



**REPUBLIC OF KENYA.**

**IN THE HIGH COURT OF KENYA AT BUNGOMA**

**ELC. CASE NO. 156 OF 2016.**

**JOSHUA ANDALA MASINGILA.....PLAINTIFF**

**VERSUS.**

**MARITA NASIPONDI.....DEFENDANT**

**RULING.**

[1]. This application is brought under Sec. 5 of the Judicature Act Cap 8 Laws of Kenya and Sec. 1A 3A and 63 of the Civil Procedure Act and Order 51 of the Civil Procedure Act. The applicant seeks for orders that the respondent Marita Nasipondi to be committed to Civil jail for 6 months for disobeying this courts orders. That the defendant be denied Courts audience until she purges her contempt.

[2]. The application is based on the fact that the defendant has disobeyed the Courts order of 21/3/2017. Which had been extracted and served upon her together with a Penal Notice and that the order was served upon her on 22/3/2017. That she has cultivated and constructed structures on the suit land.

[3]. The respondent denied having been served. She denied that she was guilty of the acts complained of. It was argued that it was not the respondent who cultivated the land and/or put the structures on the land.

[4]. After perusing the application by the applicant and the annexures annexed therein, I am not fully convinced firstly, that the respondent was properly served, secondly I am not convinced that the respondent has been positively identified as the person who cultivated the land. Consequently this application fails.

The parties should fix this application on merit. There shall be no order as to costs.

Ruling read in Open Court.

**Dated at Bungoma this 10<sup>th</sup> day of January, 2018.**

**S. MUKUNYA**

**JUDGE**

In the presence of:

Chemutai - Court Assistant

Mr. Were for Mr. Wafula for the Defendant/Respondent

S. Wanyama for the Plaintiff/Applicant