



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**MILIMANI LAW COURTS**

**ENVIRONMENT AND LAND COURT**

**ELC. CASE NO. 1460 OF 2002**

**KENYATTA UNIVERSITY .....PLAINTIFF**

**-VERSUS-**

**KIMANI MBUGUA & 78 OTHERS.....DEFENDANTS**

**RULING**

Coming up before me for determination is the Plaintiff/Applicant's Notice of Motion dated 11<sup>th</sup> February 2014 seeking for leave to serve the Court Order issued on 31<sup>st</sup> July 2008 (hereinafter referred to as the "Court Order") upon the Defendants by way of substituted service through an advertisement in a leading daily newspaper and for costs of this Application be costs in the cause.

The Application is supported by the grounds appearing on the face of it together with the Supporting Affidavit of Prof. Paul K. Wainaina sworn on 11<sup>th</sup> February 2014 in which he averred that he is the Deputy Vice-Chancellor in charge of administration at the Kenyatta University, the Plaintiff herein. He further averred that this court issued the Court Order by consent on 31<sup>st</sup> July 2008 in the consolidated suit herein restraining the Defendants from erecting any new structures and/or in any way interfering with the affected portion of Land Reference No. 11026/2 (hereinafter referred to as the "Suit Property") pending the hearing and determination of this suit. He further averred that photos taken of the Suit Property on 5<sup>th</sup> August 2008 and on 30<sup>th</sup> January 2014 indicate that the Defendants have brazenly disobeyed the Court Order and proceeded to undertake developments on the Suit Property. He further averred that the Plaintiff has been impeded by the Defendants, their agents and/or employees from proceeding with its development plans to expand its educational activities by constructing vital infrastructure and facilities and unless the court urgently intervenes, the Plaintiff's core functions and activities will be jeopardized. He further stated that the large number of Defendants renders it impossible to personally serve each and every one with the Court Order and that the Application should therefore be allowed.

Though duly served with the Application, Counsel for the Defendants failed to file any response to the Application and the same is therefore uncontested.

It is evident that in filing this Application, the Plaintiff is laying a basis for pursuing contempt of court proceedings against the Defendants for disobeying the Court Order. I have noted that the Court Order was issued by way of consent between the Plaintiff and the Defendants way back in 2008. Since that time, this suit has remained pending and the trial has never commenced. It appears to me to be a failure of justice for this court to encourage the Plaintiff to pursue the course of contempt of court proceedings while all the along, the Plaintiff has failed to fix this suit for trial more than 6 years since the Court Order was issued. The effect of allowing the Application as prayed will be to pave way for contempt of court proceedings which will have the same net effect as if judgment has already been entered against the Defendants. This cannot be allowed to happen. Accordingly, in exercise of the inherent jurisdiction vested in this court by section 3A of the Civil Procedure Act and in furtherance of the overriding objective of this court as stipulated in section 1A and 1B of the Civil Procedure Act, I decline to grant the order sought

in the Application and direct that the suit herein be fixed for hearing within the next 3 months from today.

The Application is therefore dismissed and costs shall be in the cause.

**SIGNED AND DELIVERED IN NAIROBI THIS 2<sup>ND</sup> DAY OF MAY 2014.**

**MARY M. GITUMBI**

**JUDGE**