscellaneous Application E027 of 2025) [2026] KEELC 309 (KLR) (29 January 2026) (Ruling)

Neutral citation: [2026] KEELC 309 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E027 OF 2025
JO OLOLA, J
JANUARY 29, 2026

BETWEEN

MWEMBELEGEZA COMMUNITY RESIDENTS APPLICANT

AND

JEIZAN FARUK (SECRETARY COUNTY GOVERNMENT OF MOMBASA) 1ST RESPONDENT

MOHAMED HUSSEIN MOHAMED (MOMBASA COUNTY EXECUTIVE COMMITTEE MEMBER FOR LANDS, PLANNING AND HOUSING) 2ND RESPONDENT

MARIAM MAPENZI (MOMBASA COUNTY CHIEF OFFICER FOR DEPARTMENT OF LANDS, PLANNING AND HOUSING ... 3RD RESPONDENT

SAID GULEID (MOMBASA COUNTY DIRECTOR OF INSPECTORATE) 4TH RESPONDENT

MAMO BORU MAMO (DIRECTOR GENERAL FOR NATIONAL ENVIROMENT MANAGEMENT AUTHORITY) 5TH RESPONDENT

RULING

1. By the Notice of Motion dated 11th April 2025, Mwembelegeza Community Residents (the Applicants) pray for the following orders:
 - a. Spent;
 - b. That this Honourable Court be pleased to find the Respondents, Mr. Jeizan Faruk, Mr Mohamed Hussein Mohamed, Mariam Mapenzi, Said Guleid and Mr. Mamo Boru Mamo



in contempt of the Order of Mandamus as delivered in this Honourable Court on the 29th January, 2025 by Hon. Justice Stephen Kibunja;

- c. That this Honourable Court be pleased to issue an order that the Respondents; Mr. Jeizan Faruk, Mr Mohamed Hussein Mohamed Mariam Mapenzi, Said Guleid and Mr. Mamo Boru Mamo be arrested and committed to prison for a term not exceeding six (6) months each;
 - d. That in the alternative to prayer 3 above, this Honourable Court be pleased to impose a penalty of fine of a figure to be ascertained by the Court against the said Respondents Mr. Jeizan Faruk, Mr. Mohamed Hussein Mohamed, Mariam Mapenzi, Said Guleid and Mr. Mamo Boru Mamo; and
 - e. That this Honourable Court be pleased to issue all necessary and consequential directions in respect of the contempt as may be necessary for the ends of justice to be met.
2. The application is supported by an Affidavit sworn on behalf of the Applicants by their representative Ainea Ragen and is premised on the grounds inter alia:
- i. That the Applicants filed an Amended Petition dated 26th January, 2021 in primary case No. ELC Petition No. 35 of 2020.
 - ii. That irrespective of the judgment and decree in the said ELC Petition No. 35 of 2020 being served upon the County Government of Mombasa and NEMA as well as the 2nd to 4th Respondents, they have failed to comply therewith;
 - iii. That in the Ruling delivered by this court in ELC JR E002 of 2024, on 29th January 2025, this court issued orders of mandamus compelling the Respondents to satisfy the decree issued in ELC. Petition No. 35 of 2020 by demolishing the structures/developments illegally built on public utility land No. 1476 Mwembelegeza Scheme.
 - iv. That the said Ruling and the orders of mandamus was served upon the Respondents. The 2nd to 4th Respondents declined service and asked that the orders be served upon the Mombasa County Attorney; and
 - v. That despite the order of mandamus being duly served upon all the Respondents, they have utterly refused to comply with the said orders. Their refusal to comply points to an act of impunity and conflict of interest in contravention of Articles 10 and 232 of *the Constitution* 2010 and Sections 7 and 12 of the Pubic Officer Ethics Act.
3. Jeizan Faruk, Mohamed Hussein Mohamed, Mariam Mapenzi and Said Guleid (the 1st to 4th Respondents) are opposed to the application. In their Notice of Preliminary Objection dated 28th July 2025, the 1st to 4th Respondents object to the application on the grounds:
1. That this suit is inconsistent with the *Civil Procedure Act* more specifically with regards (to) multiplicity of suits;
 2. That this application offends the *Judicature Act*;
 3. That this application has been moved with the wrong provisions of the law as the *Contempt of Court Act* was declared unconstitutional;
 4. That the form of the application is inconsistent with the *Judicature Act* and the Laws of England with regards (to) contempt of Court; and
 5. That this Application is premature and bad in law.



4. The National Environment Management Authority (the 5th Respondent) is equally opposed to the application. In a Replying Affidavit sworn on its behalf by its director General Mamo B. Mamo, the 5th Respondent avers that the orders issued by the court on 29th January 2025 were in the nature of an order of mandamus directed at several Respondents requiring demolition of certain structure and developments. The 5th Respondent avers that none of the orders directly required the Authority to undertake the demolitions.
5. The 5th Respondent further avers that the orders issued by the court had no timelines and that compliance thereof should not be left to the imagination. It is accordingly the 5th Respondent's case that the application for contempt is unmerited and inappropriate.
6. I have carefully perused and considered the application as well as the respective responses thereto. I have similarly perused and considered the submissions placed before me by the Learned Advocates representing the parties.
7. By their application before the court, the Applicants have urged the court to make a finding that the Respondents herein are in contempt of the order of mandamus issued in ELC JR No. E002 of 2024 on 31st January 2024. As a consequence of the alleged breach, the Applicants have further urged the court to have the Respondents arrested and committed to prison and/or in the alternative a penalty of a fine be imposed upon them.
8. The application is expressed to be brought pursuant to Section 4(1) and 5 of the [Contempt of Court Act](#) No. 46 of 2016 and Sections 1A, 1B, 3A and 63 of the [Civil Procedure Act](#). In their Preliminary Objection filed herein, the 1st to 4th Respondents have objected to the application on the grounds inter alia that the court has been moved under the wrong provisions of the law as the [Contempt of Court Act](#) was declared unconstitutional.
9. As it were there was no doubt that the [Contempt of Court Act](#) No. 46 of 2016 was declared unconstitutional and invalid by Justice Chacha Mwita (as he then was) in the case of Kenya Human Rights Commission –vs- the Attorney General & Another (2018) eKLR in a Judgment rendered on 9th November 2018.
10. In their submissions before the court, the Applicants have conceded the fact that the [Contempt of Court Act](#) was declared unconstitutional. It is however their case that they have cited other provisions including Section 5(1) of the [Judicature Act](#) and Sections 3A and 63(c) of the [Civil Procedure Act](#).
11. As cited hereinabove, the application has been made pursuant to the [Contempt of Court Act](#) and Sections 1A, 1B, 3A and 63 of the [Civil Procedure Act](#). The Applicants did not invoke the provisions of the [Judicature Act](#) and I was not persuaded that the provisions of the [Civil Procedure Act](#) cited could clothe this court with jurisdiction to deal with the issue of contempt of court.
12. Dealing with a similar issue in Mungai –vs- Housing Finance Company (K) Limited & 5 Others (Civil Appeal (Application) No. 9 of 2015) [2017] KESC 47 (KLR) (26th January 2017) (Ruling), the Supreme Court held as follows:

“In the case of Hermanus Phillipus Steyn v. Giovanni Gnnechi-Ruscione, Supreme Court, Application No. 4 of 2012, this Court was categorical that a Court has to be moved under a specific provision of the law. The Court stated that: it is trite law that a Court of law has to be moved under the correct provisions of the law. We reiterate that the only legal regime for the Supreme Court is [the Constitution](#), the [Supreme Court Act](#) and the Supreme Court Rules, 2012 (as amended). Hence it is preposterous for the applicant to purport to bring



his application under other statutory provisions that are not the Supreme Court Act. It is sadder that he has the audacity to even invoke provisions of repealed pieces of legislations. No court can be moved on the basis of a repealed law. What right if at all does a repealed law give? The answer is clear: none.”

13. Arising from the foregoing case, it was clear that the Supreme Court took a strict and decisive stance on applications brought under repealed or non-existent provisions of the law. Such an application was fundamentally incompetent and fatally defective
14. In the premises, I hereby find that the Motion dated 11th April 2025 having been brought pursuant to a legislation that had been declared unconstitutional is fatally defective. The same is hereby struck out with no order as to costs.

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. Ainea Ragen for the Applicant
- c. Mr. Tajbhai Advocate for the 1st, 2nd and 3rd Respondent
- d. No appearance for the 5th Respondent

