

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MILIMANI
ELC CASE NO E063 OF 2022

GEORGE KANYI1ST
PLAINTIFF
STANLEY KIMANI2ND
PLAINTIFF SANJAY SHIVJI.....
.....3RD PLAINTIFF
ALEXANDER MUEMA4TH

PLAINTIFF VERSUS

NEXTGEN OFFICE SUITES LIMITED.....1ST
DEFENDANT
THE CHIEF LAND REGISTRAR2ND
DEFENDANT PRINCIPAL SECRETARY,
MINISTRY OF LANDS & PHYSICAL
PLANNING.....3RD
DEFENDANT
MINISTRY OF LANDS &
PHYSICAL PLANNING.....4TH
DEFENDANT THE COUNTY GOVERNMENT,
NAIROBI CITY COUNTY.....5TH
DEFENDANT

RULING

1. Vide the Motion dated 12th November, 2024, brought pursuant to the provisions of **Articles 10, 159, 232 and 259**

of the **Constitution, Section 29** of the **Environment And Land Court Act, 2011, Sections 3, 3A** of the **Civil Procedure Act, Sections 2 and 5** of the **Judicature Act, Order 52 Rule 2(2)** of the **Rules of the Supreme Court of England 1965, the Contempt of Court Act 1981 & Part 8 Civil Procedure (Amendment No. 2) Rules, 2012, Laws of England**, the Plaintiffs/Applicants seek the following reliefs:

- i. That Notice to show cause do issue to Rameshkumar Kantilal Amlani to show cause why he should not be committed to civil jail and ordered to pay sum of monies as penalty for being in contempt of court for deliberately defying and violating the clear, concise and unequivocal ruling of this Honourable Court given on 16th March,2023 and order issued on 26th April, 2023.*
- ii. That this Honourable Court do make a finding that Rameshkumar Kantilal Amlani is in contempt of court for deliberately defying and violating the clear, concise and unequivocal Ruling of this court given on 16th March, 2023 and order issued on 26th April, 2023.*
- iii. That this Honourable Court be pleased to order that Rameshkumar Kantilal Amlani be arrested and brought before this Honourable Court for*

sentencing and/or committal to civil jail for a period that the court may determine and be ordered to personally pay the sum of monies the court may determine as a penalty for deliberately defying and violating the clear, concise and unequivocal Ruling of this Honourable Court given on 16th March, 2023 and order issued on 26th April, 2023.

iv. That the Costs of this Application be borne personally by the Contemnor Rameshkumar Kantilal Amlani.

2. The Motion is supported by the Affidavit of Alexander Muema, the 4th Plaintiff/Applicant, sworn with the authority of his co-Plaintiffs/Applicants.
3. He deponed that by its ruling delivered on 16th March 2023, this court directed that, pending the hearing and determination of the suit, the Plaintiffs incorporate a corporation in respect of Nextgen Commercial Center erected on L.R No. 209/18648, Nairobi.
4. It was deposed that the said corporation was to comprise the owners and purchasers of the units within Nextgen Commercial Center and was intended to manage the affairs of the common areas and common interests of all unit owners and purchasers in compliance with the provisions of the **Sectional Properties Act, 2020**.

5. The court further ordered that, other than the process of establishing and converting all leases into sectional units pursuant to the law, the 1st Defendant was prohibited from dealing with the property known as Nextgen Commercial Center erected on L.R No. 209/18648, pending the hearing and determination of the suit.
6. The Applicant averred that all parties were duly represented by Counsel during the delivery of the ruling and were aware of the court's orders. Notwithstanding the foregoing, he explained, the cited contemnor has, proceeded to deal with the property other than in the process of conversion of the leases into sectional units as required by law.
7. According to the Applicant, there are numerous entries reflected in the land register relating to L.R No. 209/18648 which, on their face, demonstrate dealings undertaken after delivery of the ruling and issuance of the court's orders.
8. He deponed, on the advice of his advocates which he verily believes to be correct, that the conduct of the cited alleged contemnor amounts to prima facie contempt of court and a violation of the rule of law. He further deponed that such conduct ought to be curtailed immediately upon detection.
9. The Applicant deponed that the dignity of this court is at stake, and unless the court intervenes, will continue being so, as the alleged contemnor has, through acts of disobedience, defied the court's ruling and Order.

- 10.** In response to the Motion, Rameshkumar Kantilal Amlani, a director of the 1st Defendant/Respondent swore a replying affidavit on 4th June, 2025. He stated that the development of the suit property, Nextgen Commercial Center erected on L.R No. 209/18648, was financed by Equity Bank, which holds the mother title under a charge created in or about 2012 and retains custody thereof and that the development comprises of close to 400 units, all of which are charged to the financier and are partially discharged upon sale.
- 11.** He explained that prior to this court's ruling of 16th March 2023, the 1st Defendant solely serviced the credit facility from the proceeds of sale of the units. Upon payment of the full purchase price for any unit, the financier executed partial discharges and sub-leases were prepared and registered. He stated that the financier had appointed project lawyers, initially Miller & Company Advocates and presently Kimani & Michuki Advocates, who prepare the respective sub-leases and partial discharges and attend to the registration process.
- 12.** He deponed that purchasers, including the Plaintiffs, acquired units by paying a deposit upon execution of a letter of offer and agreement for sale and completed payment in installments as agreed.
- 13.** It is the 1st Defendant's case that upon confirmation of full payment, the 1st Defendant would receive the prepared sub-leases from the project lawyers for execution and return

them for further processing. He stated that upon execution and return of the sub-leases, his role on behalf of the 1st Defendant ceased.

- 14.** Thereafter, it was stated, the purchasers would pay legal fees, stamp duty, and other incidental statutory payments directly to the project lawyers, who would undertake registration at their convenience without further involvement from him. He added that some executed sub-leases remain pending at the project lawyers' offices awaiting settlement of requisite legal and statutory fees by individual purchasers.
- 15.** He conceded that four entries had been made in respect of Unit Numbers 11, 25, 49 and 38. Of these, three entries relating to Units 11, 25 and 49 were made in favour of Sanjay Jadayi Shivji, the 3rd Plaintiff/Applicant herein, who authorized the 4th Plaintiff to swear the supporting affidavit.
- 16.** He deponed that the 3rd Plaintiff had paid deposits for those units under a tenancy-to-purchase scheme prior to the suit and later transitioned to a financed purchase. He confirmed that he executed the respective sub-leases for Units 11, 25 and 49 on behalf of the 1st Defendant on 9th June 2021.
- 17.** The 3rd Plaintiff thereafter independently engaged the project lawyers, culminating in registration of the sub-leases in his favour after the injunction ruling and order of 16th March 2023. He contended that the 3rd Plaintiff should not be

permitted to approbate and reprobate by seeking to enforce orders which he has allegedly aided in defying.

- 18.** With regard to Unit No. 38, he deponed that the unit was initially purchased by Euro Collections Limited on or about 18th April 2013. The purchase price was fully paid in installments between 2011 and 2016. On or about 2022, a Deed of Novation was executed between Euro Collections Limited and Maurice Onyango Owich, transferring Unit 38 to the latter and that he executed the sub-lease in favour of Maurice Onyango Owich and forwarded it to the project lawyers on 11th October 2022.
- 19.** The 1st Defendant Director deposed that on or about 21st October 2022, Maurice Onyango Owich made disbursement payments and executed a consent to charge in respect of the unit, which was forwarded to the project lawyers.
- 20.** He deponed that since full payment in 2016 and the execution of the sub-lease and charge in 2022, Maurice Onyango Owich had been dealing directly with the project lawyers and that he was not aware of when the sub-lease was registered and did not knowingly act in contravention of the court's orders.
- 21.** He further deponed that following the court's ruling, the parties engaged in mediation from March 2024, culminating in a draft consent setting out modalities for commencing the process of conversion of the suit property into sectional

units. He concluded by stating that he had not knowingly or willfully disobeyed the court's orders.

22. The Plaintiffs filed two sets of written submissions. One on behalf of the 4th Plaintiff/Applicant, and another indicated to have been filed on behalf of the Plaintiffs collectively.
23. The 4th Plaintiff's counsel filed submissions on the 14th October, 2025. Counsel submitted that when the Orders of 16th March, 2023 were issued, the Advocate for the 1st Defendant, M/s Leseigor was present. As such, the contemnor was aware of the court orders. Despite this, he proceeded to disobey the same with impunity.
24. Counsel submitted that the contemnor is the controlling Director of the 1st Defendant's Company and the court should pierce the veil to allow him to be cited for contempt. Counsel urged that as stated in ***Stephen Njoroge Gikera & another vs Econite Mining Company Limited & 7 Others (2018) eKLR***, the corporate persona of a company will be dispensed with in cases where it is apparent that the company is being used as a device and a sham. Counsel also cited the Court of Appeal decision in ***Zingo Investment Limited vs Miema Enterprises Limited (2015) eKLR***.
25. As regards the court's power to punish for contempt, reference was made to the decision in ***Christine Wangari Gachege vs Elizabeth Wanjiru Evans & 11 Others (2014) eKLR*** where the Court of Appeal emphasized that

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

26. It was submitted that, as stated in **DKG vs EG (2021) eKLR**, citing **Samuel M.N. Mweru & Others vs National Land Commission & 2 Others (2020) eKLR**, an applicant in civil contempt proceedings must establish three essential elements: first, the terms of the order alleged to have been disobeyed; second, knowledge of those terms by the respondent; and third, failure by the respondent to comply with the order.
27. Counsel further relied on **Republic v Ahmed Abolfathi Mohamed & another (2018) eKLR**, where the Supreme Court adopted the reasoning in *A.B. & Another v R.B.*, which in turn cited with approval the South African decision in **Burchell v Burchell (Case No. 364 of 2005)**. In that case, the court underscored that compliance with court orders is fundamental to a society founded on the rule of law, and that failure to enforce such orders undermines public confidence in the administration of justice.
28. Counsel pointed out that the 1st Defendant filed a Replying Affidavit sworn by Rameshkumar Kantilal Amlani on 4th June 2025, in which he annexed leases executed in direct

contravention of the court's orders dated 16th March 2023, a clear concession of the contempt.

- 29.** The Plaintiffs' filed written submissions on the 3rd June, 2025. Counsel submitted that it is undisputed that this court issued clear and binding orders on 26th April 2023; that the cited contemnor, being the principal of the 1st Defendant, was fully represented in court and therefore had actual knowledge of the orders and that as stated in ***Shimmers Plaza Limited vs National Bank of Kenya Limited [2015] eKLR***, the law is clear that personal service is not a prerequisite where an alleged contemnor had actual knowledge of the order.
- 30.** According to Counsel, the question of whether the contemnor wilfully disobeyed the court's ruling and order, must on the evidence adduced be answered in the affirmative, and that the contemnor has undertaken post ruling dealings with the property.
- 31.** Counsel submitted that the contemnor's conduct meets the legal threshold for contempt of court defined by the ***Black's Law Dictionary (9th Edition)***, as conduct that defies the authority or dignity of a court and interferes with the administration of justice, thereby attracting punishment by fine or imprisonment.
- 32.** Counsel invoked **Section 5(1)** of the **Judicature Act**, which vests this court with the same power to punish for contempt as the High Court of Justice in England, including the duty to

uphold the authority and dignity of subordinate courts and relied on **Teachers Service Commission vs Kenya National Union of Teachers & 2 others [2013] eKLR**, where the court cited **Mutitika vs Baharini Farm Limited [1985] KLR 229** for the principle that a person who knowingly breaches an injunction or stay order obstructs justice and is liable for contempt.

- 33.** Counsel also cited **Johnson v Grant (1923) SC 789**, as referenced in **Teachers Service Commission(supra)**, for the proposition that punishment for contempt is not about protecting judicial ego but safeguarding the supremacy of the law. On that basis, Counsel urged the court to find that the contemnor willfully defied a valid court order and to impose appropriate sanctions to vindicate the rule of law.
- 34.** The 1st Defendant's Counsel submitted that the alleged contemnor is merely a director of the 1st Defendant company and has not been joined to these proceedings in his personal capacity.
- 35.** It is trite, he urged, that companies are separate and distinct legal entities from their directors and shareholders, and that, in the absence of a specific order lifting or piercing the corporate veil, a director cannot be held personally liable for the acts, omissions, or liabilities of the company. In support, Counsel cited **Katsuri Limited vs Kapurchand Depar Shah [2016]KEHC 6447(KLR)**.

- 36.** Counsel submitted that, even assuming the procedural objection could be surmounted, the 1st Defendant had sufficiently explained its limited role in the transfer process, clarifying that the sub-leases dated 9th June, 2021 were executed and forwarded to the financier's project lawyers prior to the issuance of the injunction, and that any subsequent registration was undertaken by the project lawyers directly in engagement with the respective unit purchasers.
- 37.** It was further pointed out that, of the four post-injunction entries on the title, three units to wit Nos. 11, 25 and 49, were registered in favour of the 3rd Plaintiff/Applicant, Sanjay Jadayi Shivji, a fact not controverted by the Plaintiffs. Counsel also noted that the Plaintiffs did not deny their participation in mediation proceedings and the existence of a draft mediation settlement agreement intended to resolve the dispute.
- 38.** In addressing the element of willfulness and bad faith, Counsel asserted that as discussed in **Samuel M.N. Mweru & Others vs National Land Commission & 2 Others, [2020] eKLR**, contempt proceedings require proof that non-compliance was both willful and in bad faith and deliberate disregard alone, is not necessarily sufficient where a party may genuinely, albeit mistakenly, believe that his conduct is

justified. In this case, no deliberate malafides can be attributed to the 1st Defendant.

Analysis and Determination

39. Having considered the pleadings and submissions, the sole issue that arise for determination is whether the plea to have Rameshkumar Kantilal Amlani cited for contempt of the orders of this court issued on the 16th March, 2023 is merited?

40. The **Black's Law Dictionary (Ninth 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. Discussing contempt, 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 Cap. 8. **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 vs 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.”

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

47. This position was espoused by the court in **North Tetu Farmers Co. Ltd vs Joseph Nderitu Wanjohi (2016) eKLR** and **Republic vs Attorney General & another Exparte Mike Maina Kamau [2020] eKLR** where Justice Mativo, dealing with the question of contempt relied on the exposition 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 make the case for civil contempt. The applicant must prove to the required standard (in civil contempt cases which is higher than 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.”

48. By way of a brief background, the Plaintiffs filed the Motion dated 11th February, 2022, seeking, *inter-alia*, for leave to incorporate a management company comprising of owners of NextGen Commercial Centre erected on L.R No 209/18648 as well as an order of inhibition inhibiting dealings with the

property known as Nextgen Commercial Centre aforesaid. The court dealt with the same and rendered a ruling on the 16th March, 2023 on the following terms:

- i. Pending the hearing and determination of this suit, the Plaintiffs be and are hereby granted leave to incorporate a Corporation of Nextgen Commercial Center, erected on L.R. No. 209/18648, Nairobi with membership and ownership drawn from all owners/ purchasers of the units of Nextgen Commercial Center, erected on L.R. No. 209/18648, Nairobi to manage the affairs of common areas and common interests of all units owners/purchasers in compliance with the Sectional Properties Act, 2020.***
- ii. Other than the process of establishing the management company/corporation and conversion of all leases into sectional units pursuant to the provisions of the law, the 1st Defendant is hereby inhibited from dealing with the property known as Nextgen Commercial Centre, erected on L.R No 209/18648 pending the hearing and determination of the suit.***
- iii. The 1st Defendant to pay the costs of the application***

- 49.** The Plaintiffs contend that despite the clear, express and binding nature of the orders made on 16th March 2023, the 1st Defendant proceeded to deal with Nextgen Commercial Centre erected on L.R No. 209/18648 in a manner outside the limited exception permitted by the court.
- 50.** In particular, the Plaintiffs rely on entries in the land register/certificate of title said to have been made after the ruling, which they argue are prima facie proof of dealings in the suit property in breach of the inhibition orders.
- 51.** In the 1st Defendant's case, it was stated at the very outset that the alleged contemnor cannot properly be cited for contempt in his personal capacity. The 1st Defendant emphasized that the orders of 16th March 2023 were directed at the 1st Defendant company, which is a distinct legal entity, and not at Rameshkumar Kantilal Amlani individually and absent an application to lift or pierce the corporate veil, the orders cannot lie.
- 52.** On the substantive merits, the 1st Defendant denied deliberate disobedience asserting that the sub-leases complained of had been executed earlier and forwarded to the project lawyers prior to the court's ruling, and that any subsequent registrations were undertaken by the project lawyers in direct engagement with individual unit purchasers upon payment of legal fees, stamp duty and other statutory charges.

53. The 1st Defendant further explained that out of the four entries highlighted by the Plaintiffs post-ruling, three relate to Units 11, 25 and 49 registered in favour of the 3rd Plaintiff, an undisputed fact and which disentitles the Plaintiffs from relief on the basis that they cannot approbate and reprobate.
54. Beginning with the nature of the orders, this court is satisfied that the orders issued on 16th March, 2023 were clear, unambiguous and binding upon the parties.
55. The court is equally alive to the settled jurisprudence that, for purposes of contempt proceedings, knowledge of a court order now supersedes the strict requirement of personal service accompanied by a penal notice as affirmed by the Court of Appeal in ***Shimmers Plaza Limited vs National Bank of Kenya Limited (Civil Appeal No. 33 of 2012) [2015] eKLR.***
56. The record herein shows that at the time the ruling was delivered, the parties, including the 1st Defendant, were duly represented by counsel. In the circumstances, this court is satisfied that the 1st Defendant had knowledge of the orders issued on 16th March 2023.
57. There is however the question of whether Rameshkumar Kantilal Amlani, being a director of the 1st Defendant company, is properly amenable to contempt proceedings in his personal capacity within the present framework.

58. In **Africa Management Communication International Limited vs Joseph Mathenge Mugo & another [2013] KEHC 7019 (KLR)**, the court, discussing the manner in which contempt proceedings may be sustained against a corporate entity and its officers, persuasively noted:

“Given that the 2nd Defendant is a company, the question that arises is how service of an order is to be effected upon a company if the directors of such a company are to be committed for disobedience of such an order. To my mind, in order to hold a corporation with liability for contempt, it is necessary to show that the corporation has been properly served or that service has been dispensed with on the basis that an appropriate officer of the company had knowledge of the order. In the same way, in order to hold the directors of such a corporation personally liable for breach of an order, such directors should be served with the order or it must be shown that they had personal knowledge of the same.”

59. In **Geoffrey Kathuri Kison & 10 Others vs East Africa Portland Cement Company Limited & 5 Others [2021] eKLR**, the Court of Appeal held:

“We also note that the 2nd to 6th respondents cited for contempt are directors and officers of a corporate entity not cited in the application, which begs the question whether in such case the directors of a company will be personally liable for contempt committed by and in the name of the company. In the persuasive authority of Katsuri Limited v Kapurchand Deepar Shah [2016] eKLR, the High Court (Mativo, J.) in considering contempt by a director of a company observed and rightly so in our view that:

“The alleged contemnor is a director of the company. He is not a party to these proceedings in his personal capacity. The company is a legal entity. The proper procedure for the applicant was first to apply to lift the corporate veil then go for the directors in their personal capacities.”

- 60.** Upon consideration of the Motion, it is evident that no prayer has been sought to lift or pierce the 1st Defendant’s corporate veil. Guided by the decision of the appellate court on the distinct legal personality of a company and the circumstances under which its directors may be personally liable, the absence of such a plea is fatal to the claim for contempt against Rameshkumar Kantilal Amlani, a director of the 1st Defendant.

61. In the result, the Notice of Motion dated 12th November, 2024 is hereby struck out with costs.

Dated, signed and delivered virtually in Nairobi this 12th day of March, 2026.

O. A. Angote
Judge

In the presence of:

Mr. Moriasi for 1st Defendant

Mr. Langat and Keaton for 1st – 3rd Plaintiffs

Mr. Osoro for 4th Plaintiff/Applicant

Mr. Ojuok for 5th Defendant

Mr. Gagunga for Interested Party

Court Assistant: Tracy