



**Nyambane & another v Orindo & another (Environment and Land Appeal
1 of 2021) [2022] KEELC 14537 (KLR) (27 October 2022) (Ruling)**

Neutral citation: [2022] KEELC 14537 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYAMIRA
ENVIRONMENT AND LAND APPEAL 1 OF 2021
JM KAMAU, J
OCTOBER 27, 2022
(FORMERLY AT ENVIRONMENT AND LAND
COURT AT KISII APPEAL CASE NO. 11 OF 2020)**

BETWEEN

VINCENT ORINDO NYAMBANE APPELLANT

AND

ALFRED MOFFARD OMUNDI MICHIRA APPLICANT

AND

DANIEL NYANGARESI ORINDO 1ST RESPONDENT

CHARLES ARASA ORINDO 2ND RESPONDENT

*(Being an Appeal against the Judgment of Honourable B.M. Kimtai Principal Magistrate,
Keroka dated 2nd day of October 2020 and delivered on the 2nd day of October 2020
by Hon. B.M. Kimtai – pm in the original Keroka PMCELC Case No. 21 of 2020)*

RULING

1. This is a Ruling on the Application dated 15/06/2021 where the Appellants seek for orders that the Respondents be cited for contempt of this court's order issued on 05/05/2021. The order was to the effect that: -
 - a. A temporary injunction do and is hereby issued against the Respondents herein by themselves, their agents, servants, family members and/or any persons acting for and on his behalf from entering into, cutting down trees, tilling or interfering with land parcel Number East Kitutu/kebirichi/3155.
 - b. The costs of this Application shall abide the Appeal.



2. The orders were made by my sister Lady Justice Jane M. Onyango on 05/05/2021 at Kisii and extracted on 26/05/2021 with a Penal Notice at the bottom indicating the consequences that would be meted on any person who fails to keep the orders. According to the Appellants, although the orders were made in their presence the said orders were served upon the Respondents and their counsel but the latter are in defiance and in disobedience of the said orders since on 11/06/2021 the said Respondents did violently and unlawfully attack the workers/employees of the Appellants who were working on the parcel of land East Kitutu/kebirichi/3155 and inflicted bodily harm onto them for which the workers sought medical treatment as well as reporting the matter to Keroka Police Station and were issued with P3 forms which documents dated 11/06/2021 have been attached to the supporting Affidavit of Alfred Moffard Omundi Michira, the second Appellant herein. But in a rejoinder the 1st Respondent swore a Replying Affidavit on 12/07/2021 and denied having been in contempt of court. Although the Process Server appeared in court to testify the 2nd Respondent did not deny having been served with the said order. The second Appellant gave evidence in court and said that the Respondents are his cousins. He testified that around June 2021 the Respondents felled down his trees from the suit premises.

5. I find that the accusations made herein against the Respondents concern the inflicting of bodily injuries to the Appellants' workers and/or servants and felling down of trees and nappier grass. But the evidence adduced on behalf of the Appellants majored on the uprooting of trees and cutting nappier grass. This being a case of quasi- criminal nature, the onus of proof is beyond reasonable doubt. The Appellants have not discharged this burden and I would hesitate to find the alleged contemptors guilty of the same. But with a warning to them that in future this court will not hesitate to stamp out its authority and ensure that its orders are respected.

RULING DATED, SIGNED AND DELIVERED AT NYAMIRA THIS 27TH DAY OF OCTOBER 2022.

MUGO KAMAU

JUDGE

In the Presence of:-

Court Assistant: Kennedy/Orora

Appellants: Mr. Soire

Respondents: Mr. Meroka

