



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

**Civil Case 141 of 2005**

**NDUNGU NDERITU MUNYIRI & 34 OTHERS.....PLAINTIFF**

**VERSUS**

**MARGARET WAIRIMU NDUNGU.....1<sup>ST</sup> DEFENDANT**

**SAMWEL MITHAMO.....2<sup>ND</sup> DEFENDANT**

**RULING**

On the 19<sup>th</sup> of May 2005 this court issued the following order:

**“2. THAT a temporary injunction is issued restraining the defendants by themselves, (their) servants and or agents from carrying on or continuing with the survey for the purposes of sub-dividing parcel of land No. Nakuru Municipality/Block XVI into plots, and from interfering with the boundaries of the plots already demarcated and allocated to the plaintiffs until the hearing of the application interpartes on the 30<sup>th</sup> of May 2005.**

**3. THAT the defendants are restrained from demolishing and or damaging the structures already on the plot”.**

The application was not interpartes heard as scheduled on the 30<sup>th</sup> of May 2005. However the interim orders issued by this court were extended to the 8<sup>th</sup> of June 2005 by *Musinga J.* on the 4<sup>th</sup> of June 2005, during the subsistence of the said order, the 1<sup>st</sup> defendant accompanied by the Area Member of Parliament and the Municipality District Officer, one Mr Nyakundi purported to conduct a fresh balloting of the plots in the area in contravention of the orders issued by this court restraining any demarcation or sub-division of the suit land. The plaintiffs in this suit, being aggrieved by the said disobedience of the orders of this court have now made an application under the provisions of **Order XXXIX rule 2(2) of Civil Procedure Rules and Section 3A of the Civil Procedure Act** seeking to have the 1<sup>st</sup> defendant committed to civil jail for disobeying the orders issued by this court on the 20<sup>th</sup> of May 2005. The 1<sup>st</sup>

defendant filed an affidavit admitting that she had been served with the said order of this court. She however denied that she disobeyed the said orders. She states that the decision to ballot and allocate the suit land was made by the Area Member of Parliament and the Municipality District Officer, one Mr Nyakundi. She admits that she had participated in the balloting like any other member of the Wamagata squatters group.

I heard the submissions made by Mrs Ndeda, Learned Counsel for the plaintiff/applicants and Mr Nguire, Learned Counsel for the 1<sup>st</sup> defendant/respondent. After carefully considering the said submissions made, the issue for determination by this court is whether the applicants have established that the 1<sup>st</sup> defendant was in breach of the orders of this court and therefore ought to be punished for contempt of court. The rules of contempt of court have been established for the purposes of upholding the rule of law and vindicating the public interest in the due administration of justice. As the editors of *Borrie and Lowe's LAW OF CONTEMPT* 2<sup>nd</sup> edition (1983) stated at page 1:

***“The rules embodied in the law of contempt are intended to uphold the effective administration of justice. As Lord Simon said in AG –vs- Times Newspapers Ltd ([1973]3 All E.R. 54) they are the means by which the law vindicates the public interest in the due administration of justice. The law does not exist, as the phrase ‘contempt of court’ might misleadingly suggest, to protect the personal dignity of the judiciary nor does it exist to protect the private rights of the parties or litigants”.***

In the present application, it is not denied that the 1<sup>st</sup> defendant was served with the order of this court. A claim has been made that the said order issued by this court was vague and therefore not capable of being obeyed. I hasten to reiterate that it is not for a litigant who has been served with an order of the court to determine the extent to which he or she may or may not comply with a court order. It is not open for a litigant to interpret a court order to determine the boundaries of its application. Once a litigant is served with a court order, it is his/her duty to obey it and not interpret it to suit his or her circumstances. What this court has gleaned from the submissions made by the parties to this application is that the said balloting and allotment of the suit parcels of land was undertaken by the Municipality District Officer, Nakuru, in the presence of the area Member of Parliament, even after he had been made aware that there existed a court order barring such an exercise.

From the affidavit evidence presented to this court, it appears that the said balloting and allocation exercise was undertaken specifically to defeat the orders of this court. The hurry and the impromptu nature of the balloting exercise clearly suggests that the Municipality District Officer, and to some extent, the Area Member of Parliament, were aware of the existence of the order of this court and actively sought to circumvent it. Although the 1<sup>st</sup> defendant protests her innocence in the disobedience of the order of this court, for all intents and purposes she was an active participant in the said disobedience of the said orders of this court. It is however conceded that the 1<sup>st</sup> defendant could not have solely influenced the events that took place on the material day. It is clear that the participants therein intended to proceed with the balloting and allotment of the parcels of land that comprised of the suit land in utter disregard and contempt of the orders issued by this court.

Having carefully considered the facts of this case, I do hold that the 1<sup>st</sup> defendant was not wholly responsible for the disobedience of the orders issued by this court. The said disobedience could not have succeeded had the Municipality District Officer, Nakuru organized the balloting and the allotment of the

said plots that comprised the suit land. The said District Officer was shown the order of this court by one of the plaintiffs but he choose to disregard it. In the circumstances of this case and to uphold the rule and the respect of the law, this court will restore the *status quo ante*. It is therefore ordered that the balloting and the allotment exercise conducted in the contempt of the orders of this court on the 4<sup>th</sup> of June 2005 is null and void. The position on the ground shall be as existed on the 3<sup>rd</sup> of June 2005 before the said illegal allotment and balloting exercise. Any allotment made pursuant to the said exercise in contempt of the orders of this court is cancelled. The Municipality District Officer who conducted the said illegal and contemptuous exercise is hereby warned that should he deal with the suit land contrary to the orders of this court he shall be held personally liable for contempt of court.

In view of the circumstances of this case, I will not make any orders as to costs. It is so ordered.

**DATED at NAKURU this 11<sup>th</sup> day of November 2005.**

**L. KIMARU**

**JUDGE**