

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

Civil Case No. 62 Of 2013

JACKSON MATOLO NGETA

T/A FRAMA GENERAL MERCHANTS PLAINTIFF/APPLICANT

VERSUS

1. DIRECTOR GENERAL NATIONAL ENVIRONMENT

MANAGEMENT AUTHORITY (NEMA)

2. ATTORNEY GENERAL DEFENDANT/RESPONDENT

RULING

1. The application dated 27/11/2013 seeks an order that the police from **Mbooni Police Station** under the Commander of OCS be restrained from stopping the Plaintiff/Applicant from carrying the logs and timber already cut down and/or harvested and the Plaintiff/Applicant be allowed to ferry all the logs and timber without harassment and further the police be ordered to release the two tractors detained at the police station together with the carried timber.
2. The application is supported by the affidavit of **Jackson Matolo Ngeta** sworn on 7/11/2013. The thrust of the said affidavit is that the Applicant won a tender to cut down and remove trees from **Mbooni Forest in Makueni County**. That the Applicant made the requisite payments to Kenya Forest Services and thereafter he proceeded to cut the trees and was subsequently authorized by the 1st Respondent to ferry the harvested logs and timber. However, police officers acting under the instructions of the OCS, **Mbooni Police Station** stopped the Applicant from transporting the said logs and timber and detained the tractors which were carrying the same. That the logs and timber are at the risk of getting damaged due to the current rains, hence the orders sought.
3. No papers were filed in opposition to the application. An affidavit of service filed herein sworn on 18/12/2013 reflects the 1st and 2nd Respondent were served with the hearing date but they did not enter appearance nor attend court.
4. I have considered the application. However, **section 16 (2) of the Government Proceedings Act Cap 40 Laws of Kenya** states as follows:-

“The court shall not in any civil proceedings grant any injunction or make any order against an officer of the Government if the effect of granting the injunction or making the order would be to give any relief against the Government which could not have been obtained in proceedings against the Government.”

5. Granting the order sought would contravene the said provision. Consequently, the application fails and is dismissed. Costs in cause.

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B. THURANIRA JADEN

JUDGE

Dated and delivered at Machakos this **20th** day of **December** 2013.

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B. THURANIRA JADEN

JUDGE