



Mutiso & another v South Sea Services Limited (Environment and Land Case 207 of 2021) [2026] KEELC 251 (KLR) (29 January 2026) (Ruling)

Neutral citation: [2026] KEELC 251 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
ENVIRONMENT AND LAND CASE 207 OF 2021
JO OLOLA, J
JANUARY 29, 2026**

BETWEEN

AMOS KILUNGYA MUTISO 1ST PLAINTIFF

BEATRICE SILU MUTISO 2ND PLAINTIFF

AND

SOUTH SEA SERVICES LIMITED DEFENDANT

RULING

1. By the Notice of Motion dated 6th December 2024, South Sea Services Ltd (the Defendant/Applicant) prays for orders: -
 - a. Spent;
 - b. That this Honourable Court be pleased to cite the Respondents herein Beatrice Silu Mutiso and Amos Kilungya Mutiso as responsible for Contempt of the Court Orders issued on the 6th June, 2024 and therefore liable for punishment and/or be committed to civil jail for a period of six (6) months and in the alternative compelled to pay the sum of Kshs. 3 Million for the damages caused on the suit property;
 - c. That the Honourable Court be and is hereby pleased to issue an order directing the Land Registrar Mombasa to present himself/ herself and also avail the original parcel and Deed File and other documents for the LR No. Mombasa/MS/Block 1/242 in Court for the purpose of cross examination/confirmation of the register of the suit property;
 - d. That the Honourable Court be and is hereby pleased to order and direct that all entries made on the register when there was subsistence of “status quo” be cancelled and or revoked and the register be reinstated accordingly;



- e. That the Honourable Court be and is hereby pleased to issue an order directing the Respondents herein jointly and severally to deposit in Court Kshs 47 Million to be held as a security and trust pending hearing and determination of the instant application and suit herein and consequently the original title document for the title L.R No. Mombasa/MS/Block 1/242 be deposited in Court as well;
 - f. That the Honourable Court be and is hereby pleased to issue an Order directing the Officer Commanding Station (O.C.S) Shelly Beach Police Station to ensure that the Respondents by themselves, their agents, servants and/ or any other person working for them does not interfere with the suit property in any manner that will violate the rights of the Applicants herein;
 - g. That the Honourable Court be and is hereby pleased to issue any other Order (s) it deems fit in the circumstance; and
 - h. That the costs of this Application be provided for.
2. The application is supported by two Affidavits sworn by the Defendant's director Rama Hamisi Bindo and is premised on the grounds that:
 - i. The Applicant is reliably informed that the Respondents have secretly albeit illegally sold the suit property to third parties;
 - ii. The Respondents through their agents are interfering with the suit property in contempt of the orders issued by this Court on the 6th June, 2024;
 - iii. The Respondents have evicted the Applicant from the suit property contrary to the order of this Court;
 - iv. That the land parcel file is missing at the lands office and cannot be traced; and
 - v. That it is necessary that the orders sought be granted as prayed, as the Applicant would otherwise be exposed to the sort of loss, injury and inconvenience not adequately compensable in damages.
 3. Beatrice Silu Mutiso and Amos Kilungya Mutiso (the 1st and 2nd Respondents) are opposed to the application. In a Replying Affidavit sworn on their behalf by the 2nd Respondent the two aver that they had never jointly owned the suit property. It is further the Respondents case that they had withdrawn this suit on 12th July 2023.
 4. The Respondents aver that sometimes in August 2023, one David who is a Co-director of the Defendant/Applicant informed them that the Applicant had relocated its Bar and Restaurant business from the suit property to Diani. It is their case that as at January 2024, the Defendants had no dealings with the suit property.
 5. I have carefully perused and considered the Defendant's application as well as the response thereto by the Plaintiffs. I have similarly perused and considered the submissions filed herein by the Defendant. I was unable to find any submissions filed on behalf of the Plaintiffs/Respondents.
 6. By its application before the court, the Defendant/Applicant prays for an order of contempt of court to issue against the two Plaintiffs on account that the Plaintiffs have violated the orders of status quo issued by the court on 6th June 2024. In the alternative it urges the court to compel the Plaintiffs to pay the sum of Kshs. 3 Million for damages caused on the suit property.



7. The Defendant further urges the court to direct the Land Registrar to present himself before the court and to avail the parcel file for the suit property for the purpose of cross examination. In addition, the Defendant wants the court to direct the Plaintiffs to deposit the sum of Kshs. 47 Million to be held as “security and trust” pending the hearing and determination of the suit.
8. The basis of the prayer for the Plaintiff to be cited for contempt is the Defendant’s contention that contrary to the orders issued by the court on 6th June 2024, the Plaintiffs had proceeded to evict the Defendant from the suit property. The Plaintiffs however deny that they had evicted the Defendant and aver that as at January 2024, the Defendant had relocated its Bar and Restaurant business from the suit property to Diani.
9. As Mativo J., (as he then was) stated in Samuel M.N. Mweru & Others –vs- 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.
10. From a perusal of the record herein, it was evident that by an application dated 29th August 2023, the Plaintiffs had sought an order for Messrs. Kithemu Auctioneers to be allowed to break open the suit premises and to remove movable items therein to settle the sum of Kshs. 2,780,000/= which was said to be rent outstanding from the Defendant. In addition, the Plaintiffs had sought for the eviction of the Defendant from the said premises.
11. Having heard the suit and in the Ruling rendered on 6th June 2024 aforesaid, the Honorable L. Naikuni J. dismissed the application and ordered the parties to maintain the status quo pending the hearing and determination of the Defendant’s Counter-Claim.
12. As it turned out, the Plaintiffs do not deny that they had knowledge of the order and were aware of the terms thereof. What the Plaintiffs deny is that they had acted in breach of the said order. Following that denial, the burden then fell on the Defendant to prove how the Plaintiffs had breached the order. It was however telling that while it claims to have been evicted from the suit premises, the Defendant does not state when exactly the said eviction happened and who exactly carried out the eviction.
13. On the standard of proof regarding contempt proceedings, the Court of Appeal had long held in the case of Mutitika –vs- Baharini Farm Limited (1985) KLR 229, 234 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. 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.”

14. In the matter before me, I was not persuaded that the Plaintiffs had evicted the Defendant from the suit premises in the manner alleged or at all. A perusal of the Learned Judge’s Ruling reveals that the Defendant had itself removed all its movable goods from the premises. That is evident from a perusal of paragraph 20 of the Ruling where the Learned Judge notes as follows:

“ 20. On or around 12th February, 2024, the Respondent removed all the movable goods and took them to unknown destination to avoid removal by the Auctioneer. Currently, the premises are not occupied for any economic purpose except a small barber shop run by one of the Directors of the former tenant/Respondent....”

15. Arising from the foregoing, it was clear to me that as stated by the Plaintiffs, the Defendant had long before the Ruling of 6th June 2024 removed its items from the suit premises. That was the position obtaining when the court issued the orders of status quo and there was no order allowing the Defendant to return the goods it had removed back to the suit premises.

16. I was in similar vein unable to find any basis for the Defendant’s prayer that the Plaintiffs deposit a sum of Kshs. 47 Million as security for costs. An order for security for costs is a court order usually requiring the Claimant to deposit money or provide a guarantee to cover the potential legal costs of the opposing party, protecting them from an impecunious opponent who might lose and be unable to pay. It is a discretionary interim remedy, often granted if the claimant is from abroad, or a company with insufficient assets.

17. From a perusal of the record herein, it is apparent that the Plaintiffs withdrew their suit against the Defendant on 12th July 2023 and that it is only the Defendant’s Counter Claim which remains pending for hearing and determination by the court. In those circumstances I was unable to find any basis for the prayer by the Defendant that the Plaintiffs deposit security for costs.

18. In the premises, it was my finding that the Defendant’s application was totally misconceived and without any basis whatsoever. The same is dismissed with costs to the Plaintiffs.

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

.....

J.O. OLOLA

JUDGE

In the presence of:

a. Ms. Firdaus Court Assistant.

b. Mr. Magiya Advocate for the Plaintiffs/Respondent

c. Mr. Ondieki holding brief for Shimaka Advocate for the Defendant/Applicant

