



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

**Civil Case 39 of 2005**

**GEORGE KINUTHIA.....1<sup>ST</sup> PLAINTIFF**  
**PATRICK MUISYO KILONZO.....2<sup>ND</sup> PLAINTIFF**  
**SIMON NG'ANG'A KAMAU.....3<sup>RD</sup> PLAINTIFF**  
**MOSES MAINA.....4<sup>TH</sup> PLAINTIFF**  
**JOSEPH KANYANJUA MURAYA.....5<sup>TH</sup> PLAINTIFF**  
**JOSEPH MUTURI.....6<sup>TH</sup> PLAINTIFF**  
**PAUL MWANIKI KILONZO.....7<sup>TH</sup> PLAINTIFF**  
**SAMWEL WANJAU KAMAU.....8<sup>TH</sup> PLAINTIFF**  
**ALICE W. WANYEKI.....9<sup>TH</sup> PLAINTIFF**  
**GRACE WANGUI KAGIRI.....10<sup>TH</sup> PLAINTIFF**  
**ROSE MUTHONI NGUMBA.....11<sup>TH</sup> PLAINTIFF**  
**LUCY WAITHIRA MWAURA.....12<sup>TH</sup> PLAINTIFF**  
**AGNES WANJIRU THUO.....13<sup>TH</sup> PLAINTIFF**  
**JANET WANJUKU NG'ANG'A.....14<sup>TH</sup> PLAINTIFF**  
**SOPHIA NJERI.....15<sup>TH</sup> PLAINTIFF**  
**MARY WANGARI NJOROGE.....16<sup>TH</sup> PLAINTIFF**

**VERSUS**

**MUNICIPAL COUNCIL OF NAKURU.....DEFENDANT**

**RULING**

The application before me was brought pursuant to the provisions of Order XXXIX Rules 2A(2) and 9 of the Civil Procedure Rules and Section 3A of the Civil Procedure Act.

The applicants prayed that the Town Clerk of the defendant and/or such other officers as this court may find to be liable, be cited for contempt of court and be detained in prison and/or be ordered to purge the contempt.

The applicants had brought an application for injunction against the respondent seeking to restrain the council, its servants and/or agents from interfering with their businesses and/or trade of selling fruits, tomatoes, vegetables and other perishable goods along East Road within Nakuru Municipality. On 6<sup>th</sup> May, 2005 the court dismissed the said application and *obiterdicta* hoped that the respondent would give time to the applicants to organise themselves to move to another area. However, on the night of 8<sup>th</sup> May, 2005 the respondent's servants and/or agents flattened the structures that the applicants had put up along East Road.

The applicants said that the respondent gave notice to them to vacate East Road within 24 hours and according to them, that was in contempt of the order of 6<sup>th</sup> May 2005 as the court did not authorise the defendant to destroy their stalls. The applicants further argued that subsequent to the dismissal of their application, nothing prevented them from selling cereals and other non perishable goods.

The respondent, through an affidavit sworn by its acting Director of Social Services, Joseph Wanarua Kamau, denied having committed any act which could amount to contempt of court as claimed by the applicants. He stated that following this court's ruling aforesaid he gave the applicants adequate notice to vacate the premises and they removed all their perishable goods leaving the temporary structures only which were removed on 8<sup>th</sup> May 2005 and kept in the defendant's depot for the plaintiffs to claim them. He said that there was no order restraining or compelling the Town Clerk from performing anything or requiring him to perform anything and so he could not be cited for any contempt of court.

The sentiments of Mr. Joseph Wanarua Kamau were supported by those of Mr. Peter Kabete, Deputy Senior Enforcement Officer of the Municipal Council who confirmed that following the dismissal of the applicants' application aforesaid, the applicants' structures were removed on the night of 8<sup>th</sup> May, 2005. The operation was carried out at night due to security reasons, he stated.

Having carefully perused all the affidavits on record as well as this court's ruling delivered on 6<sup>th</sup> May, 2005, I am not convinced that the Town Clerk of the respondent council or his officers are guilty of any contempt of court. The respondent is alleged to have destroyed the plaintiffs' stalls but the orders that were issued by this court on 6<sup>th</sup> May, 2005 had nothing to do with the said stalls. The plaintiffs may have a genuine complaint against the respondent but there was no breach of any court order and so the committal orders sought cannot be issued. Before a person can be committed for contempt of court, it has to be shown that such a person, knowing of an injunction or an order of court which requires compliance, wilfully did something or caused others to do something in breach of the said injunction or order, See **MUTITIKA VS BAHARINI FARM LTD** [1985] KLR 227.

The court, having dismissed the plaintiffs' application merely expressed its hope that the plaintiffs would be given reasonable time to organise themselves to move out of the disputed area. If the applicants were given much shorter time than they expected and their stalls demolished, I sympathise with them but in the circumstances as aforesaid, the court cannot make any committal orders as sought and consequently I dismiss with costs the plaintiffs' application.

DATED, SIGNED AND DELIVERED at Nakuru this 14<sup>th</sup> day of November, 2005.

**D. MUSINGA**

JUDGE

**14/11/2005**

Ruling delivered in the presence of Mr. Orege holding brief for Mr. Mbiyu for the applicant.

**D. MUSINGA**

JUDGE

**14/11/2005**