



Moyale Mall Limited & 2 others v Ali & 18 others (Environment and Land Appeal E012 of 2026) [2026] KEELC 2410 (KLR) (30 April 2026) (Ruling)

Neutral citation: [2026] KEELC 2410 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND APPEAL E012 OF 2026
EK WABWOTO, J
APRIL 30, 2026**

BETWEEN

MOYALE MALL LIMITED & 2 OTHERS & 2 OTHERS APPELLANT

AND

ABDIRISAK ABSHIR ALI & 18 OTHERS & 18 OTHERS RESPONDENT

RULING

1. This ruling arises in the context of a bitterly contested landlord-tenant dispute at Moyale Mall, now the subject of this appeal. The parties, having earlier compromised their differences and obtained consent orders from this Court on 3rd March 2026 directing the maintenance of the status quo as it existed on 2nd January 2026, have since turned upon each other with cross-applications for contempt of court. Each accuses the other of deliberate and wilful violation of the very orders they jointly invited the Court to record.
2. The Respondents, by their Notice of Motion dated 17th March 2026, seek urgent restoration of electricity supply, police assistance in enforcement, citation of the Appellants for contempt, compensation for alleged business losses, and costs.
3. In response, the Appellants, by their Notice of Motion dated 25th March 2026, counter with their own application for contempt against the Respondents, seek cease-and-desist orders, committal or fines, and the striking out of certain Respondents from the appeal.
4. Pursuant to directions issued by this Court, the parties filed detailed written submissions and highlighted the same orally. This ruling determines both applications.
5. The Respondents Notice of Motion dated 17th March 2026 seeks the following principal orders:
 - (a) an order compelling the Appellants/Respondents to forthwith reconnect and restore electricity supply to the Respondents/Applicants' business premises at Moyale Mall,



representing the status quo as at 2nd January 2026 pursuant to the consent orders of this Court made on 3rd March 2026;

- (b) police assistance from the Officer Commanding Station, Eastleigh North Police Station, to supervise and enforce compliance;
 - (c) citation of the Appellants/Respondents (particularly the 2nd and 3rd Appellants in their personal and representative capacities) for contempt of court;
 - (d) compensation for losses occasioned by the alleged unlawful disconnection, with a forensic audit to quantify the same at the Appellants' expense;
 - (e) costs.
6. The Appellants/Applicants' Notice of Motion dated 25th March 2026 seeks:
- (a) citation of the Respondents for contempt of the consent status quo orders by reason of alleged unauthorised structural alterations/demolitions of inner walls, illegal subletting, and encroachment upon common areas;
 - (b) orders directing the Respondents to cease and desist from such acts and restore the premises to the status quo as at 2nd January 2026;
 - (c) committal to civil jail or, in the alternative, imposition of fines; and
 - (d) striking out of the 3rd, 5th, 9th and 17th Respondents from the appeal.
7. The Respondents assert that they are bona fide tenants in lawful occupation of various shops and business premises within Moyale Mall pursuant to valid leases duly executed with the landlords. They conduct commercial activities that are wholly dependent on a continuous supply of electricity.
8. Following earlier disputes, this Court, on 3rd March 2026, recorded and issued consent orders directing that the status quo obtaining as at 2nd January 2026 be reinstated and maintained pending the hearing and determination of the appeal. As at that reference date, the Respondents were in peaceful occupation and enjoying uninterrupted electricity supply.
9. In their Notice of Motion dated 17th March 2026, the Supporting Affidavit sworn by Abdirisak Abshir Ali the 1st Respondent herein and the detailed Written Submissions filed in support, the Respondents aver that, notwithstanding service of the consent orders upon the Appellants, the Appellants wilfully and deliberately disconnected electricity supply to the Respondents' specific shops on or about 13th March 2026.
10. This action, they contend, was calculated to frustrate their occupation, disrupt their businesses, cause loss of income, damage to perishable goods, and render the pending appeal nugatory. They maintain that the disconnection fundamentally altered the status quo ordered by the Court.
11. In their Replying Affidavit filed in opposition to the Appellants' application and the Written Submissions in opposition thereto, the Respondents further deny any breach of the consent orders on their part. They assert that any alleged alterations or modifications to the premises were minor, non-structural, limited to internal partitions, undertaken well before 2nd January 2026 or with the full knowledge and acquiescence of the Appellants, and therefore already formed part of the status quo to be maintained. They categorically deny unauthorised structural demolitions, illegal subletting, or encroachment upon common areas, contending that the Appellants' allegations are generalised, vague, unsubstantiated, and unsupported by any expert, independent, photographic, or specific evidence identifying which of the 19 Respondents committed which acts.



12. They emphasise that contempt proceedings require proof to a high standard approaching beyond reasonable doubt and that the Appellants have failed to meet this threshold. They urge the Court to allow their application dated 17th March 2026 in full and to dismiss the Appellants' application dated 25th March 2026.
13. The Appellants, in their Replying Affidavit sworn by the 2nd Appellant, Duran Hussein Mudobe, dated 25th March 2026, the Notice of Motion dated the same day and the Written Submissions strenuously deny any wilful disobedience of the consent orders.
14. They aver that they are law-abiding citizens who have at all times respected and complied with the Court's directive to maintain the status quo as at 2nd January 2026. With specific regard to the electricity disconnection alleged to have occurred on 13th March 2026, they explain that the outage was not deliberate but resulted from a technical electrical overload emanating from the ground floor shops. Upon notification, the building contractor was engaged, assessed the fault, effected repairs, and restored power. They annexed a letter from the contractor (marked "DHM3") in support of this explanation and emphasise that it is technically impossible to selectively disconnect only the Respondents' shops while leaving neighbouring premises and common areas powered.
15. By way of counter-allegations, the Appellants contend that it is the Respondents who have come to Court with unclean hands and have themselves violated the status quo orders. They accuse the Respondents of embarking on unauthorised structural demolitions and alterations of inner walls within the shops (without professional or regulatory approvals, thereby compromising the structural integrity of the entire building), illegal subletting of premises to third parties, and encroachment upon and seizure of common areas on the ground floor, effectively converting the mall into an unregulated marketplace. They rely on a police Occurrence Book report (marked "DHM4") and other documentary evidence to support these claims. They further annex letters and affidavits (marked "DHM1") demonstrating that the 3rd, 5th, 9th and 17th Respondents have withdrawn their claims in respect of lease renewals for specific shops and therefore have no further interest in the proceedings.
16. The Appellants maintain that the Respondents' application is an abuse of process calculated to harass them and that the Respondents have not paid rent for the current year. They urge the Court to cite the Respondents for contempt, issue cease-and-desist and restorative orders, impose committal or fines, strike out the named Respondents, and grant costs.
17. The Respondents filed Written Submissions in support of their Notice of Motion dated 17th March 2026. In those submissions they framed the following issues for determination:
 - i. Whether the Appellants/Respondents are in contempt of the Court's consent orders issued on 3rd March, 2026?
 - ii. Whether this Honourable Court should grant the orders sought to restore compliance and preserve the substratum of the appeal?
 - iii. Whether the Applicants have met the threshold for grant of the orders sought?
 - iv. Costs.
18. They argued that the consent order was clear and unequivocal, the Appellants had full knowledge of it having been served and their advocates having been present in Court, and they wilfully disconnected electricity supply to the Respondents' premises, thereby deliberately altering the status quo and amounting to contempt.



19. They also filed separate written submissions in opposition to the Appellants' Notice of Motion dated 25th March 2026. In those submissions they framed the following issues:
 - i. Whether the Respondents are in contempt of the Court orders issued on 10th/3rd March 2026?
 - ii. Whether the Appellants/Applicants have established a proper legal and factual basis for the grant of the orders sought (including the drastic punitive orders)?
 - iii. Whether the prayer seeking to strike out the 3rd, 5th, 9th and 17th Respondents is tenable in law?
 - iv. Costs.
20. They contended that the Appellants' allegations of structural demolitions, subletting and encroachment were broad, vague, generalised and unsupported by credible, specific or expert evidence, and fell far below the elevated standard of proof required in contempt proceedings.
21. The Appellants filed Written Submissions in response to the Respondents' application dated 17th March 2026 and in support of their own application dated 25th March 2026. They framed the following issues for determination:
 - i. Whether the respondents have established a case for contempt of court against the appellants regarding the electricity disconnection;
 - ii. Whether the prayer for a forensic audit and compensation is premature;
 - iii. Whether the Respondents are in contempt of court by violating the status quo of 02/01/2026;
 - iv. Whether the 3rd, 5th, 9th and 17th Respondents should be struck out from the Appeal;
 - v. Who should bear the costs of the applications.
22. They denied any wilful disobedience on their part, attributing the power outage to a technical electrical overload supported by the contractor's letter, and counter-alleged that the Respondents had violated the status quo through unauthorised structural alterations, illegal subletting and encroachment on common areas.
23. During oral highlights, Mr. Ndung'u, learned counsel for the Respondents submitted that the Appellants deliberately switched off electricity supply to the Respondents' shops on 13th March 2026 with full knowledge of the consent orders; that the disconnection specifically targeted only the Respondents' premises, thereby altering the status quo; that the Appellants' explanation of an electrical overload was not credible; and that all elements of civil contempt had been satisfied.
24. He urged the Court to allow the application dated 17th March 2026 in its entirety and to dismiss the Appellants' application dated 25th March 2026, arguing that the allegations against the 19 Respondents were generalised, lacked independent or specific evidence, and fell below the high threshold for contempt. He further submitted that striking out any parties would be draconian in the absence of proof of improper joinder or prejudice.
25. Mr. Kabiru, learned counsel for the Appellants, submitted that there was no direct or cogent evidence of deliberate disconnection of electricity; that the outage was caused by an electrical overload/overuse as explained in the contractor's letter marked "DHM3"; and that the same was neither intentional nor deliberate.



26. He contended that the Appellants had at all material times adhered to the consent status quo orders while the Respondents had admitted undertaking structural changes, encroached on common areas, and failed to pay rent.
27. On the strike-out prayer, counsel submitted that the Court has power under Order 1 Rule 10(2) of the Civil Procedure Rules, 2010, as the named Respondents had withdrawn their claims via letters and affidavits marked “DHM1”
28. Having carefully considered both applications, rival affidavits, written and oral submissions of the parties, the following issues arise for determination;
 - i. Whether the Appellants are in contempt of the consent orders issued on 3rd March 2026 by disconnecting electricity supply
 - ii. Whether the Respondents are in contempt of the consent orders by undertaking unauthorised structural alterations, illegal subletting and encroachment upon common areas
 - iii. Whether the ancillary prayers for reconnection of electricity, police assistance, compensation and forensic audit should be granted
 - iv. Whether the 3rd, 5th, 9th and 17th Respondents should be struck out from the appeal
 - v. Who should bear the costs of the applications
29. The law on contempt of court is well settled. As restated in *Mathenge v Munyao* (Civil Appeal 112 of 2002 [2025] KEHC 2057 (KLR)) and *Abdi v Adan & another* [2025] KEHC 13199 (KLR), civil contempt requires proof to a standard higher than a balance of probabilities (approaching beyond reasonable doubt in quasi-criminal proceedings) of: (i) a clear and unambiguous court order; (ii) the alleged contemnor’s knowledge of the order; (iii) a breach of its terms; and (iv) that the breach was wilful and deliberate.
30. Mere disobedience without mens rea does not constitute contempt see the case of *Sheila Cassatt Issenberg & another v Antony Machatha Kinyanjui* [2021] KEHC 5692 (KLR) and *Muititika v Baharini Farm Limited* [1985] KLR 229.
31. While the consent order was clear and known to the Appellants, and the disconnection did temporarily alter the status quo, the Appellants furnished a plausible and documented explanation of a technical electrical overload emanating from ground floor shops, supported by the contractor’s letter marked “DHM3” confirming assessment and restoration of power.
32. The Respondents did not adduce countervailing expert or independent evidence to disprove this explanation or to establish that the outage was selectively and maliciously targeted at their premises alone. The power supply was restored shortly thereafter.
33. The Court is therefore not satisfied to the required high standard that the disconnection was a wilful and contumacious breach. The prayer for citation of the Appellants for contempt is declined.
34. The Respondents, through the replying affidavit sworn by the 1st Respondent and annexures “AA-1” to “AA-2”, strenuously denied the allegations, asserting that any modifications were minor, non-structural, undertaken prior to or with the acquiescence of the Appellants, and formed part of the status quo as at 2nd January 2026.
35. The Appellants relied on generalised assertions and a police OB report but produced no cogent, independent, expert, photographic or specific evidence pinpointing which Respondents committed



which acts, nor did they demonstrate any compromise to the building's integrity amounting to a deliberate breach.

36. Applying the elevated standard of proof required in contempt proceedings, the Court finds that the Appellants have failed to establish wilful disobedience on the part of the Respondents. The prayer for citation of the Respondents for contempt is dismissed.
37. Having found no contempt, the Court notes that the consent order required maintenance of the status quo as at 2nd January 2026, which included uninterrupted electricity supply. The Appellants having already restored power as confirmed by the contractor's letter, and in the absence of evidence of any ongoing disconnection or obstruction, no further order for reconnection or police supervision is warranted. The prayer for compensation and a forensic audit is premature and better suited for determination at the hearing of the main appeal or upon a formal claim for damages. These prayers are declined.
38. In respect to striking out of the parties, Order 1 Rule 10(2) of the Civil Procedure Rules, 2010, empowers the Court to strike out a party who is improperly or unnecessarily joined or who no longer has any interest in the proceedings. The Appellants have annexed letters and affidavits marked "DHM1" demonstrating that the said Respondents have withdrawn their claims in respect of renewal of their respective leases (shops G3, G5, C6, G11, G26 and G27). No prejudice to the remaining parties has been shown. The strike-out will streamline the proceedings.
39. The Court accordingly orders that the 3rd, 5th, 9th and 17th Respondents be struck out from this appeal.
40. Both applications having been partially unsuccessful and the parties having contributed to the need for determination of these interlocutory matters, each party shall bear its own costs of the two applications.
41. In conclusion, and this Court having addressed itself on all the issues, the applications dated 17th March 2026 and 25th March 2026 are hereby determined as follows;
 - i. The Respondents' Notice of Motion dated 17th March 2026 is dismissed in its entirety.
 - ii. The Appellants' Notice of Motion dated 25th March 2026 is allowed only to the extent of the prayer for striking out; the prayers for citation of the Respondents for contempt and committal/fines are dismissed.
 - iii. The 3rd, 5th, 9th and 17th Respondents are hereby struck out from this appeal.
 - iv. Each party shall bear its own costs of the two applications.

It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 30TH DAY OF APRIL, 2026.

E. K. WABWOTO

JUDGE

In the presence of: -

Mr. Kabiru for the Appellants.

Mr. Ndung'u for the Respondents.

Court Assistants: Mary Ngoira and David Ngoosa.

