

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ELC CIVIL SUIT NO 633 OF 2015

KENYA RAILWAYS CORPORATION
..PLAINTIFF/RESPONDENT

VERSUS

ADAN INTALO ALI 1st

DEFENDANT/APPLICANT

ADAN ABDIRAHMAN HASSAN2nd

DEFENDANT/APPLICANT

AND

CHIEF LAND REGISTRAR INTERESTED
PARTY

RULING

1. Vide a Notice of Motion dated 13th May, 2025 brought pursuant to the provisions of **Article 35 & 159** of the **Constitution, Section 5** of the **Judicature Act Cap 8, Sections 4 and 5** of the **Access to Information Act No. 31 of 2016, Sections 1A, 1B,3B, 63 (b) & (e)** of the **Civil Procedure Act**, and **Order 40 Rule 3, Order 51 Rule 1** of the **Civil Procedure Rules, 2010**, the Defendants/Applicants seek the following reliefs, that:

- i. ***This Honourable Court be pleased to compel the Plaintiff, Kenya Railways Corporation, to disclose the identity of the person(s) or entity to***

whom it has leased or transferred the suit property, pursuant to Article 35 of the Constitution, and to furnish the Defendants with the relevant lease, license, or transfer documents.

- ii. This Honourable Court be pleased to find and declare that the Plaintiff, Kenya Railways Corporation, and/or its agents, servants, or assigns, are in contempt of the consent orders issued on 29th May 2024, which directed that the status quo preserved pending the hearing and determination of the appeal.*
- iii. The Managing Director of Kenya Railways Corporation be ordered to personally appear before this Honourable Court to show cause why contempt proceedings should not be commenced against him for wilful disobedience of the Court's orders.*
- iv. This Honourable Court be pleased to issue an order compelling the Plaintiff to purge the contempt by restoring the property to the status it was in as at 29th May 2024, including removing the unauthorized third party, any fencing or other developments recently undertaken.*

- v. ***The Plaintiff be penalized for contempt of court in such terms as this Honourable Court shall deem fit and just.***
 - vi. ***The Honourable Court be pleased to reaffirm the doctrine of lis pendens in this matter and issue orders restraining the Plaintiff from transferring, leasing, licensing, or in any other way alienating the suit property until final determination of the appeal.***
 - vii. ***The costs of this application be provided for.***
2. The application is based on the grounds on the face of the Motion and supported by the Affidavit of Adan Intalo Ali, the 2nd Defendant/Applicant herein, duly authorised and competent to swear the same on his own behalf and on behalf of the 1st Defendant/Applicant.
 3. He deponed that on 29th May 2024, this court issued a consent order directing that the *status quo* in respect of the suit property be maintained pending the hearing and determination of the appeal preferred by the Defendants to the Court of Appeal and that as of the date of the said orders, the 1st and 2nd Defendants were the registered proprietors of the suit property and were in possession thereof through rent-paying tenants, while the Plaintiff, Kenya Railways Corporation, claimed some leasehold interest.

4. According to Mr Ali, the Defendants had challenged the Plaintiff's claim over the subject property being LR 209/6228 and the dispute is the subject of Appeal No. E398 of 2024, which is yet to be conclusively determined, hence the necessity of the order preserving the property pending the outcome of the appeal.
5. He deposed that despite the express and unequivocal terms of the court's consent order, the Plaintiff has unlawfully evicted the tenants who were occupying the land, and granted access and possession to a third party, not party to this suit, who has since fenced the entire parcel.
6. He noted that the Plaintiff has refused to disclose to the Defendants the identity of the third party and the terms under which the said party took possession, despite this pending suit. He urged that they are apprehensive, that the Plaintiff has disposed off, transferred, or is in the process of transferring the suit property which will render the appeal nugatory and an academic exercise.
7. Mr Intalo deponed that under **Article 35** of the **Constitution**, they are entitled to information held by a public body such as Kenya Railways Corporation, and it should be compelled to disclose the identity of the person(s) it has leased or assigned the land to, together with all relevant lease or assignment documents.

- 8.** He stated that the Plaintiff's conduct constitutes deliberate disobedience of the consent orders of this court and amounts to contempt of court, undermining administration of justice and the authority of the judiciary. Further, that the Plaintiff's actions are in direct contravention of the doctrine of *lis pendens*, which prohibits any party from alienating or disposing of the subject matter during the pendency of the suit or appeal, without leave of the court.
- 9.** Unless the court intervenes, he urged, the suit property will be irreversibly alienated and the rights of the Defendants extinguished unlawfully, in defiance of existing court orders.
- 10.** It is the Applicants' case that the interests of justice, rule of law and the integrity of this court dictate that the Plaintiff be compelled to purge the contempt by returning the property to the status it was in as at 29th May 2024, and that the Managing Director of Kenya Railways Corporation should be directed to personally show cause why contempt proceedings should not be commenced against him.
- 11.** In response to the Motion, the Plaintiff through its Acting General Manager, Legal Services and Corporation Secretary, Stanley Gitari, swore a Replying Affidavit on 23rd June, 2025. He deponed that the Defendants have neither extracted, served, nor attached the status quo orders which the court gave on 29th May, 2024 so that the terms thereof can be seen by all.

- 12.** Nonetheless, he deponed, on 29th May 2024, the court issued orders directing that the prevailing status quo be maintained pending the hearing and determination of the Defendant's appeal before the Court of Appeal. As at that date, the status quo was that the Plaintiff/Respondent was in possession of the suit property, while the Defendants were restrained from trespassing upon, interfering with, or otherwise dealing with the property. This position, it was deposed, is clearly reflected in both the Plaintiff's pleadings and the judgment of the court delivered on 11th April 2024.
- 13.** He stated, for instance, that in its Plaint dated 6th July 2015, the Plaintiff averred that it had constructed buildings and other developments on the suit property, which it had leased to rent-paying tenants and that the Plaintiff's witness, Mr. Duncan Mwangi, further testified that the Plaintiff's predecessor, the East African Railways and Harbours Administration, and subsequently the Plaintiff itself, had used the suit property for various operational purposes, including as a Signal and Telegraph Workshop, a Signal Engineers' Workshop, and a storage facility, among other uses. He added that documentary evidence confirming these uses was duly attached.
- 14.** Further still, he deponed, in its submissions dated 1st August 2023, the Plaintiff reiterated that it remained in possession of the suit property; that this fact was also conceded to by the

1st Defendant during cross-examination by the Plaintiff's counsel and that they were unable to take possession because they found the Plaintiff already in occupation.

- 15.** The court, in its judgment dated 11th April 2024, affirmed that the Plaintiff had produced drawing plans clearly showing existing buildings and structures on the property. It was therefore evident, the court held, that as at the date of Legal Notice No. 440 of 1963, the land had been surveyed and reserved for use as the Industrial Area Signals and Telegraphs Workshop.
- 16.** He further deponed that in its judgment, the court ordered, among other reliefs, the cancellation of the Defendants' illegal title to the suit property and granted a permanent injunction restraining the Defendants/Applicants from any interference with its possession.
- 17.** He emphasized that, as matters stand, the prevailing *status quo* as at 29th May 2024, and as of the present date, remains that the Plaintiff is in possession and quiet enjoyment of the suit property, while the Defendants are restrained from trespassing upon or in any manner interfering with the same.
- 18.** Mr. Gitari maintained that, as demonstrated, the Plaintiff has not taken any step in violation or contempt of the subsisting status quo orders and that the Plaintiff has refrained from cancelling the Defendants' illegal title as directed by the

court in its judgment pending the hearing and determination of the Defendants' appeal.

- 19.** The Defendants, through Mr. Ali, swore a Supplementary Affidavit on 24th September 2025. He conceded that the Plaintiff was indeed in possession of the suit property prior to the issuance of this court's orders. However, he averred, in blatant and wilful disregard of the subsisting status quo orders, the Plaintiff, through its Managing Director, Mr. Philip Mainga executed an offer for lease dated 1st November 2024 in favour of Sagal Properties Limited.
- 20.** According to the Defendants, the said offer constitutes a clear act of contempt. They asserted that the contemnor's actions have since culminated in active construction works being undertaken on the suit property by the new tenant, thereby materially altering the status of the land.
- 21.** This, they argued, has caused them grave prejudice and amounts to a deliberate, contumacious defiance of the authority of this court. Such conduct, they contended, undermines the administration of justice and cannot be countenanced.
- 22.** Mr Ali urged the court to find the Plaintiff guilty of contempt of court, impose such punitive sanctions as the court may deem fit to uphold its dignity and authority, direct the Plaintiff to immediately cancel the unlawful lease granted to Sagal Properties Limited and take all necessary steps to

restore the suit property to its status *ante quo* as at 28th May 2024.

23. The Defendants/Applicants filed submissions in support of the Motion on 22nd August, 2025. Counsel submitted that the established test for civil contempt requires proof of clear and unambiguous terms of the orders, knowledge by the Respondent, and deliberate breach. Reliance in this respect was placed on the case of **Katsuri Limited vs Kapurchand Depar Shah [2016] eKLR**.
24. It was submitted that the consent order of 29th May 2024 directed maintenance of the prevailing status quo in respect of LR No. 209/6228 pending Civil Appeal No. E398 of 2024. As regards allegations of none service, the same was averred to be a red herring.
25. It was asserted that in **Shimmers Plaza Ltd vs National Bank of Kenya Ltd [2015] eKLR**, the Court of Appeal held that knowledge of a court order suffices for contempt and formal service is unnecessary where the party had actual knowledge. It was asserted that the Plaintiff, through counsel, recorded the consent and cannot deny knowledge.
26. Counsel submitted that the Court of Appeal in **Shimmers(supra)** also delved into the question of *status quo* orders noting that it essentially freezes the factual and legal position as at the date of the order so that neither party

alters the situation to the prejudice of the other pending determination.

27. Guided by **Bia Tosha Distributors Limited vs Kenya Breweries Limited & 6 Others [2023] KESC 14 (KLR)**, it was asserted that status quo orders must be strictly obeyed to ensure no party gets an undue advantage. Reliance was also placed on the case of **Cogno Ventures Limited & 4 Others vs Bia Tosha Distributors Limited & 15 Others; Kenya Breweries Limited & 6 Others (Interested Parties); Ferran & 24 Others (Contemnor) [2023] KESC 33 (KLR)**.

28. It was submitted that as at 29th May, 2024, the preserved position was that the Defendants were the registered proprietors, tenants were in occupation and paying rent, there was no perimeter fence, and no new third-party occupation and that the Plaintiff's subsequent eviction of tenants, introduction of a third party, and fencing of the land constitute a deliberate reconfiguration of the subject matter in breach of the consent.

29. Counsel asserted that it is trite and as stated in **Flora N. Wasike vs Destimo Wamboko [1988] eKLR**, a consent order has contractual effect and can only be set aside on limited grounds and that the consent recorded on 29th May 2024 was a post-judgment arrangement recorded by both parties to preserve the subject matter pending appeal.

- 30.** As to whether the Plaintiff should disclose the third party's identity, Counsel found in the affirmative referencing **Article 35** of the **Constitution** as read **Section 4(1)** of the **Access to Information Act**, which guarantees access to information held by public entities. Reliance in this respect was placed on the case of **Nairobi Law Monthly Company Limited vs Kenya Electricity Generating Company & Others [2013] eKLR.**
- 31.** Counsel asserted that the Plaintiff's failure to disclose the identity of the current occupant or to produce the lease/transfer documentation despite formal demand, is frustrating enforcement of the court's orders and must draw an adverse inference guided by **Section 112** of the **Evidence Act**, and explained by the court in **Britam Insurance Company Limited vs Njoki & another [2024] KEHC 14197 (KLR).**
- 32.** Counsel submitted that the Plaintiff ought to be restrained and compelled to restore the original status quo. It was argued that the Plaintiff's actions amount to a violation of the equitable doctrine of *lis pendens*, which prohibits any dealings with property that is the subject of ongoing litigation. Reference in this regard was made to **Section 52** of the (**now repealed**) **Indian Transfer of Property Act** and the case of **Ruthi Kinyua vs Patrick Thuita Gachure**

& Another [2015] eKLR, and **Bellamy vs Sabine [1857] 1 De J 566**.

33. The Plaintiff/Respondent filed its submissions on 23rd May 2024. Counsel argued that contempt proceedings are quasi-criminal in nature and therefore must satisfy a higher standard of proof than ordinary civil claims. Reliance was placed on **Thairu vs County Government of Machakos & 2 Others (Environment & Land Petition No. 137 of 2018) [2021] KEELC 2880 (KLR)**, where the court held that deliberate and willful disobedience must be proved to the required standard.
34. Counsel submitted that similar principles were emphasized in **Katsuri Limited vs Kapurchand Depar Shah [2016] eKLR** and **Sheila Cassatt Issenberg & Another vs Antony Machatha Kinyanjui [2021] eKLR**, where the courts underscored that both knowledge of the order and intentional defiance are essential elements of contempt.
35. According to Counsel, the status quo orders allegedly issued on 29th May 2024 were neither extracted nor served upon the Plaintiff, and their precise terms remain uncertain. The only record, it was argued, appears in counsel's handwritten notes taken during the court session. In the absence of a clear, extracted, and served order, the Plaintiff contended that it could not be said to have knowingly or willfully disobeyed the court's directions.

- 36.** Counsel maintained that in any event, the prevailing status quo as at 29th May 2024 was that it was lawfully in possession of the suit property, while the Defendants had been enjoined from trespassing or interfering with it. This position, counsel emphasized, is corroborated by the Plaintiff's pleadings, witness statements, and the judgment delivered on 11th April 2024, which acknowledged that the property had long been developed and occupied by the Plaintiff and its predecessor, the East African Railways and Harbours Administration
- 37.** On whether the Plaintiff had deliberately violated court orders, counsel maintained that it had not acted in contempt; that the Plaintiff had refrained from executing the order canceling the Defendants' title, awaiting the outcome of the appeal, and that in any event, that directive was addressed to the Chief Land Registrar. Consequently, it was submitted, no willful or deliberate disobedience could be attributed to the Plaintiff.
- 38.** Lastly, it was submitted that the court was *functus officio* and therefore lacked jurisdiction to entertain prayers seeking disclosure of tenants or reaffirmation of the doctrine of *lis pendens* after judgment. Citing **Telkom Kenya Limited vs John Ochanda (Suing on his own behalf and on behalf of 996 former employees of Telkom Kenya Limited) [2014] eKLR**, counsel argued that granting such post-

judgment relief would amount to reopening a finalized matter. For all these reasons, the Plaintiff urged that the Defendants' Motion be dismissed with costs.

Analysis and Determination

39. Having considered the Motion, Affidavits and submissions, the issues that arise for determination are:

- i. *Whether the Defendants/Applicants have demonstrated that there has been contempt of the Court Orders issued on 29th May, 2024?*
- ii. *Whether the Plaintiff/Respondent should be compelled to disclose the identity of the person(s) it has leased and/or transferred the suit property to and provide the relevant lease or transfer documents.*
- iii. *Whether the Plaintiff/Respondent should be restrained from transferring, leasing, licensing, or in any other way alienating the suit property pending final determination of the appeal?*

I. *Whether the Defendants/Applicants have demonstrated that there has been contempt of the Court Orders issued on 29th May, 2024?*

40. The Black's Law Dictionary (9th Edition) defines contempt of court as:

“Conduct that defies the authority or dignity of a Court. Because such conduct interferes with the

administration of justice, it is punishable usually by fine or imprisonment.”

41. Speaking to the same, the Supreme Court in **Republic vs Ahmad Abolfathi Mohammed & another [2019] eKLR** posited thus:

“ There is no doubt that an act in contempt of the Court constitutes an affront to judicial authority; and the Court has the liberty and empowerment to mete out penalty for such conduct, in a proper case. The object is, firstly, to vindicate the Court’s authority; secondly, to uphold honourable conduct among Advocates, in their standing as officers of the Court; and thirdly, to safeguard its processes for assuring compliance, so as to sustain the rule of law and the administration of justice”

42. Due to the repeal of the Contempt of Court Act, 2016, [**see The Kenya Human Rights Commission vs Attorney General & Another [2018] eKLR**] the substantive law governing contempt proceedings is the Judicature Act **Section 5** of which provides:

“(1) The High Court and the Court of Appeal shall have the same power to punish for contempt of court as is for the time being possessed by the High Court of Justice in England, and such power

shall extend to upholding the authority and dignity of subordinate courts.

(2) An order of the High Court made by way of punishment for contempt of court shall be appealable as if it were a conviction and sentence made in the exercise of the ordinary original criminal jurisdiction of the High Court.”

43. Additionally, **Section 29** of the **Environment and Land Court Act** under the title *offences* provides as follows:

“Any person who refuses, fails or neglects to obey an order or direction of the Court given under this Act, commits an offence, and shall, on conviction, be liable to a fine not exceeding twenty million shillings or to imprisonment for a term not exceeding two years, or to both.”

44. As a principle, courts do not act in vain and their orders must at all times be respected. This was articulated by the Court of Appeal in **Shimmers Plaza Limited v National Bank of Kenya Limited [2015]eKLR** referenced by the parties which stated thus:

“We reiterate here that court orders must be obeyed. Parties against whom such orders are made cannot be allowed to trash them with impunity. Obedience of Court orders is not optional, rather, it is mandatory and a person

does not choose whether to obey a court order or not. For as Theodore Roosevelt, the 26th President of the United States of America once said:-

“No man is above the law and no man is below it; nor do we ask any man’s permission to obey it. Obedience to the law is demanded as a right; not as a favour”.

The courts should not fold their hands in helplessness and watch as their orders are disobeyed with impunity left, right and centre. This would amount to abdication of our sacrosanct duty bestowed on us by the Constitution. The dignity, and authority of the Court must be protected, and that is why those who flagrantly disobey them must be punished, lest they lead us all to a state of anarchy.”

- 45.** It is trite that contempt proceedings are *quasi-criminal* in nature due to the severe consequences they attract. Consequently, the standard of proof in such proceedings is higher than the balance of probabilities in civil cases, although not as high as beyond reasonable doubt. As stated by the Supreme Court in ***Republic vs Ahmad Abolfathi Mohammed & another [2018] eKLR:***

“The standard of proof in cases of contempt of Court is well established. In the case of Mutitika

**v. Baharini Farm Limited [1985] KLR 229, 234
the Court of Appeal held that:**

“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.”

46. In order to succeed in civil contempt proceedings, the Applicant has to prove that the terms of the order were clear, unambiguous and binding on the Respondent; knowledge of

these terms by the Respondent; failure by the Respondent to comply with the terms of the order; and deliberate conduct by the Respondent.

- 47.** By way of background, the Plaintiff instituted this suit seeking declaratory and injunctive reliefs with respect to the property formerly known as the Kenya Railways Plant Depot Managers Office (DPM) Building off Kitui Road, now referred to as L.R. No. 209/6228, measuring approximately 0.9722 hectares.
- 48.** The Plaintiff claimed to be the lawful owner of the property, having acquired it from its predecessor, the East African Railways and Harbours Administration, through Legal Notices No. 24 of 1986, which vested the land in the Corporation.
- 49.** The Plaintiff averred in the Plaint that it subsequently discovered that vide a letter dated 25th August 1998, the Commissioner of Lands, without lawful justification, purportedly issued a letter of offer of allotment of the suit property to the 1st and 2nd Defendants which they accepted. On the 5th March 2007, the Commissioner of Lands purported to issue the Defendants a Grant in respect thereof.
- 50.** In its judgment, the court found in favour of the Plaintiff and granted several reliefs including a declaration that the Plaintiff is the rightful, lawful, and valid owner of the suit property known as L.R. No. 209/6228; a declaration that the

Grant No. I.R. 105175 issued to the 1st and 2nd Defendants was null and void and incapable of vesting any legal interest in them and an order directing the Chief Land Registrar to cancel the title registered in the Defendants' names.

- 51.** The court also issued a permanent injunction restraining the Defendants, their agents, or assigns from trespassing upon or interfering with the Plaintiff's possession and use of the property.
- 52.** On 29th May, 2024, the parties were before this court wherein by consent it was agreed that the *status quo* would be maintained pending the hearing and determination of the appeal. It was recorded thus:

“By consent the prevailing status quo to be maintained pending the hearing and determination of the appeal.”

- 53.** The Defendants contend that despite the clear, express, and binding nature of the orders aforesaid, the Plaintiff has evicted the tenants who were occupying the property and granted access and possession thereof to a third party, who is not party to these proceedings, and that the Plaintiff has refused to disclose to the Defendants the identity of the third parties and the terms under which they took possession.

54. They assert that the Plaintiff has disposed off or transferred the property or is in the process of doing so which will render the appeal an academic exercise and nugatory.
55. The Plaintiff, on its part, denies any contravention of the said orders and argues that no credible evidence has been presented to establish the same. It asserts that the status quo orders have never been extracted by the Defendants and served on them nor attached to the Motion.
56. To begin with, it is uncontested that on 29th May, 2024, the parties by consent agreed to have the status quo maintained. It need not be gainsaid that a consent order is a binding order of the court. In **Frank Phipps & Pearl Phipps vs Harold Morrison SCCA 86 of 2008** Harris JA stated:

“As a general rule, an order obtained by the consent of the parties is binding.

57. Similarly, in **Wildung vs Sanderson [1897] 2 CL 534**, it was stated:

“A consent Judgment or order is meant to be the formal result and expression of an agreement already arrived at by the parties to the proceedings embodied in an order of the Court. The fact of its being so expressed puts the parties in a different position from the position of those who have simply entered into an ordinary

agreement. It is of course, enforceable while it stands, and a party affected by it cannot if he concludes, he is entitled to relief, simply wait until it is sought to be enforced against him, and then raised by way of defence. The matters in respect of which he desires to be relieved. He must, when he has completed obey it, unless and until he can get it set aside in proceedings duly constituted for this purpose.”

- 58.** The consent order in question has neither been challenged nor set aside, and therefore remains a valid and binding order of the court. The first issue for consideration is whether that order was clear and unequivocal. By the terms of the consent, it was agreed that status quo would be maintained pending the hearing and determination of the pending appeal. The language of the order is plain and unambiguous.
- 59.** Turning now to the element of knowledge, it is essential to restate the shift in jurisprudence that has occurred over time, namely, that knowledge of a court order now supersedes the need for personal service accompanied by a penal notice. This principle was authoritatively affirmed by the Court of Appeal in ***Shimmers Plaza Limited vs National Bank of Kenya Limited (Civil Appeal No. 33 of***

2012) [2015] KECA 945 (KLR) (Civ) (18 February 2015)
(Ruling), where the court held as follows:

“This Court has slowly and gradually moved from the position that service of the order along with the penal notice must be personally served on a person before contempt can be proved. This is in line with the dispensations covered under 81.8 (1) (supra).

Kenya's growing jurisprudence right from the High court has reiterated that knowledge of a court order suffices to prove service and dispense with personal service for the purposes of contempt proceedings. For instance, Lenaola J in the case of Basil Criticos Vs Attorney General and 8 Others [2012] eKLR pronounced himself as follows:-

“...the law has changed and as it stands today knowledge supersedes personal service.....where a party clearly acts and shows that he had knowledge of a Court Order; the strict requirement that personal service must be proved is rendered unnecessary”

60. In the present case, the impugned orders were recorded by consent of the parties, with the Plaintiff being represented by learned counsel, Mr. Obok. There has been no suggestion

that the consent was entered into without the Plaintiff's authority.

- 61.** Indeed, the Plaintiff's deponent has not denied knowledge of the orders. The argument in this regard is limited to the claim of lack of personal service and penal notice. Guided by the exposition in ***Shimmers Plaza Limited (supra)***, the same must fail.
- 62.** Turning now to the question of whether a breach of the court's orders has been established, it is essential to recall that the orders in question expressly required that the *status quo* be maintained. The **Black's Law Dictionary, Butter Worth's 9th Edition**, defines status quo as:

'the situation as it exists'.

- 63.** Discussing this, the court in ***Republic vs National Environment Tribunal, Ex - Parte Palm Homes Limited & Another [2013] eKLR***, noted:

"When a court of law orders or a statute ordains that the status quo be maintained, it is expected that the circumstances as at the time when the order is made or the statute takes effect must be maintained. An order maintaining status quo is meant to preserve the existing state of affairs...Status quo must therefore be interpreted with respect to existing factual scenario..."

64. Additionally, in the case of *Kenya Airline Pilots Association (KALPA) vs Co - Operative Bank of Kenya Limited & another [2020]eKLR* it was stated:

“By maintaining the status quo, the court strives to safeguard the situation so that the substratum of the subject matter of the dispute before it is not so eroded or radically changed or that one of the parties before it is not so negatively prejudiced that the status quo ante cannot be restored thereby rendering nugatory its proposed decision.”

65. The critical inquiry, therefore is what was the prevailing *status quo* at the time those orders were issued? From the record, and as conceded by the 1st and 2nd Defendants at the time of the issuance of the status quo orders, the Plaintiff was, and still is, in physical possession of the suit property, whereas the title thereto is with the 1st and 2nd Defendants.

66. The Plaintiff has consistently used the premises for its operational purposes and, in part, leased some of the structures to rent-paying tenants in the ordinary course of its business. This factual position is conceded by the Defendants.

67. Their main contention is that the Plaintiff has, since the issuance of the status quo orders, leased out the property to a third party, allegedly Sagal Properties Limited without

disclosing this arrangement to them, and that such action constitutes a breach of the status quo orders. They have produced a lease agreement dated 1st November 2024 in support of that claim. This agreement has not been disputed.

- 68.** In the court's assessment, the execution of the said lease does not, in itself, constitute a breach of the subsisting status quo orders. The Plaintiff has, from the outset, been in possession of the property, utilizing it and deriving income through leasing portions thereof.
- 69.** The court is therefore not persuaded that the substitution or introduction of tenants within the property materially altered the factual or legal status quo. Such tenancy arrangements merely reflect the Plaintiff's continued exercise of rights incidental to its possession. Crucially, it does not amount to a transfer of ownership to a third party.
- 70.** Accordingly, the act of leasing portions of the property cannot be deemed a variation of the status quo or a contemptuous act against the authority of the court.
- 71.** The 1st and 2nd Defendants have asked the court, guided by **Article 35** of the **Constitution** to compel the Plaintiff to furnish them with the identity of the persons to whom it has leased and/or transferred the land. The Constitution grants citizens' access to information as a constitutional right. In that regard, **Article 35** of the **Constitution** provides that:

“1)Every citizen has the right of access to-
a)information held by the State; and
b)information held by another person and
required for the exercise or protection of any
right or fundamental freedom.
2)Every person has the right to the correction or
deletion of untrue or misleading information that
affects the person.
3The State shall publish and publicize any
important information affecting the nation.”

72. For purposes of actualizing **Article 35**, parliament enacted the Access to Information Act 2016. **Section 4** of the Act reaffirms the right to access information whereas **Section 5** mandates a public entity to facilitate access to information held by it.

73. In the case of **Trusted Society of Human Rights Alliance & 3 Others vs Judicial Service Commission [2016] eKLR**, the court reaffirmed the position that the Constitution does not limit the right to access information when it stated as follows:

“[270] Article 35(1) (a) of the Constitution does not seem to impose any conditions precedent to the disclosure of information by the state. I therefore agree with the position encapsulated in The Public’s Right to Know: Principles on

Freedom of Information Legislation -Article 19 at page 2 that the principle of maximum disclosure establishes a presumption that all information held by public bodies should be subject to disclosure and that this presumption may be overcome only in very limited circumstances and that public bodies have an obligation to disclose information and every member of the public has corresponding right to receive information. Further the exercise of this right should not require individuals to demonstrate a specific interest in the information.”

74. From the foregoing, it is evident that the right to access information is a constitutionally protected entitlement. The Defendants urge the court to compel the Plaintiff to disclose the identity of the person or entity to whom it has allegedly transferred or leased the property.
75. However, through their Supplementary Affidavit, the Defendants have already annexed the very lease agreement executed between the Plaintiff and Sagal Properties Limited, which they rely upon as proof of the alleged transaction. They have not referred to or provided evidence of any other lease or transfer. In these circumstances, the court finds that the request for disclosure has been overtaken by events and is therefore moot.

76. The Defendants seek orders restraining the Plaintiff from any form of alienation of the suit property pending determination of the appeal, contending that such actions would contravene the doctrine of *lis pendens*. The Plaintiff, however, maintains that this court is *functus officio* and therefore lacks jurisdiction to issue further restraining orders.

77. The doctrine of *lis pendens*, originally codified under the repealed **Section 52** of the **Indian Transfer of Property Act, 1882**, remains a persuasive common law and equitable principle. Its purpose is to preserve the subject matter of litigation pending its final determination by preventing any transfer or dealing that could prejudice parties' rights or render the court's eventual decision nugatory.

78. Speaking to the same, the Court of Appeal in **Co-operative Bank of Kenya Limited vs Patrick Kangethe Njuguna & 5 others [2017] KECA 79 (KLR)** noted:

“The Supreme Court of India in the case of KN Aswathnarayana Setty (D) Tr. LRs. & Others v. State of Karnataka & Others [2013] INSC 1069 stated that the doctrine is based on the legal maxim ‘ut lite pendente nihil innovetur’ (During a litigation nothing new should be introduced). The doctrine is couched equity, good conscience or justice because they rest upon an equitable and just foundation that it

will be impossible to bring an action or suit to a successful termination if alienations are permitted to prevail.”

79. In this case, and as already found, there is no evidence that the Plaintiff has transferred or attempted to alienate the suit property contrary to this principle. The substitution or renewal of tenants does not constitute a transfer of proprietary rights and therefore cannot be construed as a breach of *lis pendens*. Moreover, the subsisting status quo orders sufficiently preserve the property, and any attempt to transfer it would attract contempt sanctions.

80. Regarding the issue of *functus officio*, although the trial court becomes functus officio on the merits once judgment is delivered, it retains residual jurisdiction to safeguard the subject matter and ensure compliance with its orders, such as the status quo orders granted.

81. In the end, the court finds that the Motion is unmerited. The same is dismissed with costs.

Dated, signed and delivered virtually in Nairobi this 20th day of November, 2025.

**O. A. Angote
Judge**

In the presence of;

Mr. Obok for Plaintiff/Respondent

Mr. Mwangi for Ms Githogori for Defendant/Applicant

Court Assistant - Tracy

ORIGINAL