



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS**

**ELC. CASE NO. 200 OF 2018 (O.S)**

**MWENE MUNDA WELFARE ASSOCIATION**

*(Suing through its Chairman, Secretary and*

*Organizing Secretary*

**DUNCAN KAMBA**

**KAVILI MBITHI**

**MUTHUI MUSEMBI.....PLAINTIFF**

**VERSUS**

**KITUI COUNTY GOVERNMENT.....1<sup>ST</sup> DEFENDANT**

**B2 YATTA RANCHING CO-OP. SOCIETY LTD.....2<sup>ND</sup> DEFENDANT**

**KATOTENI NGUAMUKA FARMERS**

**ENVIRONMENTAL CONSERVATION**

*(Sued through its Patron, Chairman, Secretary and Organizing Secretary*

**KYALO NGUTHU**

**MUTHENGI MULAMBAYA**

**CEDRIC SAMMY MWANZIA**

**JOSEPHAT NGUU NDONGA.....3<sup>RD</sup> DEFENDANT**

**RULING**

1. What is before me is the Application by the Plaintiff dated 28<sup>th</sup> November, 2018 in which the Plaintiff is praying for the following orders:

*a. That this Honourable Court be pleased to order that Kyalo Nguthu, Muthengi Mulambaya, Cedric Sammy Mwanzia and Josephat Nguu Ndonga the Patron, Chairman, Secretary and Organizing Secretary respectively of the 3<sup>rd</sup> Defendant herein be committed to civil jail for a term of six (6) months and/or for such a term as the court may determine and/or property of the said Kyalo Nguthu, Muthengi Mulambaya, Cedric Sammy Mwanzia and Josephat Nguu Ndonga be attached and sold for disobedience of this Honourable Court’s orders made on 17<sup>th</sup> October, 2018 and extended on 25<sup>th</sup> October, 2018.*

*b. That this Honourable Court be pleased to summon Shadrack Kyalo Malulu and Charles Nyambora, both administration police officers based at Katutu AP Camp to show cause why they should not be committed to civil [jail] for a term of six (6) months or for such a term as the court may determine and/or why the property of the said Shadrack Kyalo Malulu and Charles Nyambora should not be attached and sold for blatant and continued disregard of this Honourable Court’s orders made on 17<sup>th</sup> October, 2018 and extended on 25<sup>th</sup> October, 2018.*

c. *That this Honourable Court be pleased to give further orders and/or directions as it may deem fit and just to grant.*

d. *That costs of this Application be provided for.*

2. The Application is supported by the Affidavit of the Plaintiff's Chairman who has deponed that on 17<sup>th</sup> October, 2018, this court issued injunctive orders restraining the Defendants or their agents from harassing or threatening the officials of the Plaintiff and its members and from interference with the Plaintiff's use of a portion of L.R. No. 12010 at Kitui Yatta B2 (*Katoteni*).

3. It is the Plaintiff's case that the said orders were served on all the officials of the 3<sup>rd</sup> Defendant on 22<sup>nd</sup> October, 2018 and 13<sup>th</sup> November, 2018; that despite being served with the said court orders, the alleged contemnors have continued to disobey them and that at the behest of the 3<sup>rd</sup> Defendant's officials, the named Administration Police Officers arrested some members of the Plaintiff.

4. The Plaintiff's Chairman deponed that the failure by the contemnors to comply with the orders of the court is contemptuous; that the acts of the two named Administration Police officers are sub-judice and that for the maintenance of the rule of law and good order, the authority and dignity of the courts should be upheld at all times.

5. In response, the 3<sup>rd</sup> Defendant's Secretary deponed that the Application does not disclose any act of disobedience of the order of the court; that the Plaintiff's Affidavit lack material particulars of the mode and manner of the harassment, intimidation and/or threats and that the matter complained of is before Kitui Law Courts in Criminal Case No. 1338 of 2018.

6. The 3<sup>rd</sup> Defendant's Secretary stated that to seek to commit law enforcement officers for having undertaken law enforcement duties is an affront to the rule of law and an abuse of the court process and that the Plaintiff's annexure DK 3 demonstrates the absurdity of the Application.

7. The 3<sup>rd</sup> Defendant's Secretary finally deponed that some of the Plaintiff's associates are law breakers who want to use the order of the court to halt criminal proceedings and that the Application should be dismissed. The Plaintiff and the Defendant's advocates filed their respective submissions which I have considered.

8. It is not in dispute that on 17<sup>th</sup> October, 2018, this court issued a temporary order of injunction in the following terms:

***“2. That pending the hearing and determination of this suit and/or further orders, this Honourable Court be pleased to issue an order of temporary injunction restraining the Defendants either by themselves, their authorized agents, servants, employees, workers or otherwise whomsoever from harassing, intimidating, threatening the officials and/or the members of the Plaintiff and/or entering, trespassing, evicting, threatening to evict, alienating, selling, advertising for sale, transferring, charging, mortgaging, registering and/or otherwise interfering with the Plaintiff's, its officials, members, and/or the Plaintiff's, its officials and member's possession, use, occupation and/or quiet enjoyment to a portion measuring 3,000 acres or thereabout of all that property situated at the intersection of Katoteni River and Mwita Syano River and being a portion of all that parcel of land known as L.R. No. 12010 at Kitui Yatta B2 (Katoteni), within Kitui County for fourteen (14) days.”***

9. According to the Affidavit of Service of the process-server, the 3<sup>rd</sup> Defendant's officials were served with the said order on 22<sup>nd</sup> October, 2018. On the same day, the said order was served on the Kitui County Police Commander and the County DCI.

10. Although the Plaintiff's officials have deponed that the 3<sup>rd</sup> Defendant's officials have continued to harass, intimidate and or threaten them and their members, they have not explained how and in what manner the 3<sup>rd</sup> Defendant's officials have done that, or even the date of the purported harassment.

11. The evidence annexed on the Plaintiff's Secretary's Affidavit shows that the Plaintiff's members were arrested and arraigned in court in respect to some acts, including assault. No evidence has been placed before this court to show that the charges facing the Plaintiff's members are in direct conflict with the orders of this court.

12. In any event, the orders of this court did not mandate the Plaintiff's members or officials to engage in any act that is criminal in nature. Indeed, despite the orders of this court, the police are entitled to maintain law and order, and to charge in a criminal court any person, including the Plaintiff's and the 3<sup>rd</sup> Defendant's members and officials, if, upon investigations, they are convinced that they have committed an offence. It is not the business of this court to curtail the police to undertake their constitutional mandate of maintaining law and order.

13. In the absence of evidence to show that the alleged contemnors are in contempt of the orders of this court, and in view of the fact that the annexed charge sheet has no correlation with the orders of this court, I find the Application dated 28<sup>th</sup> November, 2018 to be unmeritorious.

14. For those reasons, I dismiss the Notice of Motion dated 28<sup>th</sup> November, 2018 with costs.

**DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 22<sup>ND</sup> DAY OF MARCH, 2019.**

**O.A. ANGOTE**

**JUDGE**