



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT MERU**  
**CIVIL CASE NO. 82 (OS) OF 2011**

**SAMUEL GIKUNDA.....PLAINTIFF**

**VERSUS**

**JOYCE NCEE JOHN.....1ST DEFENDANT**

**BEATRICE MIRIAM ISMAIL (sued as dministratrix of the estate of**

**MUNYUA MIGUARI – Deceased).....2ND DEFENDANT**

**ABDUL MWIRIGI MUNYUA.....3RD  
DEFENDANT**

**PETER MEME.....4TH DEFENDANT**

**JACKLINE NKATHA JOHN.....5TH  
DEFENDANT**

**FLORENCE KANJA MWITL.....6TH  
DEFENDANT**

**SAMUEL MIRITL.....7TH  
DEFENDANT**

**SABINA KANGAI.....9TH DEFENDANT**

**RULING**

This application is dated 29th May, 2012 and seeks orders that:

1. This Honourable Court be pleased to order the arrest and committal of all the defendants to prison for a term not exceeding six (6) months having disobeyed the Court Orders issued on 22nd March, 2012.
2. Costs of this application be borne by the defendants.

The applicant's case was that the defendants had disobeyed a court order granted on 23rd February, 2012 and issued on 23rd March, 2012. According to one of the grounds proffered in support of the application, the order restrained the defendants from: Evicting, entering or in any other way, manner whatsoever from interfering with the plaintiff's quiet possession and user of plot No. **TIMAU SETTLEMENT SCHEME/1189** occupied and in possession of the plaintiff pending the hearing and determination of this suit.”

The applicant in his submissions contended that all procedural requirements had been satisfied and that his application should be allowed.

The defendants denied the plaintiff's claim. It was said on their behalf that no order had been extracted and personally served upon the defendants. They claimed that they were unaware of the order. They submitted that it was necessary that the defendants be served with the order they allegedly disobeyed and that it was also necessary that a penal notice be appended to any such order. It was also said that since contempt proceedings had consequences of a criminal nature, the targets must have notice of the consequences of disobedience.

It was submitted for the defendants that no leave was obtained before the filing of this application. It was also submitted that the ruling delivered by this Court on 23.2.2012, which forms the basis of this application, allowed land parcel No. **TIMAU SETTLEMENT SCHEME NO.1189** to be utilized by the applicant together with Jackline Nkatha, the 4th Respondent. It was proffered that it is only Jackline Nkatha, the 4th Respondent who was, together with the applicant, utilizing the parcel of land. It was also opined on behalf of the defendants that the plaintiff was hell bent on having the respondents jailed to enable him to utilize more land out of Parcel No. **TIMAU SETTLEMENT SCHEME 1189**, than he has all along been utilizing.

I commend the parties advocates, on both sides, for submitting very good authorities which I have carefully gone through. I would have gone through the process of analysing the authorities proffered and ascertaining if procedural requirements had been satisfied by the applicant. It is clear that the alleged contemnors were not served with the order that they were supposed to obey. But I have a more compelling reason which ineluctably leads me to the decision that this application has no merit and, therefore, should be dismissed.

The order granted by the Court on 23rd February, 2012 and issued on 23rd March, 2012, reads:

**“THAT An order of temporary injunction be and is hereby issued restraining the defendants, by themselves, agents and servants or anyone acting at their behest from evicting, entering or in any other manner whatsoever from interfering with Applicants and JACKLINE NKATHA's quiet possession and user of plot No.1189 occupied and in possession of the Applicant and JACKLINE NKATHA pending hearing and determination of the suit.”**

The order the plaintiff claims the defendants disobeyed, as appears at the beginning of this ruling and as has been depicted in the application and in the applicant's submissions, is different from the order granted. It is non-existent. The defendants could not have disobeyed a non-existent order.

In the circumstances this application lacks merit and is dismissed. Costs are awarded to the defendants.

**DELIVERED** in open Court at Meru this 19th day of February, 2014 in the presence of:

Cc. Daniel

Parties absent

**P. M. NJOROGE**

**JUDGE**