

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT NAIROBI**  
**ENVIRONMENT AND LAND PETITION NO. E005 OF 2026**

**SUPERCLEAN SHINE ENTERPRISE LIMITED.....1<sup>st</sup>  
PETITIONER**

**KING PRIME INTERNATIONAL LIMITED.....2<sup>nd</sup>  
PETITIONER PRIME THE PLACE  
LIMITED.....3<sup>rd</sup> PETITIONER**

**PRIME AUTO AND GENERAL  
ENTERPRISES LIMITED.....4<sup>th</sup>  
PETITIONER**

**VERSUS**

**KENYA RAILWAYS CORPORATION.....1<sup>st</sup>  
RESPONDENT NATIONAL POLICE  
SERVICE.....2<sup>nd</sup> RESPONDENT MR. PHILIP J.  
MAINGA EBS MANAGING DIRECTOR,**

**KENYA RAILWAYS CORPORATION.....3<sup>rd</sup>  
RESPONDENT  
OFFICER MAUREEN**

**CHEPKEMBOI OCPD RAILWAYS.....4<sup>th</sup>  
RESPONDENT**

**DOUGLAS KANJA KIROCHO, CBS, OGW  
INSPECTOR GENERAL,**

**NATIONAL POLICE SERVICE.....5<sup>th</sup>  
RESPONDENT**

**AND**

**MR. PHILIP J. MAINGA, EBS, MANAGING DIRECTOR**  
**KENYA RAILWAYS CORPORATION.....1<sup>st</sup>**  
**CONTEMNOR STANLEY GITARI, AG. CORPORATION**  
**SECRETARY**  
**KENYA RAILWAYS CORPORATION..... 2<sup>nd</sup>**  
**CONTEMNOR**

## **RULING**

### **Background**

1. Before this court for determination is the Petitioners’/Applicants’ Notice of Motion dated 19<sup>th</sup> March, 2026 brought pursuant to the provisions of **Order 50 Rules 1 of the Civil Procedure Rules**, and **Section 5 of the Judicature Act** seeking the following reliefs:

- a. THAT this Honourable Court be pleased to find and hold that the Contemnors are in wilful contempt of the lawful orders of this Court issued on 11<sup>th</sup> March, 2026.*
- b. THAT upon a finding of contempt, this Honourable Court be pleased to punish the contemnors by committal to civil jail and/or by imposition of punitive fines and/or by such other sanctions as the court may deem fit in order to vindicate the authority and dignity of this Honourable Court.*

***c. THAT the costs of this application be borne personally by the Contemnors.***

2. The Motion is supported by the affidavit of Paul Kimani Wamatangi, who deponed that the Applicants are corporate entities carrying on lawful business operations and were at all material times in possession of the suit property pursuant to a valid, subsisting and enforceable lease.
3. It was his disposition that the suit property is situated off Lang'ata Road at km. 532/6 measuring approximately 0.5723 hectares or thereabouts and currently referenced and/or known as Plot Number 209/1618 and that on 11<sup>th</sup> March, 2026, this court issued clear, unequivocal, and binding conservatory orders directing the maintenance of the prevailing status quo in respect of the suit property pending the *inter partes* hearing of the application dated 10<sup>th</sup> March, 2026.
4. According to the Applicants Director, the effect of the said status quo orders was to preserve the suit property in the condition it existed as at 11<sup>th</sup> March, 2026, when the orders were issued, by restraining any dealings, development, construction, or the movement of materials, equipment, or personnel to and from the property, thereby safeguarding the subject matter of the dispute pending its determination.
5. The deponent explained that the said orders were duly extracted and served upon the Respondents and the

Contemnors on 11<sup>th</sup> March 2026, and subsequently upon their agents and/or contractors on 12<sup>th</sup> March 2026 within the suit premises. As such, they had actual knowledge of the existence and terms of the said orders and were consequently fully bound to comply therewith.

6. According to the deponent, despite having full knowledge of the orders as aforesaid, the Respondents and the Contemnors have wilfully, deliberately, and in bad faith disobeyed this court by continuing construction works, mobilizing machinery, materials, and personnel, and, in fact, intensifying these activities by bringing additional resources onto the suit property and working round the clock, in direct defiance of the court's clear and binding orders.
7. It was deposed by the Applicants Director that the orders issued on 11<sup>th</sup> March, 2026 also required the Respondents to file a response to the application within five (5) days, that is, on or before 16<sup>th</sup> March, 2026, in preparation for the hearing scheduled for 18<sup>th</sup> March, 2026; that as at the time of filing the present application, no response had been filed by the Respondents and that the Respondents' conduct aforesaid is contumacious and deliberately aimed at defeating, obstructing, and rendering nugatory the orders issued herein.

- 8.** Such actions, it was deposed, not only undermine the proper administration of justice, but also threaten to render the pending proceedings ineffectual, thereby demonstrating a deliberate and contemptuous obstruction of the judicial process.
- 9.** It is the Applicants' case that at all material times, the alleged contemnors were officials of the 1<sup>st</sup> Respondent vested with the authority to direct its employees, servants and/or agents to comply with the orders issued by this court on 11<sup>th</sup> March 2026 and that by virtue of their respective offices, they bore responsibility for the management and operations of the 1<sup>st</sup> Respondent, including ensuring compliance with all lawful court orders issued against it.
- 10.** It was urged that unless restrained by this court, the Respondents and contemnors will complete the impugned construction and permanently alter the suit property, causing irreparable harm to the Applicants and rendering any eventual orders of this court ineffectual, notwithstanding the Applicants' valid, subsisting, and enforceable interest in the property.
- 11.** The Applicants' Director deposed that the prevailing circumstances require that the Applicants be granted immediate and protected access to the suit property as sought in the application dated 10<sup>th</sup> March, 2026, for the purpose of identifying, securing, documenting, and

professionally assessing their remaining assets, in order to preserve critical evidence, prevent further loss, and ensure the just determination of the dispute herein.

- 12.** Unless the preservation and inspection measures sought are urgently undertaken, it was deposed, there is a real and imminent risk that material evidence will be lost, destroyed, or irreversibly altered, severely prejudicing the Applicants' case.
- 13.** The 1<sup>st</sup> and 3<sup>rd</sup> Respondents opposed the application through a replying affidavit sworn on 1<sup>st</sup> April 2026 by Stanley Gitari, the acting Corporation Secretary of the 1<sup>st</sup> Respondent who deposed that the application is misconceived and founded on a misrepresentation of facts. He denied the allegations of disobedience of court orders, terming the same as wholly untrue.
- 14.** He explained that the 1<sup>st</sup> Respondent is undertaking the construction of a wall intended to enhance the safety and security of the railway corridor stretching from Upper Hill through Kibera and that the wall is being constructed along the side of the railway track adjacent to Upper Hill, an area which, he maintained, had never been occupied by the Applicants herein.
- 15.** It was deposed by the acting Corporation Secretary of the 1<sup>st</sup> Respondent that the Applicants had structures on the opposite side of the railway line and since the issuance of

the orders, all construction works thereon were halted pending further directions from the court and that to date, there has been no construction on the side of the rail track which was occupied by the Applicants herein.

- 16.** He stated that the purported lease agreement is fraught with ambiguity, particularly in its description of the demised premises as “all that piece of land situated off Langata Road at km. 532/6 measuring 0.5723 hectares.” According to him, the reference to distance and chainage relates to the railway track alignment and does not provide a clear or identifiable description of the property.
- 17.** He contended that, owing to that ambiguity, the description is so imprecise that it could even be interpreted as extending to portions of the railway line itself, thereby opening the possibility of the Applicant asserting ownership over the rail track.
- 18.** The 1<sup>st</sup> Respondent, it was urged, is a compliant state corporation which immediately ceased all activities upon being served with the court orders. The deponent added that, having vigorously opposed the application for interim orders, which was scheduled for ruling on 30<sup>th</sup> April 2026, the 1<sup>st</sup> Respondent was awaiting the court’s determination on the matter and that in the circumstances the present application amounts to a legal misadventure and ought to be dismissed with costs.

- 19.** Mr Gitari stated that the 1<sup>st</sup> Respondent is ready and willing to facilitate a site visit by the court in order to establish the true position on the ground and appreciate the illegality underlying what the Applicants describe as a lease agreement.
- 20.** The Applicants filed a Further Affidavit sworn on 7<sup>th</sup> April 2026. It was deponed that, apart from the evidence demonstrating the ongoing acts of contempt, the Respondents had themselves expressly admitted that the 1<sup>st</sup> Respondent was undertaking construction works on the suit property in blatant disregard of the orders issued by this court on 11<sup>th</sup> March 2025. As such, he contended, the Respondents' assertion that they immediately downed their tools upon being served with the court orders was false and inconsistent with their own admissions regarding the ongoing construction activities on the suit property.
- 21.** He explained that the lease held by the 1<sup>st</sup> Applicant, King Prime International Limited, was duly authorized and issued by the 1<sup>st</sup> Respondent herein, and remains valid and subsisting and that the 1<sup>st</sup> Respondent has in fact, for over 20 years during which the Applicants have been in possession of the suit property, continuously received rent from them pursuant to the said lease.
- 22.** According to the Applicant, the Respondents cannot, at this stage, raise any allegations of impropriety or illegality as

they purport to, having been the originators of the subject lease and that in any event, if any illegality were to exist in respect of the said lease, which is denied, the same would be attributable solely to the 1<sup>st</sup> and 3<sup>rd</sup> Respondents as well as the contemnors herein.

23. It was reiterated that the conduct of the Respondents and the alleged contemnors was deliberately calculated to defeat, obstruct, and render nugatory the orders issued by this court, thereby undermining the proper administration of justice and threatening to render the pending proceedings ineffectual and that the contemnors had demonstrated no remorse whatsoever for their continued acts of contempt.
24. The Applicants urged the court to exercise its jurisdiction to punish the Respondents and the Contemnors for contempt, enforce its orders, and issue such further or consequential orders as may be necessary to safeguard the administration of justice and uphold the rule of law.

### **Submissions**

25. The parties submitted both orally and vide written submissions. Counsel for the Applicants, Mr. Ligunya, submitted that despite the status quo orders issued by the court on 11<sup>th</sup> March 2026, construction activities continued on the suit property. Counsel relied on the electronic evidence showing that as at 16<sup>th</sup> March 2026, the site

remained active, with construction materials, machinery and equipment present on the premises.

26. Counsel further pointed out that the Respondents had themselves admitted that construction works were ongoing on the suit property, albeit under the guise of enhancing security along the railway corridor. He submitted that construction materials and equipment had already been moved onto the site and works had commenced thereon, in clear breach of the court orders. According to counsel, the Respondents were intent on altering the nature and character of the land notwithstanding the subsisting status quo orders.
27. Through written submissions dated 24<sup>th</sup> April 2026, counsel for the Applicants elaborated on the principles governing contempt of court. In this regard, reliance was placed on **Econet Wireless Kenya Ltd vs Minister for Information & Communication of Kenya & Another [2005] eKLR** for the principle that court orders must be obeyed at all times, whether or not a party agrees with them.
28. Counsel also cited **Shimmers Plaza Limited vs National Bank of Kenya Limited [2015] eKLR**, where the Court of Appeal held that knowledge of a court order supersedes the requirement for personal service and further affirmed that directors and officers of a corporate entity may personally

be held liable for contempt where knowledge and willful disobedience are established.

- 29.** Counsel submitted that the orders issued on 11<sup>th</sup> March 2026, duly served upon the Respondents as evinced by the affidavits of service, and admitted, clearly directed that the prevailing status quo be maintained and expressly prohibited any construction, development, movement of materials or equipment, or any activity on the suit property pending further directions of the court.
- 30.** It was submitted that at all material times, the alleged contemnors were officials of the 1<sup>st</sup> Respondent vested with authority to direct its employees, servants and agents to comply with the court orders and that by virtue of their positions, they bore responsibility for the management and operations of the 1<sup>st</sup> Respondent, including ensuring compliance with all lawful orders issued by the court.
- 31.** On the issue of willful disobedience, counsel submitted that the photographic evidence placed before the court demonstrated that construction activities continued on the suit property even after service of the court orders. Counsel further relied on the site visit conducted on 14<sup>th</sup> April 2026, in the presence of counsel and representatives of the parties for purposes of establishing the prevailing status of the *locus in quo*.

- 32.** It was submitted that the site visit report confirmed that construction activities, including masonry works relating to the development of a boundary wall, were ongoing on the site and that construction personnel, building materials and tools were present and actively in use conclusively establishing continued violation of the court's *status quo* orders.
- 33.** Consequently, the court was urged to find the alleged contemnors guilty of contempt and impose appropriate sanctions, including fines or committal to civil jail, together with such further orders as may be necessary to secure compliance with the court's directives.
- 34.** The 1<sup>st</sup> and 3<sup>rd</sup> Respondents, through Mr. Obuya Counsel, orally submitted that the suit land had initially been leased by Kenya Railways to one Mr. Musyoka and was described as being situated at Kilometre 532/6 off Lang'ata Road.
- 35.** Counsel submitted that the Applicants occupied only the portion on one side of the railway track, whereas the wall currently under construction was situated on the upper side adjacent to Upper Hill. According to counsel, the construction works had commenced from the Kibera side progressing towards Upper Hill and was therefore being undertaken on the opposite side of the railway track, away from the portion occupied by the Applicants.

36. Counsel further submitted that the construction materials presently at the site had been deposited there before the court orders were issued and had never been removed thereafter. Referring to the Nyayo Stadium area, counsel stated that the parcel was described as Kilometre 537/2 measuring approximately 0.5723 hectares, but maintained that it was unclear on which side of the railway track the land fell, including whether the track itself formed part of the leased area.
37. It was further contended that although demolition had previously taken place on the site, there had since been no interference with the Applicants' portion. Counsel reiterated that the ongoing construction was taking place on the opposite side of the railway line and not on the Aerodrome Road side occupied by the Applicants, and that the materials complained of had merely been deposited at the location where the earlier demolition had occurred.

### **Analysis and Determination**

38. Having considered the pleadings and submissions, the sole issue that arises for determination is whether the 1<sup>st</sup> and 3<sup>rd</sup> Respondents are in contempt of the court orders of 11<sup>th</sup> March, 2026. 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.”*

39. 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”*

40. The substantive law governing contempt proceedings is the Judicature Act. **Section 5** of which provides as follows:

*“(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.”***

**41.** 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.”***

**42.** 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.”***

- 43.** In order to succeed in civil contempt proceedings, an Applicant has to prove 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.

- 44.** By way of brief background, vide the Motion dated 10<sup>th</sup> March, 2026, the Petitioners/Applicants sought *inter-alia*, conservatory orders preserving the *status quo* of the suit property situated off Lang'ata Road at km. 532/6 measuring approximately 0.5723 hectares or thereabouts, currently referenced and/or known as Plot Number 209/1618.
- 45.** The Motion came up before court at the ex-parte stage on 11<sup>th</sup> March, 2026. On this date, the court issued the following orders:

**“THAT the application is certified as urgent.**

**THAT the respondents to file responses within 5 days.**

**THAT the application to be heard on 18<sup>th</sup> March, 2026.**

**THAT the current prevailing status quo to be maintained, meaning, that there shall be no selling, letting, leasing, development, construction, depositing of materials or moving of equipment or any to and from the suit property, or undertaking of any activity on the suit property by all the parties until 18<sup>th</sup> March, 2026.”**

- 46.** The Petitioners maintain that despite the clear and binding nature of those orders, which were duly served upon the Respondents, construction activities continued unabated. In support, the Petitioners have exhibited photographs taken on 16<sup>th</sup> March, 2026 and 17<sup>th</sup> March, 2026.
- 47.** In response, the 1<sup>st</sup> and 3<sup>rd</sup> Respondents maintain that the 1<sup>st</sup> Respondent is a compliant State Corporation which immediately ceased all construction activities upon being served with the court orders. They explained that the ongoing project involves the construction of a wall intended to enhance the safety and security of the railway corridor stretching from Upper Hill through Kibera.
- 48.** According to the Respondents, the construction is being undertaken on the side of the railway track adjacent to Upper Hill, an area which they assert was not occupied by the Applicants.
- 49.** Beginning with whether the court's orders were clear and unequivocal, the answer is plainly in the affirmative. The court expressly restrained all the parties from undertaking any activities on the suit property. There is no ambiguity in the language used, and indeed, the Respondents have not disputed the clarity of those orders.
- 50.** Moving next to the aspect of knowledge, the court notes that the same is expressly conceded by the 1<sup>st</sup> and 3<sup>rd</sup> Respondents. In the affidavit sworn by Stanley Gitari, the

Respondents acknowledge that the 1<sup>st</sup> Respondent, being a compliant State corporation, immediately downed its tools upon being served with the court orders.

- 51.** This admission is significant, as it confirms that the Respondents were fully aware of the existence and contents of the orders in question. There are also the affidavits of service dated 11<sup>th</sup> and 13<sup>th</sup> March, 2026 evincing service upon all the Respondents.
- 52.** The next issue for determination is whether the 1<sup>st</sup> and 3<sup>rd</sup> Respondents acted in breach of the court orders issued on 11<sup>th</sup> March, 2026. The Applicants contend that despite the express prohibition against any activities on the suit property, construction works continued unabated. In support of this assertion, they produced photographs taken on 16<sup>th</sup> and 17<sup>th</sup> March, 2026 depicting construction personnel and ongoing works at the site.
- 53.** The court also takes cognizance of the Site Visit Report prepared by the Deputy Registrar pursuant to the court's directions, during which site visit both the Applicants and the 1<sup>st</sup> and 3<sup>rd</sup> Respondents were duly represented.
- 54.** The Respondents have argued that the construction activities complained of were being undertaken on the opposite side of the railway line, which they contend was not occupied by the Applicants. Indeed, while the description of the suit property as contained in the lease,

namely “all that piece of land situated off Lang’ata Road at km 532/6 measuring approximately 0.5723 hectares,” is broad, the Site Visit Report prepared pursuant to the court’s directions clearly identified the locus in quo as “the land between the railway track and Aerodrome Road.

- 55.** The report described the site as an open parcel of land partially enclosed by a perimeter wall and corrugated iron sheet fencing, bordering Aerodrome Road, with visible vehicular activity and billboards. It further observed that the iron sheet perimeter barrier separated the site from Aerodrome Road.
- 56.** The report additionally documented the presence of multiple piles of construction materials, including sand, aggregate and rubble, excavated trenches, construction personnel in protective gear, masonry works consistent with the construction of a boundary wall, and heavy construction equipment, including a road roller and paving machine.
- 57.** Significantly, the report expressly confirmed at paragraph 9 that “construction activity is ongoing on the site, including masonry works consistent with the development of a boundary wall which is ongoing at the opposite side of the railway line,” while paragraph 10 observed that construction personnel, building materials and tools were actively in use at the site.

58. Consequently, the Respondents' contention that the impugned activities were occurring on a distinct portion outside the area in issue is not borne out by the independent site visit report and is therefore unpersuasive, especially in respect to the construction materials which were deposited on the suit property, and which were being used for the construction of the perimeter wall.
59. In the circumstances, and considering the evidence before the court, the court is satisfied that the Applicants have established, to the requisite standards, that the Respondents were aware of the orders issued on 11<sup>th</sup> March, 2026 and that they deliberately acted in breach thereof. The essential elements necessary to establish contempt of court have therefore been proved.
60. Accordingly, the court finds the Motion dated 19<sup>th</sup> March, 2026 to be merited, and issues the follows orders:
- a) **The 1<sup>st</sup> and 2<sup>nd</sup> Contemnors, Philip J. Mainga, the Managing Director of Kenya Railways Corporation and Stanley Gitari, acting Corporation Secretary of Kenya Railways Corporation are found to be in contempt of the orders of this court issued on 11<sup>th</sup> March, 2026.**
  - b) **Philip J. Mainga, the Managing Director of Kenya Railways Corporation and Stanley Gitari, acting Corporation Secretary of Kenya Railways**

**Corporation to appear before this court on a date to be fixed by the court for mitigation and sentencing.**

- c) The 1<sup>st</sup> Respondent shall bear the costs of the Motion.**

**Dated, signed and delivered in Nairobi virtually this 14<sup>th</sup> day of May, 2026**

**O. A. Angote  
Judge**

**In the presence of;**

Mr. Amimo for 2<sup>nd</sup> and 3<sup>rd</sup> Petitioners

Mr. Obuya for 1<sup>st</sup> Respondent and Contemnors

Court Assistant: Tracy