



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**ELC NO. 155 OF 2009**

DAVID MBUVI KATHITU.....	1 <sup>ST</sup>
PLAINTIFF	
DAVI OLOO MIRUKA.....	2 <sup>ND</sup>
PLAINTIFF	
JOSEPH K. NZWILI.....	3 <sup>RD</sup>
PLAINTIFF	
ONESMUS MWENDWA WAMBUA.....	4 <sup>TH</sup>
PLAINTIFF	
MARGARET GACHANJA.....	5 <sup>TH</sup>
PLAINTIFF	
PAUL KATHYAKA.....	6 <sup>TH</sup>
PLAINTIFF	
MOSES MUTINDA.....	7 <sup>TH</sup>
PLAINTIFF	
EZEKIEL MUNDIA NJENGA.....	8 <sup>TH</sup>
PLAINTIFF	
TABITHA WAMBUI.....	9 <sup>TH</sup>
PLAINTIFF	
JANE MUTHONI.....	10 <sup>TH</sup>
PLAINTIFF	
JAPHETH NYAMONGO.....	11 <sup>TH</sup>
PLAINTIFF	
MWAURA NGOMBE.....	12 <sup>TH</sup>
PLAINTIFF	
SAMUEL KURIA MUIGAI.....	13 <sup>TH</sup>
PLAINTIFF	
JOHN MUTUNGA.....	14 <sup>TH</sup>
PLAINTIFF	
JULIANA MUTUKU.....	15 <sup>TH</sup>
PLAINTIFF	
(suing on their own behalf and on behalf of other persons)	

**V E R S U S**

CITY COUNCIL OF NAIROBI.....	1 <sup>ST</sup>
DEFENDANT	
STEPHEN MAINGI MUREITHI.....	2 <sup>ND</sup>
DEFENDANT	
RIITHO MUREITHI.....	3 <sup>RD</sup>
DEFENDANT	
NYAGATHUGU LIMITED.....	4 <sup>TH</sup>
DEFENDANT	

**R U L I N G**

The 2<sup>nd</sup> Defendant was jailed for 21 days for contempt of court order. The term begun to run on 24<sup>th</sup> March 2011. When I asked Mr. Kiai how much time is left he indicated it was about 7 days. That was yesterday. The Defendant states that he is remorseful but that he did not deliberately disobey the court order in respect of which he was found to be in contempt. Further that he is hypertensive and diabetic and that further incarceration will compromise his health.

I do not want to say that if the health status of the Defendant is brought to the attention of prison authorities that can be dealt with, including access to specialized services.

In the face of a finding that the Defendant deliberately disobeyed the injunction order, and there being no appeal, it is contemptuous for him to be saying what he did not deliberately disobey. He cannot question the decision that was reached against him by the court and at the same time say he is remorseful. Any expression of remorse has to be unconditional and unequivocal.

There has been no demonstration that the Defendant has been sufficiently punished, and neither has he purged the contempt.

I refuse the application with costs.

**DATED AND DELIVERED AT NAIROBI THIS 8<sup>TH</sup> DAY OF APRIL 2011**

**A. O. MUCHELULE**

**J U D G E**