



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT EMBU**  
**MISC. APPLICATION NO. 113 OF 2015**

**ESBON KIURA BEN**

**NJERU KAVINDI**

**NJERU W. WACIMBA**

**MWANGI BENJAMIN**

**MUSA JOSEPH**

**TIRUS NJIRU KIRIMUI.....PLAINTIFFS/APPLICANTS**

**VERSUS**

**CHAIRMAN, GITARE PRIMARY SCHOOL**

**HEADTEACHER, GITARE PRIMARY SCHOOL**

**AGNES MUTHONI NJIRU**

**SAMWEL RUTERE JOSPHAT**

**JELIA CIUMWARI NAFTARY**

**JESSEE MTETU FOR GITARE SECONDARY.....DEFENDANTS/RESPONDENTS**

**RULING**

By a ruling dated 13th April 2016 **BWONWONGA J.** referred this matter to the Environment and Land Court having found that he had no jurisdiction to handle this application in view of the judgment of the Court of Appeal in the case of ***KARISA CHENGO & OTHERS VS REPUBLIC 2015 e K.L.R.*** The application seeks the committal of the respondents to civil jail for contempt of Court.

The genesis of the application is that the parties herein were involved in a boundary dispute which was heard and determined by the Embu Land Disputes Tribunal which made an award that the Land Registrar remarks the boundaries of plots No. T 199, 200, 201, 202, 203 and 204 and also the access road separating those plots. To facilitate the exercise of that remarking of the access road and boundaries, the respondents were ordered to remove pit latrines on those plots within six (6) months from the date of that award which was made on 17th February 2011. That award, was read in Court on 10th August 2011 by **E.K. NYUTU (RESIDENT MAGISTRATE)** and adopted as judgment of the Court in **EMBU CHIEF MAGISTRATE'S COURT CASE No. 36 of 2011** as was the practice under the now **repealed Land**

**Disputes Tribunal Act.** A right of appeal was explained, erroneously as 14 days, but nothing turns on that because although the respondents filed **APPEAL No. 81 of 2011** at the **PROVINCIAL APPEALS COMMITTEE IN NYERI**, it appears to have been abandoned.

The applicants thereafter filed a Notice of Motion dated 2nd June 2015 at the **HIGH COURT IN EMBU** seeking the main relief that the respondents be committed to civil jail for contempt having disobeyed the orders issued by the **CHIEF MAGISTRATE'S COURT EMBU IN CASE No. 36 of 2011**. That is the application that was referred to me by **BWONWONGA J.** on the basis that this matter is within the jurisdiction of the Environment and Land Court.

What is clear therefore is that the subject of the contempt proceedings is an order issued by the **CHIEF MAGISTRATE'S COURT IN CIVIL CASE No. 36 of 2011** on 10th August 2011. By that time, the **Environment and Land Court Act** had not come into operation so it is not clear why it took the applicants upto 2nd June 2015 to file this application in the **HIGH COURT**. What is clear, however, is that following the enactment of the **MAGISTRATE'S COURT ACT 2015** which came into force on 2nd January 2016, Magistrates Courts now have un-limited jurisdiction to punish for contempt – see **RAMADHAN SALIM VS EVANS MAABI & ANOTHER C.A CIVIL APPEAL No. 69 of 2015**. Therefore, although previously the jurisdiction to punish for contempt was the preserve of the High Court and Court of Appeal and the Subordinate Court could only punish for contempt committed in the face of the Court, that jurisdiction has now been extended to the Subordinate Courts. **Section 10 (1) (2) and (3) of the Magistrate's Court Act 2015** provides as follows:-

**10 (1) "Subject to the provisions of any other law, the Court shall have power to punish for contempt:**

**10 (2) A person who, in the face of the Court –**

**(a) assaults, threatens, intimidates, or insults a magistrate, Court administrator, judicial officer, or a witness, during a sitting or attendance in Court, or in going to or returning from the Court**

**(b) interrupts or obstructs the proceedings of the Court, or**

**(c) without lawful excuse disobeys an order or direction of the Court in the course of the hearing of a proceeding commits an offence.**

**10 (3) In the case of civil proceedings, the willful disobedience of any judgment, decree, direction, order or other process of a Court or willful breach of an undertaking given to a Court constitutes contempt of Court"**

**Section 10 (7)** of the same Act provides for the right of appeal and states as follows:

**"A person may appeal against an order of the Court made by way of punishment for contempt of Court as if it were a conviction and sentence made in the exercise of the ordinary criminal jurisdiction of the Court"**

It is clear therefore that since January 2016, the Subordinate Courts now enjoy expanded jurisdiction to punish for contempt including for the willful disobedience of their judgments, decrees, orders and other processes. By the time this application was being referred to this Court in April 2016, the Chief Magistrate's Court at Embu whose judgment is the subject of these contempt proceedings was well seized of the requisite jurisdiction to hear and determine this application. For avoidance of doubt, I must make it clear that **Section 10 of the Magistrate's Court Act** was not among the provisions declared to be un-Constitutional by the High Court in **CONSTITUTIONAL PETITION No. 3 of 2016 (MALINDI)**.

It is also important to remember that contempt of Court proceedings are quasi criminal in nature although they may arise out of civil proceedings. A contempt of Court is an offence of a criminal character and a

man may be sent to prison for it – **GATHARIA MUTIKIKA VS BAHARINI FARM 1985 K.L.R 227**. That is why an appeal against such an order is handled under the ordinary criminal jurisdiction. Therefore, contempt of Court proceedings, even if they arise in a Subordinate Court out of a dispute involving land, are not, strictosensu, matters relating to ***“the environment and the use and occupation of and title to land”*** as provided for under **Article 162 (2) (b) of the Constitution** and which should therefore be referred to the Environment and Land Court.

In the circumstances therefore, I make the following orders:-

***1. The Chief Magistrate’s Court at Embu is well seized of the jurisdiction to handle the applicant’s Notice of Motion dated 2nd June 2015.***

***2. This matter is therefore transferred to that Court where it will be mentioned on 15th February 2017 for further directions as to hearing and final determination.***

It is so ordered.

**B.N. OLAO**

**JUDGE**

**1<sup>ST</sup> FEBRUARY, 2017**

Ruling dated, delivered and signed in open Court this 1<sup>st</sup> day of February 2017

Ms Muthike for Mr. Kamunyori for the Applicants present

Attorney General for the Respondents absent.

**B.N. OLAO**

**JUDGE**

**1<sup>ST</sup> FEBRUARY, 2017**