



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT MALINDI**

**ELC CASE NO. 224 OF 2014**

**1. LAMU BREEZE INVESTMENT LIMITED**

**2. EQUATORIAL COMMERCIAL BANK  
LIMITED.....PLAINTIFFS**

**VERSUS**

**1. CHARLES MALAKWEN**

**2. LUKAS CHIMERA KENGA**

**3. DIM PROPERTIES LIMITED**

**4. THE SENIOR REGISTRAR OF TITLES**

**5. COUNTY GOVERNMENT OF KILIFI**

**6. THE HON. ATTORNEY GENERAL.....**

**DEFENDANT**

**RULING**

**1. The applicant's notice of motion dated March 7, 2025, seeks the following orders:**

**a) Spent.**

**b) The directors of Dim Properties Limited, including Ashok Doshi, should be cited for contempt of court.**

**c) The costs of the application be provided for.**

2. The application is supported by the affidavit of Bhupinder Singh Dogra, sworn on March 7, 2025, and his supplementary affidavit dated May 12, 2025.
3. The 3rd defendant filed its replying affidavit, sworn by Ashok Doshi on May 7, 2025, in opposition to the application.
4. The 4th and 6th respondents oppose the application, and we rely on the replying affidavit sworn by Phenix Oduya on April 24, 2025, and filed on May 6, 2025.
5. The application was canvassed based on written submissions from the parties. I acknowledge receipt of submissions from learned counsel, Mr. Munyithya for the applicants, Mr. Ondego for the 3rd respondent, and Mr. Munga for the 6th respondent, with great appreciation, as they have contributed significantly to resolving the issues raised in this matter.
6. Based on the materials and submissions before me, I outline the following issues for the court's determination: whether the

directors of the 3rd respondent are in contempt of this court's order and whether the court should grant the orders sought, as well as who should bear the costs involved.

7. The applicants state that the directors of the 3rd respondent, Dim Properties, including one Ashok Doshi, who are the alleged contemnors, have been cited for contempt because they disobeyed the decree from the judgment dated November 22, 2019. The decree ordered that a writ of mandamus be issued, directing the 3rd respondent, along with its agents, servants, or others, to demolish the perimeter wall around plot LR NO. 28462 and remove all debris from plot LR NO. 10159 Kilifi.
8. The applicant argues that the 3rd respondent is in contempt for allegedly interfering with the court-ordered possession of the property by filing a police complaint.
9. The 3rd respondent and the 6th respondent argue that the judgment in this case was delivered on November 22, 2019, and a decree was issued on February 20, 2020. The decree ordered the restoration of beacons on property CR. 8245 and the removal of a perimeter wall and debris from that property.

**10.** Notably, the applicant sought to execute the decree on property known as CR 18245, which was not part of the original decree and was under dispute in the 3<sup>rd</sup> defendant's application filed on December 11, 2024.

**11.** The application aimed to review the Deputy Registrar's orders permitting execution on property CR 18245, since no decree had been issued against this property. It was revealed that on October 27, 2020, the plaintiffs' *ex parte* motion was filed with this court to allow their application to amend the prayers in their plaint after the judgment, citing an alleged typographical error. The defendants were unaware of this application or its outcome. However, as confirmed by the Deputy Registrar in her directions dated December 23, 2024, no new decree was issued following this amendment. Despite the absence of a valid decree for property CR 18245, the plaintiff forcibly took possession of the property and went so far as to demolish the perimeter wall, which led the 3<sup>rd</sup> defendants to file a complaint at the police station—an action the plaintiff claims constitutes contempt of court.

**12.** The defendants argue that the plaintiff also irregularly obtained a new decree, which was uploaded to the case tracking system on February 17, 2025. The plaintiff never served the 3rd defendant with this new decree.

**13.** When it comes to contempt proceedings, the standard of proof is well established. In the case of **Republic v Ahmad Abolfathi Mohammed & another [2018] eKLR**, the Supreme Court of Kenya stated as follows:

*“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 case of **Samuel M. N. Mweru & Others v National Land Commission & 2 others [2020] eKLR, Mativo J** (as he then was) stated that:

***“Perhaps the most comprehensive element of civil contempt was stated by the learned authors of the book ‘Contempt in Modern New Zealand,’ who succinctly stated:***

***“There are essentially four elements that must be proved to establish a case for civil contempt. The applicant must prove to the required standard in civil contempt cases, which is higher than in civil cases, that:***

***(a) the terms of the order (or injunction or undertaking) were clear and***

***unambiguous and were binding on the defendant;***

***(b) the defendant had knowledge of or proper notice of the terms of the order;***

***(c) the defendant has acted in breach of the terms of the order; and***

***(d) the defendant's conduct was deliberate.”***

**15.** In the aforementioned case, the court confirmed that when determining what constitutes contempt of court orders, the test is whether the breach was committed *‘deliberately and mala fide.’* A deliberate disregard alone is not sufficient, as the non-complier might genuinely, but mistakenly, believe they are

justified in acting in a way that constitutes contempt. In such situations, good faith prevents the violation. Even an objectively unreasonable refusal to comply may be made in good faith. These standards— that refusal to obey must be both intentional and *mala fide*, and that unreasonable non-compliance, if made in good faith, does not amount to contempt— align with the broader definition of the offense, of which non-compliance with civil orders is part. They demonstrate that the offense is committed not merely by ignoring a court order but by intentionally and willfully violating the court’s dignity, reputation, or authority. An honest belief that non-compliance is justified or proper is incompatible with that intent.

**16.** Based on the sequence of events in this matter and a straightforward reading of the 3rd defendant, 4th, and 6th respondents' replying affidavits, it is clear that the records from the 4th respondent indicate that the involved plot is LR No. 28462-Kilifi, owned by Dim Properties, which was subdivided into LR No. 28462/1 (C.R No. 82163) and LR No. 28462/2 (C.R No. 82162). The annexures support this, as marked in PO-2 (b),

(c), and (d), which identify the landowner and indicate that the order was executed on the incorrect property.

**17.** Consequently, one of the directors, Ashok Doshi, filed a complaint with the police, which has a legal obligation to investigate alleged criminal acts and report its findings. There was no deliberate disobedience by the directors of the 3rd respondent regarding their obligation to demolish the perimeter wall around plot LR 28462 as ordered by the court.

**18.** Additionally, the applicant affirms in affidavits that they have already taken possession of the suit property in accordance with the judgment and decree from this court, constructed a perimeter fence, demolished a wall, assigned security guards, and updated the title at the Lands Office. This application is therefore a *fait accompli*.

**19.** Consequently, the application dated March 7, 2025, is hereby dismissed with costs.

**Dated, signed, and delivered virtually at Malindi on this 22<sup>nd</sup> day of October, 2025.**

**E. K. MAKORI**

**JUDGE**

**In the presence of:**

**Mr. Barasa for the 3<sup>rd</sup> Defendant**

**Happy: Court Assistant**

**In the absence of:**

**Mr. Munyithya for the Plaintiff**

**Mr.Munga for the 4<sup>th</sup> and 6<sup>th</sup> Defendant**