



**REPUBLIC OF KENYA**

**IN ENVIRONMENT AND LAND COURT OF KENYA AT ELDORET**

**PETITION NO. 18 OF 2013**

SAMUEL K. MAIYO.....1<sup>ST</sup> APPLICANT  
KEN OTIENO.....2<sup>ND</sup> APPLICANT  
JOSEPH OBONDO.....3<sup>RD</sup> APPLICANT  
GABRIEL KHAYEDI NGAIRA.....4<sup>TH</sup> APPLICANT  
PATRICK MUSYOKA MUNYU.....5<sup>TH</sup> APPLICANT  
JOHN OLOO ODONGO.....6<sup>TH</sup> APPLICANT

*(Suing as tenants on their own behalf and on behalf of other tenants and residents and as the representative of the tenants of Mayabi, Uhuru, Kamanda, Kuria, Tom Mboya, St. Mary Kodhek, Kilimani and Macharia Estates)*

**VERSUS**

COUNTY GOVERNMENT OF UASIN GISHU.....1<sup>ST</sup> RESPONDENT  
UASIN GISHU COUNTY BOARD.....2<sup>ND</sup> RESPONDENT  
THE HON. ATTORNEY GENERAL.....3<sup>RD</sup> RESPONDENT

**AND**

MR. JACKSON MANDAGO, THE GOVERNOR.....1<sup>ST</sup> CONTEMNOR  
MR. PETER LELEY, COUNTY SECRETARY.....2<sup>ND</sup> CONTEMNOR  
ROBERT NGISIREY, CES, DEPARTMENT OF LANDS.....3<sup>RD</sup> CONTEMNOR  
AUGUSTUS MUTIA, AP COMMANDANT,  
UASIN GISHU COUNTY.....4<sup>TH</sup> CONTEMNOR

**RULING**

The application before court is dated 11.3.2015 filed by the Petitioners seeking orders that Jackson Mandago, Mr. Peter Lelei, Robert Ngisirey and Augustus Mutia all jointly and severally be ordered to attend court forthwith to show cause why they should not be committed to civil jail for a period not exceeding six (6) months for contempt of court order dated 27.11.2014 per extract order dated 19.1.2015. The petitioners apply that the alleged contemnors be restrained by an order of injunction from evicting, harassing or threatening the petitioners and/or demolishing and/or damaging the premises whereat the petitioners reside. The petitioners pray that the respondent repair the premises.

The application is based on grounds that this Honourable Court granted its final orders on 27<sup>th</sup> November, 2014 per the extract order issued on 19<sup>th</sup> January, 2015 wherein inter alia the Court Order that status quo pending before the Finance Act, 2013 of Uasin Gishu (now nullified) in so far as the Petitioners are concerned be maintained.

The Respondents to the Petition were duly served with the Extract Order issued on 19<sup>th</sup> January, 2015 and that in breach of the court order on 28<sup>th</sup> February, 2015 personnel/officers from the County Government of Uasin Gishu in flagrant disobedience and contempt of the said court order invaded the Applicants' premises at Kodhek Estate whereat they damaged gates, doors and threw out the Applicants' household items in an unlawful attempt to forcefully evict the applicants.

While carrying out the forceful and unlawful attempted eviction, the Contemnors' personnel, agents or servants were heavily guarded by a contingent of armed Administration Police officers and they were being ferried by motor vehicles bearing the registration numbers of the County Government of Uasin Gishu.

It is stated that the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Contemnors are vested with executive authority and a fundamental/constitutional duty over the actions of the personnel/offices of the County Government of Uasin Gishu. The County personnel/officers were not armed with a valid court order authorizing the purported forceful eviction. The purported forceful and unlawful eviction was being carried out from dawn on a Saturday which is not an official working day for the County Government. That even after the tenants showed the invaders including the AP police copies of the court order dated 27<sup>th</sup> November, 2014, they nonetheless ignored the same and instead proceeded with their illegal and criminal activities.

It is contended that the involvement of the Administration Police in a purely civil dispute was unlawful, unconscionable, untenable in law, criminal, a travesty and gross abuse of their powers and renders the 4<sup>th</sup> Contemnor liable/punishable accordingly. That it is the fundamental duty of every person or entity against whom a court order is issued to obey such order to the fullest. The contemptuous actions were intended to undermine and belittle the dignity, authority and power of this Honourable Court as an impartial arbiter.

The petitioners contend that this Honourable Court should stamp its authority and dignity by punishing the Contemnors who have a penchant for disobeying court orders as a lesson to other persons who may be tempted to disobey court orders. That it is trite law that court orders should not be issued in vain.

In the supporting affidavit of Patrick Musyoka Munyu, it is stated that this Honourable Court rendered its final Ruling on 27<sup>th</sup> November, 2014 in respect to their Petition herein as per the Extract Order issued on 19<sup>th</sup> January, 2015 which is self-explanatory. The Extract Order which contained a Notice of Penal Consequence was duly served upon all the Respondents.

He states that on Saturday, the 28<sup>th</sup> February, 2015 at dawn a group of personnel/officers from the County Government of Uasin Gishu in company of heavily armed contingent of Administration Police officers invaded their premises and attempted to forcefully and unlawfully evict them thereby causing immense damage to their gates, doors, houses and threw out household items at Kodhek Estate in blatant contempt of the court order aforesaid. The invaders illegal and criminal actions were widely publicized by the local newspapers. The Applicants together with their families were terrified and traumatized by the inhumane, callous, illegal and criminal actions on the part of the Contemnors herein. That attempts by the tenants to show copies of the court order to the invaders and AP Officers was in vain, as they ignored the same and carried on with the illegal actions.

The 1<sup>st</sup> and 2<sup>nd</sup> Contemnors are the Principal Officers of the County Government of Uasin Gishu which was sued as the 1<sup>st</sup> Respondent in the Petition herein. The 3<sup>rd</sup> Contemnor is the County Executive Secretary in Charge of Lands Department. The 4<sup>th</sup> Contemnor is the AP Commandant, Uasin Gishu County and is as such responsible/culpable for the illegal actions of the Administrative Police Officers during the attempted evictions. The 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Contemnors are vested with the executive authority over the members of the County Government of Uasin Gishu by dint of Article 17 of the Constitution of Kenya.

That members/personnel of the County Government, Uasin Gishu are accountable and answerable to the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Contemnors who therefore bear the highest responsibility for the illegal actions, omissions or commissions of the County Government.

The applicants contend that it is a fundamental duty of the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Contemnors and all members of the County Governments to observe, respect, protect, promote and fulfill the rights and fundamental freedoms in the Bill of Rights including the right to peaceful and quiet occupation of the premises and human dignity, and that it is also a fundamental obligation of every person or entity and state organs including the County Government against whom a court order is issued to respect and obey such court orders and to promote the rule of law and that by reason of the County Government of Uasin Gishu being a party to the Petition herein and having fully participated in the proceedings; it therefore behooves on the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Contemnors to obey all the court orders issued herein to the fullest.

To the best of his knowledge, the Ruling dated 27<sup>th</sup> November, 2014 and the Orders emanating thereto have not been varied or set aside and are therefore binding on the parties. The Contemnors, their personnel, agents or servants were not armed with a court order authorizing the purported eviction. The actions by the Contemnors is a clear demonstration of impunity and abuse of Powers and is as such liable for punishment by this Honourable Court. A complaint regarding the illegal eviction was lodged at Eldoret Police Station vide 0B/No. 40/28/2/2015. That it is pertinent that this Honourable Court guards its dignity and authority as an impartial arbiter. The Contemnors ought to be compelled to personally either jointly or severally repair, replace any damaged items during the illegal evictions and to compensate the petitioners accordingly.

The applicants believe that it is therefore pertinent that this Honourable Court be pleased to issue injunctive orders to restrain the Contemnors from carrying out the unlawful evictions, destroying or damaging their properties and or harassing or intimidating them and their families. That the Administration Police under the Command of the 4<sup>th</sup> Contemnor engaged in illegal activities in a purely civil dispute and hence abused their powers and should be sanctioned by this court accordingly.

Mr. Peter Leley, the County Secretary as he then was states that he is the County Secretary of the 1<sup>st</sup> Respondent, and also the alleged 2<sup>nd</sup> Contemnor, Uasin Gishu County hence competent to make and swear this affidavit on his own behalf and on behalf of the 1<sup>st</sup> and 3<sup>rd</sup> alleged

contemnors. That he has read and understood the import, purport and purpose of the 5<sup>th</sup> Applicant's application dated 11<sup>th</sup> March, 2015 and wish to respond that he has been advised by Mr. Z. K. Yego, their advocate on record, which information he believes to be true that the 5<sup>th</sup> Applicant's application dated 11<sup>th</sup> March 2015 lacks merit, is defective, misconceived and has been made in bad faith.

That he is informed by their advocate that the said application is fatally defective as no leave was sought or granted to institute this contempt application. That he is aware that on 24<sup>th</sup> December 2013, the Applicants herein filed this petition seeking the following orders: -

***a. A declaration that the process undertaken by the Respondents in increasing the rent for residential houses to wit; Mayabi, Uhuru, Kamanda, Kuria, Tom Mboya, St. Mary's Kodhek, Kilimani and Macharia was not democratic and transparent and therefore null and void.***

***b. A declaration that public participation and/or involvement in a matter of this magnitude in the county is paramount and the exercise undertaken by the Respondents without observing the Supreme law of the land is null and void.***

***c. A declaration that the Uasin Gishu County Finance Bill No. 6/2013 is illegal.***

***d. IN THE ALTERNATIVE AND WITHOUT PREJUDICE to prayers a, b and c above the court be pleased to order deletion of that part of the Uasin Gishu County Finance Bill No. 6/2013 specifically part VI(I.O) dealing with increment of rent.***

***e. An order for mandamus to compel the Respondents to publish a public notice in the daily newspaper a withdrawing the new rent and/or rent increment in the Uasin Gishu County Finance Bill No. 6/2013 part VI (I.O) within 7 days of the date of the court order.***

***f. A permanent injunction to restrain the Respondents their servants, agents and/or assigns and/or any other person acting for and on behalf of the respondents from interfering with the Petitioners, tenants and residents' tenancy, charging the increased rent, evicting and/or in any other manner with the Petitioners wellbeing and as stake holders in the housing industry within the county.***

***g. An order for costs.***

***h. Any other or further orders which this honourable court may deem just and fit to grant in the circumstances.***

The petition was accompanied by an application dated 23<sup>rd</sup> December, 2013 seeking an injunction restraining the County Government of Uasin Gishu from charging the increased rent and staying enforcement of the rent legislated in the Uasin Gishu County Finance Act, 2013 in respect of Mayabi, Uhuru, Kamande, Kuria, Tom Mboya, St. Mary's Kodhek, Kilimani and Macharia Estates pending the hearing and determination of the application inter-partes. That nowhere in the said petition and the said application did the 5<sup>th</sup> Applicant or any other petitioner pray for an injunction restraining the County Government of Uasin Gishu from evicting tenants from Kodhek Estate. That he was aware that there was a case filed by some tenants of Kodhek challenging notices of eviction issued to them on 19<sup>th</sup> May 2014.

The tenants filed judicial review case No. 6 of 2014; **Republic -Vs- Uasin Gishu County Board & Another** seeking an order of certiorari to quash their decision of 19<sup>th</sup> May 2014 terminating the tenancy of the exparte applicants in the Respondent's houses in Kodhek Estate Eldoret. That vide a ruling delivered on 13<sup>th</sup> August 2014, Learned Justice G. K. Kimondo dismissed the exparte applicant's application for stay of execution of the said termination notice and having lost the said application for stay of the termination notice, the exparte applicants went to their office on 15<sup>th</sup> August, 2014 and requested the County Government of Uasin Gishu to grant them more time to vacate the premises so that they could undertake renovations and repairs. They jointly agreed for a 30-day period of stay of eviction to enable the exparte applicants to secure alternative accommodation.

That despite binding themselves to move out of the premises and withdrawing case No. Judicial Review No. 46 of 2014, the exparte applicants moved to this court to seek stay orders and were granted stay of eviction orders pending the hearing and determination of this petition.

That it is in fact curious that the Applicants sneaked back to court despite binding themselves to vacate the premises by 15<sup>th</sup> September 2014.

The Applicants were due for eviction when the stay orders were vacated on 13<sup>th</sup> August, 2014 but asked for and were granted a 30 days extension when they sought his audience on 15<sup>th</sup> August 2014. They granted them that extension on humanitarian grounds to facilitate them to organize alternative accommodation. The tenants bound themselves to vacate the premises by 14<sup>th</sup> September 2014 to enable the 1<sup>st</sup> Respondent renovate the premises. As a sign of good faith, the Applicants withdrew the case then pending in court thus Judicial Review No. 46 of 2014. However, to their dismay and consternation, the Applicants acted in bad faith and in blatant disregard of the consent sneaked back to court in an unrelated matter and filed the application for stay of eviction pending the conclusion of this petition. The stay orders that the Applicants enjoyed therefore lapsed immediately judgment was delivered on 27<sup>th</sup> November 2014. That it was the contemplation of all parties that the stay orders would lapse on the day of the delivery of judgment in this matter.

He contends that in his judgment, Justice Munyao merely adopted the judgment of Justice Ngenye in Eldoret High Court Petition No. 3 of 2013 **North Rift Motor Bike Taxi Association —VS- The Uasin Gishu County Government** which had declared that the Uasin Gishu County Finance Act, 2013 was unconstitutional, null and void and that in the said judgment, Justice Munyao did not injunct the 1<sup>st</sup> Respondent from evicting the Applicants from Kodhek Estate or terminating their tenancy since the issue of eviction was not available for determination in the petition which only concerned the constitutionality and legality of the increased rent prescribed in the Uasin Gishu

County Finance Act, 2013.

They have not charged any rent on the basis of the Uasin Gishu County Finance Act, 2013 and have already credited all monies paid on the basis of the said Act to the tenants. That he is informed by his advocate that he is not in contempt of the said court judgment insofar as they have not charged rent on the basis of the Uasin Gishu County Finance Act, 2013.

He is aware that this petition has no relation to the issue of termination of tenancy and eviction of the tenants of Kodhek Estate, which was the subject matter in Judicial Review No. 46 of 2014 which has since become withdrawn. In fact, the ex parte applicants in Judicial Review No. 46 of 2014 and the Petitioners herein are different parties with different claims.

That in any event the alleged orders have never been served on him personally. Be that as it may, having looked at the order annexed to this application, the same does not categorically injunct the 1<sup>st</sup> Respondent from evicting tenants from Kodhek Estate whose tenancy had been lawfully terminated.

That with all due respect to the 5<sup>th</sup> Applicant who filed this petition, he seems to confuse the prayers in this petition with that of Judicial Review No. 46 of 2014 which has been withdrawn. The Applicant herein is very mischievous and has only sneaked to court to intimidate them from enforcing the consent dated 15<sup>th</sup> August 2014. The Applicant is indeed a vexatious and frivolous claimant as he was party to Judicial Review No. 46 of 2014.

That to also demonstrate the distinct nature of the two suits and their subject matter it is instructive to note that the Petitioners live in different estates and were only united for the purposes of opposing the rent increment and not termination of tenancy.

That the County Government wishes to renovate Kodhek Estate and issued the eviction notices to the tenants to vacate the premises to enable them carry out the said evictions as the same cannot be carried out when tenants are still resident in the premises. The renovation was occasioned by the Applicants' demands in his affidavit dated 3<sup>rd</sup> April, 2014.

That indeed, they have already renovated most of the premises to make them more habitable. Surprisingly, the Applicant is in rent arrears of Kshs.32,700/= and has not been paying rent since August 2014.

That he is informed by his advocate which information he believes to be true that they did not breach any court order in carrying out evictions of tenants of Kodhek Estate who had been issued with eviction notices way back on 19<sup>th</sup> May, 2014.

That he is not aware of any order stopping the 1<sup>st</sup> Respondent from renovating its rental premises in Kodhek Estate.

That as a matter of fact, renovations could not be done while the tenants are in occupation, and thus most of the tenants moved out voluntarily to enable them carry out renovations, which would ultimately benefit them.

That it is important to note that more than 15 of the 21 tenants have voluntarily moved from the premises to enable the 1<sup>st</sup> Respondent carry out renovations.

That he knows of his own knowledge that most of the tenants in Kodhek Estate have in fact vacated their premises in line with the eviction notice of 19<sup>th</sup> May 2014, the consent and the court judgment issued on 27<sup>th</sup> November 2014 but the 5<sup>th</sup> Appellant is a lone ranger engaging in a wild goose chase and ought to be condemned to pay the costs of this misconceived application. The fact that the 1<sup>st</sup>, 4<sup>th</sup> and 6<sup>th</sup> Respondents have disembarked from this case is also quite telling.

That the Applicants have enjoyed stay orders for almost one year which has adversely affected the operations of the County Government since contractors had already been appointed to undertake renovations and the delay has occasioned additional costs in terms of idle labour and equipment, inflation and penalties for breach of contract to the contractors. That he prays that this application be dismissed with costs as the same is lacking in merits and is misconceived and made in bad faith.

**Mr. Robert Ngisirey**, the CES, Department of Land as he then was states that the 5<sup>th</sup> Applicant is a frivolous, malicious, vexatious and mischievous litigant who thrives on impunity and falsehoods. That the 5<sup>th</sup> Applicant misled the court into granting him interim orders on the basis as an inexistent suit and inexistent order and failed to disclose to the court material facts particularly the fact that there is no order in this suit prohibiting the 1<sup>st</sup> Respondent from evicting the former tenants of Kodhek Estate whose tenancy had been validly terminated on 15<sup>th</sup> May 2014.

The Applicant and other former tenants of Kodhek Estate had filed another suit against the 1<sup>st</sup> Respondent challenging the notices of termination of tenancy, which suit the 5<sup>th</sup> Applicant withdrew on 26<sup>th</sup> August 2014 and undertook to vacate the 1<sup>st</sup> Respondent's premises by 14<sup>th</sup> September 2014 but have persisted in illegal occupation of the premises to-date.

This case is distinct from Eldoret High Court Judicial Review No. 6 of 2014 in that this case related to a claim challenging increment of rent in all the ten estates owned by the 1<sup>st</sup> Respondent as per the rates prescribed in the Uasin Gishu County Finance Act, 2013 while case No. JR No. 6 of 2014 which was later withdrawn by the Applicant, challenged notices of termination of tenancy and eviction issued to the tenants of Kodhek estate only. The two cases are therefore unrelated.

The Applicant's application for stay of execution of the notices of termination was dismissed on 13<sup>th</sup> August, 2014 by Justice G. K. Kimondo

in JR No. 6 of 2014 whereupon the Applicants sought to be indulged for 30 days to vacate the premises and voluntarily undertook to clear all arrears and give voluntary possession of the premises to the 1<sup>st</sup> Respondent on 14<sup>th</sup> September, 2014.

The Applicant tenants are in arrears of over Kshs. 212,600/= as at 26<sup>th</sup> August 2014. They are in illegal occupation of the premises without payment of rent.

Vide an undertaking done on 15<sup>th</sup> August 2014, the Applicant and his former co-tenants undertook to vacate the premises by 14<sup>th</sup> September, 2014 and promised to pay all rent arrears before then. They also gave the 1<sup>st</sup> Respondent the right to evict them should they fail to pay rent before 14<sup>th</sup> September, 2014.

There is no existing tenancy relationship between the Applicant and the 1<sup>st</sup> Respondent as the tenancy was terminated on 15<sup>th</sup> May, 2014. The Applicant had only been granted temporary relief from eviction in this suit until the hearing and determination of the petition for whatever it's worth and the temporary relief therefore lapsed on 27<sup>th</sup> November 2014 when judgment was delivered in this matter.

That on 17<sup>th</sup> April 2015, he was called by a Mr. Barnabas Mwangi who is the proprietor of a land parcel adjacent to Kodhek Estate who wanted them to establish and agree on a boundary possession for a wall he wanted to put up as he did not want to encroach on the 1<sup>st</sup> Respondent's property.

He went there in the company of P. Mutai (Chief Officer), Engineer Lutta (County Architect) and two officers Mr. Busienei and Mr. Alwanyi. After establishing the boundaries and tentatively agreeing with the said Mr. Mwangi, he walked back to his car but the Applicant, together with other former tenants, namely Peterson Mwangi and over six others accosted him with pangas (machetes) as the 5<sup>th</sup> Applicant shouted "**Leo waziri tumekupata, umetusumbua sana lakini leo utakiona**".

The 5<sup>th</sup> Applicant aimed a panga at him and almost cut him on the face were it not for Mr. Busienei who shielded him with his hands and got injured in the process. They ran for their dear lives and even abandoned one of their car's motor vehicle registration No. KAU 147C at the site with the Applicant and about 10 other people in hot pursuit fully armed with pangas.

Pangas were even thrown at them and Mr. Lutta, Mr. Busienei and Mr. Alwanyi got injured in the process. They reported the assault at Eldoret Police Station at 6.30 p.m. and the three injured officers went to Uasin Gishu District Hospital where they were treated and discharged.

They reported the incident to the police who issued with OB No. 101/17/4/2015. His officers were duly issued with P3 forms. Surprisingly, the Applicant, in his characteristic manner of misleading everyone and playing victim sensing an imminent arrest and prosecution for the assault and to maliciously beef up their hopeless application for contempt, gave false information to the police that they had also been assaulted by their officers.

The police duly conducted their independent investigation and found out that the officers of the 1<sup>st</sup> Respondent had been assaulted by the 5<sup>th</sup> Applicant and one Peterson Mwangi. The police further found that the 5<sup>th</sup> Applicant and Peterson Mwangi had given false information to the police. The 5<sup>th</sup> Applicant and the said Peterson Mwangi are now being pursued to be charged with the offence of assault. The Applicant is now on the run to evade arrest and prosecution for assault and for giving false information the police. Herewith annexed and marked RN1 (a)-(b) are copies of the P3 forms.

That it is therefore evident that the Applicant is in the process of teasing the 1<sup>st</sup> Respondent with a view to fishing for false evidence to beef up their hopeless application.

They were not evicting the Applicant as they know that his frivolous and mischievous shenanigans will soon come to an end once his contempt application is dismissed and the interim orders discharged as the same were issued on the basis of false information.

The Applicant should learn to respect court orders and simple undertakings for him to regain any credibility in the eyes of right thinking members of the society some of whom have shunned him for his trademark impunity including the 1<sup>st</sup> - 4<sup>th</sup> and 6<sup>th</sup> Petitioners and more than 15 tenants who voluntarily vacated the premises after withdrawing the case they had earlier filed challenging termination of their tenancy in Kodhek Estate to wit Eldoret HCC Judicial Review No. 6 of 2014.

That annexure PL6 was not signed under any coercion but under leniency since the Applicant had already lost their application for stay orders and risked immediate eviction but it is them who were magnanimous enough to grant them 30 more days to vacate the premises but the Applicant has maliciously abused our magnanimity and disobeyed court orders and his own undertakings at will.

That no eviction of the Applicant took place and the question of loss and damage does not arise. The Applicant appears to have graduated from a vexatious litigant to a shameless extortionist who clearly thrives on impunity and should face the full force of the law. The Applicant is the one who should pay damages that have been occasioned by stay orders issued herein.

That the court process should not be openly abused by parties such as the Applicant who is the one in contempt of court orders dated 13<sup>th</sup> August 2014, 27<sup>th</sup> November 2014, the interim orders herein and his own undertaking of 15<sup>th</sup> August, 2014.

That the contempt application herein lacks merit and is so baseless and misconceived, and further brought in bad faith by a vexatious and frivolous litigant on a mission to perpetuate impunity and extort money from unsuspecting members of the public and should be dismissed

with costs of Kenya Shillings One Million and paid by the Applicant within seven days. There was no eviction done herein but renovations of the premises.

Mr. Augustus Mutia, the County Administration Police Commander, Uasin Gishu states that he never participated in the eviction of the Petitioners.

I have considered the submissions by the parties herein and do find that on the 27.11.2014, this court gave an order:

**1. That the issue whether or not the Finance Act, 2013 of Uasin Gishu County is unconstitutional has already been decided in Eldoret High Court, Constitutional Petition No. 3 of 2014, The North rift Motorbike Taxi Association (NRMBTA) Vs The Uasin Gishu County Government.**

**2. That in the said decision, the said Finance Act, 2013 of Uasin Gishu County has already been held to be unconstitutional, null and void.**

**3. That it follows therefore that the parties herein need to be placed in the position that they were in prior to the enactment of the Finance Act, 2013 and any monies paid in accordance with the new rent needs to be credited to the tenants.**

**4. That the status quo pending before the Finance Act, 2013 of Uasin Gishu County in so far as the petitioners are concerned be maintained.**

The order was issued on the 19.1.2015. The same was served upon the firm of Z. K. Yego, Kimaru Kiplagat, Officer in-charge Eldoret Police Station, sub County, Administration Police Commandant, Eldoret West and Office of the Attorney General. This court finds that all parties to the dispute were served with the court order and therefore, the alleged contemnors cannot feign ignorance. Z. K. Yego was served on behalf of the County Government of Uasin Gishu, the 1<sup>st</sup> respondent. The Attorney General was also served with the court order. Service on counsel for the respondents was sufficient service upon the respondents.

Mr. Peter Lelei denies that the court enjoined them from evicting the applicants from Kodhek Estate or terminating their tenancy since the issue of eviction was not available for determination in the petition which only concerned the constitutionality and legality of the increased rent prescribed in the Uasin Gishu County Finance Act, 2013.

Mr. Peter Lelei was informed by his advocate that he was not in contempt so long as he did not charge rent on the basis of the Uasin Gishu County Finance Act, 2013. He states that he was not served personally but this court finds that service upon the advocates of the County was sufficient service upon the respondents and the alleged contemnors. He acknowledges that the County Government issued eviction notices because it wished to renovate the houses. He states that the houses have been renovated. The County Secretary states that he did not breach any court order in carrying out evictions of tenants of Kodhek Estate who had been issued with eviction notices way back on 19.5.2014. He is not aware of any court order stopping renovation of Kodhek Estate. That renovation could not be done with tenants in occupation. He adds that in fact the court voluntarily visited the premises. This action was a clear breach of the order of status quo.

Mr. Ngisirey denies ever evicting the petitioners and states that the petitioners are engaged in acts of extortion and violence. Augustus Mutia, the Administration Police Commandant, Uasin Gishu and the 4<sup>th</sup> alleged Contemnor states that neither the office or himself was party to the petition that laid the issuance of the orders dated 19.1.2015 and therefore, no orders were issued against his department. He was not served with the order. He was not aware of the dispute. He does not know the status quo to be maintained. Moreover, it is not clear the officers who went to the scene. He states that on the material date, the officers at the scene were merely to avert criminal authorities of a gang of robbers.

No officer was assigned to carry out any eviction. However, he admits that he found the officers of the County Government evicting residents in the affected areas based on a court order. The officers asked for the court order but the County officials did not produce one and therefore, his officers intervened and stopped the eviction. He did not assign the County Government any police officers to assist in the eviction.

From evidence on record, it has been demonstrated as required in such a case that the respondents carried out an eviction of the petitioners despite an order of status quo. What does an order of status quo mean? This court refers to **Black's Law Dictionary**, that defines status quo as the situation as currently exists.

In the petition, the petitioners had applied for the following reliefs:

***(a) A declaration that the process undertaken by the respondents in increasing the rent for the residential houses to wit; Mayabi, Uhuru, Kamanda, Kuria, tom Mboya, St. Mary's Kodhek, Kilimani and Macharia was not democratic and transparent and therefore null and void.***

***(b) A declaration that public participation and/or involvement in a matter of this magnitude in the county is paramount and the exercise undertaken by the respondents without observing the Supreme law of the land is null and void.***

***(c) A declaration that the Uasin gishu County Finance Bill No. 6/2013 is illegal.***

***(d) In the alternative and without prejudice to prayers a, b and c above, the court be pleased to order deletion of that part of the Uasin Gishu County finance Bill No. 6/2013 specifically part VI(I.O.) dealing with increment of rent.***

*(e) An order for mandamus to compel the respondents to publish a public notice in the daily newspaper a withdrawing the new rent and/or rent increment in the Uasin Gishu County Finance Bill No. 6/2013 Part VI (I.O.) within 7 days of the date of the court order.*

*(f) A permanent injunction to restrain the respondents, their servants, agents and/or assigns and/or any other person acting for and on behalf of the respondents from interfering with the petitioners, tenants and resident's tenancy, charging the increased rent, evicting and/or in any other manner with the petitioner's well-being and as stakeholders in the housing industry within the county.*

*(g) An order for costs.*

*(h) Any other or further orders which this honourable court may deem just and fit to grant in the circumstances.*

By the court granting an order of status quo, it simply granted an order against any eviction as the situation before the order was that there was no eviction. By evicting or attempting to evict the petitioners, the respondent was acting in contempt of the court order issued on 19<sup>th</sup> January 2015.

The upshot of the above is that the 2<sup>nd</sup> respondent is found to have acted in contempt of the court order issued on 19<sup>th</sup> January 2015 by evicting or attempting to evict the petitioners and it is hereby ordered that he be imprisoned for a term of 2 months or in alternative pay a fine of Kshs.200,000. There is no evidence that the 1<sup>st</sup> and 3<sup>rd</sup> alleged Contemnors acted in contempt of the court order. The 4<sup>th</sup> alleged Contemnor's evidence is that he did not deploy any officer at the scene of eviction and no evidence has been adduced by the petitioners to that effect and therefore no act of contempt has been proved against him. The application succeeds against the 2<sup>nd</sup> alleged Contemnor as he admitted that there was an eviction, but fails against the 1<sup>st</sup>, 3<sup>rd</sup> and 4<sup>th</sup> alleged Contemnors. The applicants have applied for an injunction and renovation of the premises but this court is of the view that there is an order of status quo which serves as an injunction.

For the avoidance of doubt, the status quo as ordered by the court could not have gone beyond the financial year in ending 2014 as the Finance Act being challenged was the one of Finance Act 2013.

This court observes that the order of status quo is still in force as it was a final order of the court and has not been set aside or reviewed, however the same was to lapse by implication with the lapse of the financial year. Granting an order of injunction as prayed would be superfluous there being an order of status quo. To avoid confusion in this dispute, this court extends the order of status quo up to and until the 30.6.2019. Orders accordingly.

**Dated and delivered at Eldoret this 25<sup>th</sup> day of January, 2019.**

**A. OMBWAYO**

**JUDGE**