



**Dodhia v Kung'u & another (Environment and Land Case  
1577 of 2014) [2026] KEELC 1336 (KLR) (9 March 2026) (Ruling)**

Neutral citation: [2026] KEELC 1336 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT AND LAND CASE 1577 OF 2014**

**CG MBOGO, J**

**MARCH 9, 2026**

**BETWEEN**

**AKASH HIMATLAL DODHIA ..... PLAINTIFF**

**AND**

**DOROTHY MARGARET WANJIKU KUNG'U ..... 1<sup>ST</sup> DEFENDANT**

**CHIEF LAND REGISTRAR ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

1. Before this court for determination is the notice of motion dated 27<sup>th</sup> August, 2025 filed by the plaintiff/applicant and it is expressed to be brought under Section 5 of the *Judicature Act*, Rules 23.3 & 81.4 of the Civil Procedure Rules of the High Court of England seeking the following orders:-
  1. Spent.
  2. The 1<sup>st</sup> defendant be and is hereby convicted of contempt of court for disobeying the judgment and decree of this court of 12<sup>th</sup> October, 2017.
  3. The property belonging to the 1<sup>st</sup> defendant be and is hereby attached and sold for being in contempt of the court or in the alternative the 1<sup>st</sup> defendant be committed to prison for a term not exceeding 6 months.
  4. The court be and is hereby pleased to issue any such or further punitive orders in respect of the contempt of the court as may be necessary for the ends of justice to be met and towards the protection of the dignity and authority of the court.
  5. The 1<sup>st</sup> defendant to comply with the decree of 12<sup>th</sup> October 2017 by handing over, through her servants, agents or beneficiaries, possession of the property known as LR. No. 7741/422 to the plaintiff forthwith.



6. The OCS Spring Valley Police Station to ensure the smooth and peaceful handover of possession of the property known as LR no. 7741/422 to the plaintiff.
2. The application is premised on the grounds inter alia that this court delivered judgment on 12<sup>th</sup> October, 2017 in his favour. The application is further supported by the affidavit of the plaintiff/ applicant seemingly sworn on 20<sup>th</sup> August, 2025. The plaintiff/ applicant deposed that following the judgment delivered on 12<sup>th</sup> October, 2017 the 1<sup>st</sup> defendant/contemnor refused to transfer the suit property to him and eventually the chief registrar lands effected the said transfer. Further, that there was an order for specific performance for payment of the balance of the purchase price which the 1<sup>st</sup> defendant/ contemnor has refused or neglected to confirm the bank account details. Having refused to confirm the said payments, his advocates paid the balance of the purchase price, but the same was returned.
3. The plaintiff/applicant deposed that despite the suit property being registered in his name, he has been unable to pay the remainder of the purchase price, and that he has also been unable to take possession thereof. He deposed that the 1<sup>st</sup> defendant is aware of the orders of this court requiring her to fulfil her obligations under the agreement but has chosen to ignore the same. The plaintiff/applicant deposed that it is now more than 8 years since the judgment and decree were issued, and it is only fair that the orders are granted.
4. In response thereto, the 1<sup>st</sup> defendant/contemnor filed the notice of preliminary objection dated 10<sup>th</sup> November, 2025 challenging the instant application on the following grounds:-
  - i. The applicant has primarily relied on the judgment that was delivered by the court in his favour dated 12<sup>th</sup> October, 2017. As such, Order 22 of the Civil Procedure Rules does not provide for contempt of court as one of the modes of enforcing such a judgment.
  - ii. The applicant is misusing the law of contempt for a purpose that was never meant to be achieved through such a procedure.
  - iii. That as judgment was rendered by the court in this suit on 12<sup>th</sup> October, 2017 the filing of an application notice in the same suit amounts to an abuse of the process of the court since it is not open to the plaintiff to file an application notice on a suit that was conducted by way of a delivery of a judgment on 12<sup>th</sup> October, 2017.
  - iv. That the application is also fatally defective as it has introduced a party known as the applicant and another party known as the 1<sup>st</sup> defendant/contemnor which parties are different from the parties that have always existed in this suit from inception upto the date of the delivery of judgment on 12<sup>th</sup> October, 2017.
5. The application and the preliminary objection were canvassed through written submissions. The plaintiff/applicant filed his written submissions dated 25<sup>th</sup> November, 2025 and 10<sup>th</sup> December, 2025. The 1<sup>st</sup> defendant/contemnor filed her written submissions dated 9<sup>th</sup> December, 2025. And on the 26<sup>th</sup> January, 2026 the counsel for the parties herein highlighted their submissions.
6. I have considered the application, the notice of preliminary objection and the written submissions filed. I will first deal with the preliminary objection as it may as well dispose the application.



7. Law, J.A. in *Mukisa Biscuits Manufacturing Company Limited -vs- West End Distributors* (1969) EA 696 stated as follows:-

“So far as I am aware, a preliminary objection consists of a point of law which has been pleaded or which raises by clear implication out of pleadings, and which if argued as a preliminary point, will dispose of the suit. Examples are an objection to jurisdiction of the court, a plea of limitation or a submission that the parties are bound by the contract giving rise to the suit to refer the matter to arbitration...”

8. Also, the case of *John Musakali vs. Speaker County of Bungoma & 4 others* (2015) eKLR, it was held that: -

“The position in law is that a preliminary objection should arise from the pleadings and on the basis that facts are agreed by both sides. Once raised the preliminary objection should have the potential to disposing of the suit at that point without the need to go for trial. If, however, facts are disputed and remain to be ascertained, that would not be a suitable preliminary objection on a point of law.”

9. Further, Ojwang J (As he then was) in *Oraro -vs- Mbaja* (2005) KLR 141 where after quoting the statement of Law, J.A. in the *Mukisa Biscuits* case (supra) went on to state that: -

“A 'preliminary objection' correctly understood is now well defined as and declared to be a point of law which must not be blurred by factual details liable to be contested and in any event, to be proved through the process of evidence. Any assertion which claims to be a preliminary objection, yet it bears factual aspects calling for proof, or seeks to adduce evidence for its authentication is not, as a matter of legal principle, a true preliminary objection which the court should allow to proceed. Where a court needs to investigate facts, a matter cannot be raised as a preliminary point. . .

Anything that purports to be a preliminary objection must not deal with disputed facts, and it must not itself derive its foundation from factual information which stands to be tested by normal rules of evidence...”

10. From the above cited authorities, it is clear that for a preliminary objection to succeed, the same must consist of a pure point of law, with the facts not disputed by the opposing party. Also, a preliminary objection should possess the ability to dispose of the issue that is before court without going to trial and lastly, the same ought to stem from and not outside of pleadings.

11. Grounds one and two of the preliminary objection were that Order 22 of the Civil Procedure Rules does not provide for contempt of court as a mode of enforcing the judgment of the court. It is not in dispute that judgment was delivered in this matter on 12<sup>th</sup> October, 2017. Looking at the provisions on which the instant application is anchored, the plaintiff/applicant has not made any reference to Order 22. However, the 1<sup>st</sup> defendant/contemnor argued that since there was no order requiring the handing over of the suit property to the plaintiff/applicant, it was not open for him to craft his own preferred orders.

12. Order 22 Rule 29 (1) of the Civil Procedure Rules provides:-

“Where a decree is for the delivery of any immovable property, possession thereof shall be delivered to the party to whom it has been adjudged, or to such person as he may appoint to



receive delivery on his behalf, and, if necessary, by removing any person bound by the decree who refuses to vacate the property.”

13. Thus on this ground, I am satisfied that the plaintiff/applicant ought to move the court accordingly in seeking the eviction of the 1<sup>st</sup> defendant/contemnor. I say so bearing in mind that he now has a certificate of title registered in his name which was issued on 22<sup>nd</sup> January, 2025.
14. On the third ground, the 1<sup>st</sup> defendant/contemnor argued that the filing of an application notice in the same suit amounts to an abuse of the process of the court since it is not open to the plaintiff to file an application notice on a suit that was conducted by way of a delivery of a judgment on 12<sup>th</sup> October, 2017. First and foremost, this is not a pure point of law. Secondly, I have had difficulty trying to understand what the 1<sup>st</sup> defendant/ contemnor meant by filing an application in a suit where judgment has already been delivered. Let me point out that Section 29 of the Environment and Land Court clearly states that:-

“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.”
15. This provision of the law grants this court the power to punish for willful disobedience of its orders as when it arises. The application of the same provision transcends even after judgment. While the 1<sup>st</sup> defendant/contemnor submitted that this is unheard of, I will advise her and the learned counsel to have a look at the following cases: Kooba Kenya Limited v County Government of Mombasa [2017] KEHC 2966 (KLR), Angello Costabir & another v Hussein Ali Odey & 4 others [2019] KEHC 2004 (KLR), Njenga v Munyua & another [2023] KEELC 16286 (KLR), and Kenya Railways Corporation v Ali & another; Chief Land Registrar (Interested Party) [2025] KEELC 8074 (KLR).
16. On the fourth ground, the 1<sup>st</sup> defendant/contemnor argued that the suit is defective for introducing parties who are different from the parties that existed in the main suit. I presume by this she inferred to the new parties as applicant and 1<sup>st</sup> defendant/contemnor instead of the plaintiff and the 1<sup>st</sup> defendant. Even to say the least, this ground is in and of itself very poorly thought out and drafted in carelessness. Seemingly, and from the submissions filed by the 1<sup>st</sup> defendant/contemnor, this ground was not argued or supported further. I would presume perhaps this was the reason it was abandoned.
17. From the above, I find that the notice of preliminary objection dated 10<sup>th</sup> November, 2025 does not raise pure points of law and the same is hereby dismissed with costs to the plaintiff/applicant.
18. Turning to the application, the plaintiff/applicant moved the court seeking its intervention on that the 1<sup>st</sup> defendant/contemnor be found in contempt for willfully disobeying the orders of the court in the judgment delivered on 12<sup>th</sup> October, 2017. I have read the judgment and the decree issued on 14<sup>th</sup> February, 2018. According to the decree, the following orders were pronounced:-
  1. That the 1<sup>st</sup> defendant was the author of her own misfortune and her claim for damages is dismissed for mental anguish from the plaintiff.
  2. That the 1<sup>st</sup> defendant’s counterclaim is dismissed with costs to the plaintiff.
  3. That it is hereby declared that there exists a valid sale agreement between the plaintiff and the first defendant.
  4. That a permanent injunction is issued restraining the first defendant whether by herself, her beneficiaries, employees and/or agents, from selling, transferring, alienating, developing



or whatsoever dealing with the suit property being LR. Number 7741/422, Nairobi, a subdivision of L.R No. 7741/163, Nairobi.

5. That an order is issued compelling the second defendant to issue a certificate of title and/or a provisional certificate of title in respect of the suit property.
6. That an order of specific performance is hereby issued compelling the first defendant to transfer the suit property to the plaintiff.
7. That an order is issued requiring the deputy registrar of the high court to execute any document necessary for the:-
  - i. Procurement of a certificate of title and/or a provisional certificate of title to the suit property.
  - ii. The issuance of a deed plan for the suit property.
  - iii. Transfer of the suit property to the plaintiff.
8. That the plaintiff will have the costs of this suit to be borne by the 1<sup>st</sup> defendant.
9. That the plaintiff will cooperate with the 1<sup>st</sup> defendant and withdraw the caveat at the time of registration of the transfer of the suit property in his favour.
19. The plaintiff/applicant deposed that the 1<sup>st</sup> defendant/contemnor refused to transfer the suit property to him and eventually the chief registrar lands effected the said transfer. This is evidenced by the transfer instruments signed by the deputy registrar of this court. He also argued that there was an order for specific performance for payment of the balance of the purchase price which the 1<sup>st</sup> defendant/contemnor has refused or neglected to confirm the bank account details. Having refused to confirm the said payments, his advocates paid the balance of the purchase price, but the same was returned.
20. The plaintiff/applicant further contended that despite the suit property being registered in his name, he has been unable to pay the remainder of the purchase price, and he has also been unable to take possession thereof. On the issue of actual possession of the suit property, Order 22 Rule 29 of the Civil Procedure Rules gives proper instructions on what a party is required to do, and contempt proceedings may not be the appropriate avenue. In *Mutitika v Baharini Farm Ltd* [1985] KECA 60 (KLR), the court of appeal observed as follows:-

“The principle propounded in *Re Maria Annie Davies* [1889] 21 QBD 236, and 239, that-

“Recourse ought not to be had to process of contempt in aid of a civil remedy where there is any other method of doing justice. The observations of the later Master of the Rolls in the case of *Re Clement* seem much in point: ‘It seems to me that this jurisdiction of committing for contempt being practically arbitrary and unlimited, should be most jealously and carefully watched, and exercised, if I may say so, with the greatest reluctance and the greatest anxiety on the part of judges to see whether there is not other mode which is not open to the objection of arbitrariness, and which can be brought to bear upon the subject. I say that a judge should be most careful to see that the cause cannot be mode of dealing with persons brought before him.

On accusations of contempt should be adopted. I have myself had on many occasions to consider this jurisdiction, and I have always thought that, necessary though it be, it is necessary only in the sense in which extreme measures are sometimes necessary to preserve men’s rights, that is, if no other pertinent remedy can be found. Probably that will be



discovered after consideration to be the true measure of the exercise of the jurisdiction must be born in mind.”

21. More importantly, the judgment and the decree did not expressly provide for the handing over of the suit property. However, I will seek to adopt a deeper interpretation and meaning of order no. 3 where the court established that there existed a valid sale agreement between the parties. In my understanding, the parties remained bound by the terms of the said agreement as it was found to be valid. I say this for the reason that the plaintiff/applicant moved the court on account of failure and refusal by the 1<sup>st</sup> defendant/ contemnor to complete the sale. In enforcing order 3, the 1<sup>st</sup> defendant/contemnor needed to complete the sale through receipt of the balance of the purchase price thereof. From the record, the transfer of the suit property has already been effected and what remains is the balance of the purchase price which the plaintiff/applicant is desirous to pay. The documents annexed to the supporting affidavit bears witness to the plaintiff/applicant’s intention to clear and settle the balance of the purchase price.
22. In Republic v Mohammed & another [2019] KESC 47 (KLR), the Supreme Court held as follows:-

“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.” With emphasis
23. In the case of Kenya Human Rights Commission v Attorney General; Law Society of Kenya (Interested Party) [2018] KEHC 9656 (KLR), it was observed:

“57. Article 159 of *the constitution* recognizes the judicial authority of courts and tribunals established under *the constitution*. Courts and tribunals exercise this authority on behalf of the people. The decisions courts make are for and on behalf of the people and for that reason, they must not only be respected and obeyed but must also be complied with in order to enhance public confidence in the judiciary which is vital for the preservation of our constitutional democracy. The judiciary acts only in accordance with *the constitution* and the law (Article 160) and exercises its judicial authority through its judgments decrees orders and or directions to check government power, keep it within its constitutional stretch hold the legislature and executive to account thereby secure the rule of law, administration of justice and protection of human rights. For that reason, the authority of the courts and dignity of their processes are maintained when their court orders are obeyed and respected thus courts become effective in the discharge of their constitutional mandate.”
24. This court frowns upon litigants who are intent to undermine the rule of law and the administration of justice. It is now close to 9 years since judgment was delivered, yet the 1<sup>st</sup> defendant/contemnor has ‘sworn’ not to complete the sale. What she implies, especially in the letter dated 20<sup>th</sup> May, 2025 written by her advocate is akin to someone saying that ‘there is nothing you can do to me’ which is total disregard and disrespect to the overriding objective of this court which is to uphold substantive justice.



25. It is my finding that the 1<sup>st</sup> defendant/contemnor is in contempt of the judgment of this court delivered on 12<sup>th</sup> October, 2017 and the decree issued on 14<sup>th</sup> February, 2018 pursuant to Order 3 thereof. The notice of motion dated 27<sup>th</sup> August, 2025 has merit and I grant the following orders:-

- i. A notice to show cause to issue forthwith to the 1<sup>st</sup> defendant/contemnor to show cause why she should not be committed to jail or punished.
- ii. The 1<sup>st</sup> defendant/contemnor to appear in court on 22<sup>nd</sup> April, 2026 at 2.30 p.m. for the said notice to show cause.
- iii. Failure to comply with order (ii) above, warrants of arrest to issue.
- iv. The plaintiff/applicant is entitled to the costs of this application. The same to be borne by the 1<sup>st</sup> defendant/contemnor.

It is so ordered.

**DATED, SIGNED & DELIVERED VIRTUALLY THIS 9<sup>TH</sup> DAY OF MARCH, 2026.**

**HON. MBOGO C.G.**

**JUDGE**

09/03/2026.

In the presence of:

Ms. Benson Agunga - Court assistant

Mr. Ochieng for the Plaintiff/Applicant

Mr. Kabebe holding brief for Mr. Gikandi for the 1<sup>st</sup> Defendant /Contemnor

