



REPUBLIC OF KENYA



**Ibrahim v Muhsin & 3 others (Civil Suit E051 of 2021)
[2026] KEHC 4373 (KLR) (5 March 2026) (Ruling)**

Neutral citation: [2026] KEHC 4373 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
CIVIL SUIT E051 OF 2021
F WANGARI, J
MARCH 5, 2026**

BETWEEN

NEDIM MOHAMMED IBRAHIM PLAINTIFF

AND

ABDULKARIM SALEH MUHSIN 1ST DEFENDANT

ZUMZUM INVESTMENT LIMITED 2ND DEFENDANT

AKABA INVESTMENT LIMITED 3RD DEFENDANT

ANCIENT INLAND SEAS LIMITED 4TH DEFENDANT

RULING

1. The Plaintiff filed a Notice of Motion application dated 26th March 2025 under Section 5 (1) of the Judicature Act, Section 1A, 1B, 3, 3A & 63 of the Civil Procedure Act, Section 8 (2) and 9 of the Law Reform Act, the Civil Procedure Rules of England Part 81:12-14, and all other enabling provisions of the law.
2. The Applicant seeks for orders that that this court finds Abdulkarim Saleh Muhsin, Zum Zum Investment Limited, Abdulbasit Swaleh Muhsin, Abdurasul Saleh Muhsin and Mahsen Abdulkarim Swaleh in contempt of the court order made on 24th November 2023.
3. That the said Abdulkarim Saleh Muhsin, Abdulbasit Swaleh Muhsin, Abdurasul Saleh Muhsin and Mahsen Abdulkarim Swaleh be committed to civil jail for 6 months or such other period as the honourable court deem fit, for contempt and defiance of the court order made on 24th November 2023. That such other or further orders be issued as the court deem fit for the end of justice to be met, and that costs of the application be paid by the Respondents.
4. The Applicant relied the grounds on the face of the application and on the grounds set out in the Statutory Statement and Verifying Affidavit filed in court on 11th July 2024 which were in support of



the Ex-Parte Chamber Summons dated 11th July, 2024, The Applicant stated that the Respondents had openly disobeyed the court order made on 24th November 2023 by refusing to implement the judgment of the court and the enforcement of the decree. That it was for the interest of justice that the Respondents be cited for contempt to ensure compliance and to uphold the dignity and authority of the court.

5. In response to the application, the 1st and 2nd Defendants filed a Replying Affidavit sworn on 7th April 2025 by Abdulkarim Saleh Muhsin, a director and shareholder of the 2nd Respondent, and maintained that the Respondents were not in contempt of the judgment and orders issued of 24th November 2023. That the Applicant had not done anything towards complying with the judgment, and that he had not rendered any account in relation to the properties belonging to the 2nd Respondent which he and his wife had fraudulently and illegally sold. That the 2nd Respondent was struggling with debts whereas the Applicant and his wife continued to siphon hundreds of millions of shillings from the company through fraudulent and illegal dealings. The illegal dealings were addressed in Mombasa HCCC No. 25 of 2025 and Mombasa Petition No. E001 of 2023.
6. It was deponed that in addition to the unsettled decree in HCCC No. 116 of 2016, the Applicant was well aware that the 2nd Respondent owed a sum in excess of Kshs. 161,383,578 on account of unpaid rates. That the 2nd Respondent and its directors could not wish away the liabilities of the 2nd Respondent as the same needed to be urgently settled to avert unnecessary losses.
7. The Applicant filed a Further Affidavit sworn on 11th April 2025 that he was the one who made the effort towards execution of the judgment while his advocate pursued a meeting with the Defendant's lawyers and attended the meeting in their offices. That the Defendant attended the meeting on 25th March 2024 and that during the said meeting, the Defendant and his advocate categorically said they would not be part of future meetings, which position was brought to the attention of the court.
8. The Plaintiff deponed that he has on several occasions tried to mediate with the Respondents to implement the mediation agreement and resolution dated 7th May 2017 to no avail. That the mediation agreement and resolution settled all issues between the 2nd Defendant and all other companies including Regional Container Freight Station Limited on the issue of debts incurred by the 2nd Defendant.
9. It was deponed that Clause 12 of the Resolution stipulated that the 1st Defendant was to resign as director and shareholder of the 2nd Defendant and that the Plaintiff was to take on the liabilities, if any, of the 2nd Defendant. That the mediation agreement and resolution of 7th May 2017 settled all commercial disputes between the Plaintiff and the 1st Defendant, including the dispute in HCCC No. 116 of 2016. That the 1st Defendant in defiance appointed new directors and transferred the ordinary shares of the 2nd Defendant. That the 1st Defendant procured a new board of Directors to pass a resolution to sell and dispose of the 2nd Defendant.
10. The application was canvassed by way of written submissions. The Applicant filed submissions dated 4th June 2025 on whether the Defendants were in contempt by reiterating contents of their application and relying on the authorities submitted.
11. The 1st and 2nd Defendants relied on their submissions dated 13th November 2024 which were relating to the Chamber Summons dated 11th July, 2024, by the Applicant herein. It was submitted that requirements for contempt application were set out in Part 81.4 of the English Civil Procedure Rules of 2020. That there is no compliance with the mandatory provisions of Part 81.3 (6) as read together with the provisions of Part 81.4 of the Rules.



12. That the court in Samuel M. N. Mweru & others v National Land Commission & 2 others (2020) eKLR restated the test to be applied on matters of contempt. The 1st and 2nd Defendants submitted that the decree in HCCC No. 116 of 2016 was issued before filing of the suit herein and the resultant judgment. That as at 30th June 2024, the sum due pursuant to the said decree was Kshs. 1,755,057,076.46. That the Applicant has been aware of the unsettled liability but did nothing as a director/shareholder of the 2nd Respondent.
13. The 1st and 2nd Respondent submitted that the Applicant has not tendered any evidence to show that the 2nd Respondent has other assets and/or properties other than those referred to in the deliberations of the directors of the 2nd Respondent that can be used to settle the 2nd Respondent's liabilities. That compliance with the orders issued in HCCC No. 116 of 2016 has to come first and that the interest of the 2nd Respondent's shareholders have to take a backseat.
14. That the Applicant has failed to disclose the nature and import of the judgment and orders of the court issued in Mombasa Petition No. E001 OF 2023, Abdulkarim Saleh Muhsin v Nedim Mohammed Ibrahim & 2 others. That the decree and orders issued by Magare, J. relating to the running and management of the 2nd Respondent affairs speak for themselves. That the actions of the Respondents and the appointments made are in line with the orders.
15. The 1st and 2nd Respondents argued that the actions complained of by the Applicant have been undertaken by the 1st Respondent, Abdulbasit Swaleh Muhsin, Abdulrasul Saleh Muhsin and Mahsen Abdulkarim Swaleh in their capacities as directors of the 2nd Respondent. That by inviting the court to find them in contempt of court on account of the allegations raised, the Applicant is inviting this court to disregard the law set out in the case of Salomon v Salomon [1897] AC 78 where the House of Lords held that a company is in law as separate person from its members.
16. The 1st and 2nd Respondents also urged the court to consider the holding in the case of Victor Mabachi & another v Nurtun Bates Ltd NRB CA Civil Appeal No. 247 of 2005 (2013) eKLR. The 1st and 2nd Respondents stated that the orders sought should not issue on the basis that no application has been made to this court to lift the corporate veil of the 2nd Respondent.
17. The 1st and 2nd Respondents submitted that no evidence has been placed before this court to demonstrate that the Respondents have frustrated implementation of the judgment of this court. They stated that an appeal has been filed against the judgment of this court vide Mombasa Court of Appeal Case No. E084 of 2024, Abdulkarim Saleh Muhsin & 3 others v Nedim Mohammed and pending determination, which position has not been disclosed by the Applicant. That the instant application is an abuse of the court process as it is intended to achieve a collateral purpose that has nothing to do with advancing the course of justice.
18. The Applicant is said to have approached the court seeking discretionary orders, with dirty hands yet equity demands that one must do so with clean hands. That the entire application is premised on misrepresentation and non-disclosure of material facts. The 1st and 2nd Respondents prayed that the application be dismissed with costs.
19. The Directors of the 2nd Respondent, Abdulbasit Swaleh Muhsin, Abdulrasul Saleh Muhsin and Mahsen Abdulkarim Swaleh, also filed submissions dated 29th May 2025. They argued that the suit herein was commenced in 2021 against the named Defendants and that the Directors in question were appointed on 30th May 2024 whereas the judgment was delivered on 24th November 2023. That the said directors were never parties to the suit and as such the judgment delivered by this court on 24th



November 2023 cannot be enforced against them. Reliance was placed on the case of Kenya Electricity Transmission Company Ltd v Kitobu Ltd (2019) eKLR.

20. The Directors submitted that before one is held liable for contempt, they must demonstrate that they were aware of the order or judgment they are alleged to be in contempt, and therefore proof of service is necessary. This position was supported by the holding in the case of Nyamodi Ochieng Nyamogo & another v Kenya Post & Telecommunication Corporation (1994) eKLR. They stated that in the present case, there is no evidence of service of the order of 24th November 2023 upon the 2nd Defendant's directors.
21. The Directors further submitted that there are valid orders issued by the High Court in Mombasa HCCC No. 116 and Mombasa High Court Petition No. E001 of 2023 and that the orders are yet to be set aside on appeal or review. That the said orders having been issued by judges of the superior courts, this court lacks jurisdiction to set them aside. Reliance was placed on Article 165 (6) of *the Constitution* and the decision in the case of Kenya in Hotels Properties Limited v the Attorney General & 5 others (Petition No. 16 of 2020) (2022) KESC 62 (KLR). The Directors therefore prayed that the application is dismissed with costs.

Analysis

22. This court has considered the Notice of Motion application and supporting statement and affidavit, the Replying Affidavit the Further Affidavit and submissions by the parties. The issues for determination are: -
 - a. Whether the 2nd Respondent directors as cited should be held in contempt of the court order made on 24th November 2023.
 - b. Whether the judgment delivered on 24th November 2023 is still valid.
 - c. Who should bear costs.
23. The Respondents submitted that the Applicant did not comply with Rule 81.4 of the English Civil Procedure Rules. I have perused through The Civil Procedure (Amendment No. 3) Rules 2020 of England and more specifically, Rule 81 on "Applications and Proceedings in Relation to Contempt of Court". Rule 81.4 provides for the "Requirements of a contempt application"
 - 81.4. Unless and to the extent that the court directs otherwise, every contempt
 - (1) application must be supported by written evidence given by affidavit or affirmation.
 - (2) A contempt application must include statements of all the following, unless (in the case of (b) to (g)) wholly inapplicable—
 - (a) the nature of the alleged contempt (for example, breach of an order or undertaking or contempt in the face of the court);
 - (b) the date and terms of any order allegedly breached or disobeyed;
 - (c) confirmation that any such order was personally served, and the date it was served, unless the court or the parties dispensed with personal service;
 - (d) if the court dispensed with personal service, the terms and date of the court's order dispensing with personal service;



- (e) confirmation that any order allegedly breached or disobeyed included a penal notice;
- (f) the date and terms of any undertaking allegedly breached;
- (g) confirmation of the claimant's belief that the person who gave any undertaking understood its terms and the consequences of failure to comply with it;
- (h) a brief summary of the facts alleged to constitute the contempt, set out numerically in chronological order;
- (i) that the defendant has the right to be legally represented in the contempt proceedings;
- (j) that the defendant is entitled to a reasonable opportunity to obtain legal representation and to apply for legal aid which may be available without any means test;
- (k) that the defendant may be entitled to the services of an interpreter;
- (l) that the defendant is entitled to a reasonable time to prepare for the hearing;
- (m) that the defendant is entitled but not obliged to give written and oral evidence in their defence;
- (n) that the defendant has the right to remain silent and to decline to answer any question the answer to which may incriminate the defendant;
- (o) that the court may proceed in the defendant's absence if they do not attend but (whether or not they attend) will only find the defendant in contempt if satisfied beyond reasonable doubt of the facts constituting contempt and that they do constitute contempt;
- (p) that if the court is satisfied that the defendant has committed a contempt, the court may punish the defendant by a fine, imprisonment, confiscation of assets or other punishment under the law;
- (q) that if the defendant admits the contempt and wishes to apologize to the court, that is likely to reduce the seriousness of any punishment by the court;
- (r) that the court's findings will be provided in writing as soon as practicable after the hearing; and
- (s) that the court will sit in public, unless and to the extent that the court orders otherwise, and that its findings will be made public.

24. From the above, I find that the application by the Applicant is in compliance with Rules 81.4 as stated herein above. The issue is whether the Applicant has proved that the Respondents and the directors



cited are in contempt of court proceedings. Through the judgment dated 24th November, 2023, this court issued the following orders: -

- a. An order by way of specific performance of the Mediation Agreement and Resolution dated 7th May, 2017 does issue;
 - b. To give effect to (a) above, I direct parties, that is, the Plaintiff and 1st Defendant to meet and with the help of their Counsel, agree on how to set the ball rolling towards realizing what they had initially intended;
 - c. The meeting to be organized as soon as possible but not later than 15th December, 2023;
 - d. The meeting can take any form recognized, be it physical or virtual;
 - e. Each party to bear own costs.
25. Thereafter, there arose a dispute between the parties on the decree extracted. The Defendants declined to approve the extracted decree for reasons inter alia that the draft decree was not in consonance with the judgement and orders of the court. With this disagreement, the court was called to intervene and rule on the issue of decree.
26. This court in its ruling delivered on 14th March, 2024 ordered as follows;
- “Having so found as above, I proceed to review order (c) of the judgement dated 24th November, 2023 as follows: -
- i. The meeting to be held within the next fourteen (14) days from the date hereof;
 - ii. Any party who feels frustrated in realization of the meeting is at liberty to move the court within seven (7) days of the said frustration;
 - iii. That the meeting can take any form recognized, be it physical or virtual.
 - iv. Mention on 15th April, 2024
 - v. No orders as to costs.
27. It is the failure to comply with the above orders of the court that this application has been filed.
28. The Respondent and the cited directors of the 2nd Respondent stated that they were appointed to the Office of Directors on 30th May 2024 and cannot address issues that transpired prior to their appointment. Further, their appointment to the office was pursuant to the judgment of the court in High Court Petition No. E001 of 2023, and their actions regarding the 2nd Respondent was in execution of the court orders issued in Mombasa HCCC No. 116 of 2016.
29. One of the requirements to be met for one to be found in contempt of the court orders under Rule 81.4 of the English Civil Procedure Rules is that of personal service. The Applicant ought to show the court that there was personal service of the court order (s) alleged to have been disobeyed, the date of service. If the court had dispensed with the personal service, the terms and date of court order dispensing with the personal service.
30. The Applicant has failed to placed before this court the evidence of personal service of the order upon the Respondents and/or directors now sought to be cited. Proof of knowledge is critical and mere assumptions of knowledge are insufficient. The application is fatally weakened on this ground.



31. On whether the judgment of this court is still valid and enforceable, having failed to find the Respondents in contempt of court proceedings, it does not discharge the parties in this suit to obey the court orders. The judgment of this court dated 24th November 2023 and the ruling of this court dated 14th March, 2024 have not been stayed, set aside or reviewed.
32. This court is alive to the fact that there is a pending appeal against the judgment of the court in Mombasa C.A Civil Application No. E109 of 2023. The Court of Appeal in its wisdom declined to issue stay orders against the judgment of this court.
33. The judgment of the court upholding the Mediation Agreement is still in force. The change of directors of the 2nd Respondent does not change the effect of the judgment of this court. The Respondents state that their actions are in compliance with the orders of the court in Mombasa HCCC No. 116 of 2016 and Mombasa HCCC No. 25 of 2015.
34. Upon further perusal of the documents relating to this case in the Judiciary Case Tracking System, I note that the Court of Appeal in Mombasa C.A Civil Application No. E044 of 2025, the court granted stay of execution and stay of proceedings orders in Mombasa HCCC No. 25 of 2015. The excuse that the directors are executing the orders in the HCCC 25 of 2015 should not arise.
35. This court reiterates its position that the Mediation Agreement which was upheld by this court through its judgment and the subsequent ruling that gave effect to the judgment, settles all the pending matter between the parties herein. The conduct of the Respondents undermines the decision of this court, and which judgment is still in force as it has not been discharged.
36. This court has a duty to protect its dignity and uphold its authority, even in cases where the persons affected by the order believes it to be irregular or void. In the case of *Econet Wireless Kenya Limited v Minister for Information and Communication of Kenya Authority* [2005] eKLR it was held 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 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.”
37. Further, in the case of *Wildlife Lodges Limited v County Council of Narok and another* [2005] 2 EA 344, in emphasizing the sanctity of judicial authority, the court held that court orders must be strictly obeyed until discharged.
38. This litigation must come to an end. In exercise of the court’s inherent powers to protect its dignity and uphold its authority, further to the judgment of this court dated 24th November, 2023 and the ruling dated 14th March, 2024, and the fact that the Respondents herein are deliberately frustrating the enforcement of the said judgment, in giving effect to the judgment and bringing the matter to a close before this court, the Deputy Registrar is hereby mandated to give effect to the Resolutions in the Mediation Agreement by being authorized to execute all the necessary documents on behalf of the parties herein.



39. The Parties are at liberty to present their documents to the Deputy Registrar in compliance with the above. The pending application by the Plaintiff dated 10th February 2025 is deemed as spent by virtue of the orders of the court.
40. On costs, in order to bring this matter to a close, each party to bear its own costs.

Determination

41. In the upshot, the court orders as hereunder;
- a. The Notice of Motion application dated 26th March 2025 lacks merit and is dismissed.
 - b. The Deputy Registrar is hereby authorized to execute all the necessary documents for purposes of giving effect to the judgment of the court dated 24th November, 2023.
 - c. That the parties herein are at liberty to move the Deputy Registrar for purposes of execution of documents as per order (b) above.
 - d. Each part to bear its own costs.
 - e. File deemed as closed.

DATED AND DELIVERED VIRTUALLY AT MOMBASA THIS 5TH DAY OF MARCH, 2026.

HON. F. WANGARI

JUDGE OF THE HIGH COURT

In the presence of: -

Mr. Paul Mwangi Advocate for the Plaintiff/ Applicant

Mr. Muchoki Advocate for the Defendants/ Respondent

Mr. Wafula Advocate for Directors of the 2nd Defendant

Ms. Salwa, Court Assistant

