

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KERICHO

ELC CASE NO. E014 OF 2022

LIPTON TEAS AND INFUSIONS KENYA PLC.....PLAINTIFF

VERSUS

**MOKAL INVESTMENTS LIMITED.....1ST
DEFENDANT**

**CHIEF LAND REGISTRAR.....2ND
DEFENDANT**

**ANTHONY NGETICH.....3RD
DEFENDANT**

**LANDO AGENCIES LIMITED.....4TH
DEFENDANT**

**ANDREW CHERUIYOT ROTICH.....5TH
DEFENDANT**

**CHILEK ENTERPRISES LIMITED.....6TH
DEFENDANT**

**LEONARD KIMUTAI NGERECHI.....7TH
DEFENDANT**

**SIMON KIPTOO SIGILAI.....8TH
DEFENDANT**

**KERIWEST SUPPLIES ENTERPRISES LTD.....9TH
DEFENDANT**

**TIME STAR LIMITED.....10TH
DEFENDANT**

**EZEKIEL KIPKOECH TONUI.....11TH
DEFENDANT**

**JOHNSTONE KIPKEMOI CHEBOCHOK.....12TH
DEFENDANT**

**FATUMA ALI ABDULREHMAN.....13TH
DEFENDANT**

**BYMARK GENERAL ENTERPRISES LIMITED.....14TH
DEFENDANT**

**SILVERLINE CONTRACTORS LIMITED.....15TH
DEFENDANT**

**BELTED HOLDINGS LIMITED.....16TH
DEFENDANT**

RULING

Introduction

1. This ruling is in respect of the 3rd to 16th Defendants/Applicants Notice of Motion application dated 17th March, 2025.
2. The application is expressed to be brought under **Order 40 Rule 3(1) & Order 50 Rule 1** of the **Civil Procedure Rules, Sections 3A & 63** of the **Civil Procedure Act, Section 5(1)** of the Judicature Act and **Article 159** of the Constitution of Kenya.
3. The application seeks the following orders;
 - a. **Spent**
 - b. **That David Korir, Sambret Estate Manager, Forestry Manager Reuben Geni and Ken Odire General Manager all being**

senior employees of the Plaintiff/Respondent named herein, be committed to jail for contempt of Court for disobeying the orders of this Court given on 14th January, 2025.

c. That the said employees be ordered to pay a fine of not less than Kshs. 1,000,000 each and/or be kept in prison for a term of six (6) months or for such terms as this Honourable Court may deem fit to order.

d. That the Respondent be compelled to forthwith cease cutting trees on the suit land in compliance with the status quo orders of this Court and that the OCS, Chepseon Police Station to ensure compliance.

e. That the Respondent do pay costs of this application.

f. That this Honourable Court make such orders as it deem fit in the circumstances.

4. The application is based on the grounds on its face and the supporting affidavit of **Silas Kiptui Kipchilat** sworn on 17th March, 2025.

Factual Background.

5. The Plaintiff/Respondent commenced the present proceedings vide the Plaint dated 11th October, 2020. The Plaint was amended in June, 2024 and further Amended on 20th February, 2025.
6. In the further amended Plaint, the Plaintiff/Respondent seeks the following prayers;

aa) A declaration that LR 9932/2 (Grant No. No (sic) 83721) a valid and existing title.

a) A declaration that the Plaintiff is the only lawful and registered proprietor of the property known as LR No. 9932/2, and all the excisions arising therefrom, and that the said parcel of land is private property;

b) A declaration that the lease dated 28th April, 2022 in respect of LR

9932/7 and the Certificate of Title dated 10th May, 2022 in respect of LR No. 9932/7 held by the 1st Defendant and any other person are null and void.

bb) A declaration that the certificates of title and lease with respect to LR 9932/8, LR 9932/9, LR 9932/10, LR 9932/11, LR 9932/12, LR 9932/13, LR 9932/14, LR 9932/16, LR 9932/17, LR 9932/18, LR 9932/19, LR 9932/20, LR 9932/21, LR 9932/22 or any other purported evidence of proprietorship arising from any parcel of land that is a sub-division of LR 9932/7 or any other excision of LR 9932/2 is null and void.

c) A permanent injunction restraining the 1st Defendant and the 3rd to 16th Defendants either by themselves, servants and/or employees, their agents, and/or representatives from entering, remaining upon and/or trespassing on all that property known as LR No. 9932/2, cutting trees, removing trees or any other thing, disposing, alienating, encumbering, charging, interfering, transferring or in any other way howsoever dealing with all that property known as LR No. 9932/2;

d) An order directing the 2nd Defendant to recall the lease dated 28th April, 2022 in respect of LR 9932/7 and the Certificate of Title dated 10th May, 2022 issued to the 1st Defendant and any other persons in respect of LR 9932/7 and to revoke the same within fourteen (14) days of the judgement date, failure to which the lease and Certificate of Title to stand revoked;

dd) An order directing the 2nd Defendant to recall the Certificates of Title and lease with respect to LR 9932/8, LR 9932/9, LR 9932/10, LR 9932/11, LR 9932/12, LR 9932/13, LR 9932/14, LR 9932/16, LR 9932/17, LR 9932/18, LR 9932/19, LR 9932/20, LR 9932/21, LR 9932/22 issued to the 3rd to 16th Defendants and to revoke the same within fourteen (14) days of the judgement date, failure to which the lease and Certificate of Title to stand revoked.

e) General damages for trespass;

f) Special damages in the sum of Kes. 4,300,000.

g) Interest on (e) and (f) from the date of filing this suit until payment in full.

- 7.** The 1st Defendant/Respondent filed its Statement of Defence dated 24th October, 2022 which Statement of Defence was amended on 10th June, 2024. It denies the averments in the Amended Plaint and prays that the Plaintiff/Respondent's suit be dismissed with costs.
- 8.** The 2nd Defendant/Respondent filed its Statement of Defence dated 8th February, 2022. The said Statement of Defence was amended on 25th September, 2024. The 2nd Defendant/Respondent denies the averments in the Amended Plaint and prays that the Plaintiff/Respondent's suit be dismissed with costs.
- 9.** As at the time of writing of this ruling the 3rd to 16th Defendants/Applicants have not filed their Statements of Defence.

- 10.** The application under consideration first came up for hearing on 19th March, 2025 when the Court directed that it be served upon the Respondents.
- 11.** On 30th April, 2025, the application came up for hearing and was rescheduled to 15th July, 2025, on which date Counsel for the 1st Defendant and Counsel for the 2nd Defendant informed the Court that they will not be participating in the hearing of the application.
- 12.** The Court issued directions that the application will be canvassed by way of written submissions.
- 13.** On 13th November, 2025, the matter was mentioned to confirm filing of submissions. On this date, Counsel for the 3rd to 16th Defendants/Applicants waived his right to file submissions and

the application was then reserved for ruling.

The 3rd to 16th Defendants/Applicants Contention

- 14.** The affidavit in support of the application is sworn by one **Silas Kiptui Kipchilat.**
- 15.** He contends that he has the authority of his Co-Applicants to swear the affidavit.
- 16.** He also contends that on 14th January, 2025, the Court issued orders of *status quo* pending the hearing and determination of the application dated 14th January, 2025.
- 17.** He further contends that the Plaintiff/Respondent has defied the *status quo* orders by cutting down trees and carting them away thereby destroying the substratum of the suit.

- 18.** It is his contention that the said orders of *status quo* are still in force as the said application is pending hearing and determination.
- 19.** It is also his contention that the Plaintiff/Respondent has continued to cut down the trees planted on the suit property despite being served with a penal notice.
- 20.** It is further his contention that the Plaintiff/Respondent approached this Court seeking orders of *status quo* with the intention of destroying the substratum of the suit.
- 21.** He contends that this Court should find that the Plaintiff/Respondent through **David Korir** its Manager Sambret Estate, **Reuben Geni** its Forestry Manager and **Ken Odire** its General Manager Estates and Factories to be in disobedience of the orders of the Court.

22. He also contends that the Court should make a finding that the said officials are in contempt of the orders of the Court and commit them to civil jail for a term of six months and/or fine them Kshs. 1,000,000/= each.

23. He ends his deposition by stating that the Plaintiff/Respondent should be directed to forthwith stop cutting down trees on the suit land in compliance with the *status quo* orders. He goes on to state that the OCS, Chepseon Police Station should ensure compliance.

The Plaintiff/Respondent's Response.

24. In response to the 3rd to 16th Defendants/Applicants application, the Plaintiff/Respondent filed a Replying Affidavit sworn by **Jonathan Mwita Wangubo** its General Counsel Plantations sworn on 22nd May, 2025.

- 25.** He deposes that the Plaintiff/Respondent is the registered owner of LR No. 9932/2 also referred to as LR 9932/7 by the 1st Defendant/Respondent and/or its resultant subdivisions as contended by the 3rd to 16th Defendants/Applicants.
- 26.** He also deposes that the Plaintiff/Respondent has been utilizing the suit parcel of land since the year 1957 for various agricultural activities including planting trees and tea plantations. He goes on to state that the trees planted on the suit parcel of land are for sale and/or use in the tea processing plants.
- 27.** He further deposes that the Plaintiff/Respondent has several tea factories on the suit parcel of land as it is engaged in large-scale tea production and processing. He goes on to state that the Plaintiff/Respondent relies on a sustainable and structured supply of fire wood to fuel its tea processing plants.

28. It is his deposition that the Plaintiff/Respondent has maintained dedicated portions of the suit parcel of land for the cultivation of fast-growing trees such as Eucalyptus Trees which are periodically harvested and replaced through systemic replanting programs.

29. It is also his deposition that the harvesting of trees is done in a rotational system that ensures a continuous supply of fuelwood without the land being degraded and/or its primary use being altered.

30. It is further his deposition that on or about 6th October, 2022, the 1st Defendant/Respondent through its servants and/or agents entered the suit parcel of land and begun cutting down trees.

31. He deposes that the said agents used the timber from the trees to construct temporary structures while contending that they

owned the suit parcel of land.

- 32.** He also deposes that the Plaintiff/Respondent filed the present suit together with an application seeking for injunctive reliefs. He goes on to state that the Plaintiff/Respondent's application was dismissed and they filed an appeal to the Court of Appeal.
- 33.** He further deposes that the Court of Appeal in Nakuru Civil Appeal (Application) No. E052 of 2023 issued an order on 27th October, 2023 which restrained the 1st Defendant, its agents and/or servants from interfering in any manner with the suit property.
- 34.** It is his deposition that despite the existence of the said order, the 3rd to 16th Defendants/Applicants also invaded the suit parcel of land and started fixing beacons while contending that they were the registered owners of various

parcels of land that are alleged to be subdivisions of LR 9932/7.

- 35.** It is also his deposition that upon being confronted, the 3rd to 16th Defendants/Applicants presented an order issued on 22nd October, 2024 in Kericho ELC Miscellaneous Application No. E023 of 2024.
- 36.** It is further his deposition that the said order directed the Deputy County Commissioner, Kipkelion East and the OCPD Londiani Police Station to provide security to Emenkei Techno Services Limited in the intended exercise of fixing boundaries and beacons on various parcels of land alleged to be owned by the 3rd to 16th Defendants/Applicants.
- 37.** He deposes that on 19th December, 2024 and 10th January, 2025, the 3rd to 16th Defendants/Applicants invaded the suit parcel of land and cut down trees that belong to the Plaintiff/Respondent.

- 38.** He also deposes that as a result of the said invasion, the Plaintiff/Respondent filed a Notice of Motion application dated 13th January, 2025 seeking for orders of temporary injunction pending hearing and determination of the suit.
- 39.** He further deposes that on 14th January, 2025 this Court issued *status quo* orders pending the hearing and determination of the said application. He goes on to state that the import of the said order is to preserve the Plaintiff/Respondent's continued possession and use of the suit parcel of land.
- 40.** He reiterates that the Court of Appeal delivered a ruling on 27th October, 2023 and issued an order of injunction which remains in force and defines the *status quo* which the orders of this Court issued on 14th January, 2025 intend to preserve.

41. It is his deposition that the Plaintiff/Respondent has fully complied with the said order and the allegations at paragraphs 4 & 5 of the affidavit in support of the application under consideration that contend that the Plaintiff/Respondent has

interfered with the *status quo* by cutting down trees are false.

42. He reiterates that the Plaintiff/Respondent's use of the suit parcel of land involves the planting and harvesting of trees which has not altered the nature and use of the suit parcel of land.

43. It is also his deposition that the *status quo* orders issued by the Court were intended to allow the status prevailing at the time to subsist. He goes on to state that the said status includes processing of tea and rotational harvesting and planting of trees.

- 44.** It is further his deposition that the Plaintiff/Respondent has not acted in bad faith and/or deliberately sought to undermine the authority of this Court.
- 45.** He deposes that the Plaintiff/Respondent has consistently complied with the *status quo* orders and has continued to use the said parcel of land in the manner it was doing as at the date the said orders were issued. He goes on to state that the Plaintiff/Respondent has openly disclosed its activities without any attempt to conceal the harvesting of trees.
- 46.** He also deposes that the allegations contained at paragraph 6 of the affidavit in support of the application are not true. He goes on to state that it is the 3rd to 16th Defendants/Applicants who have persistently acted in disregard to the orders of the Court and have misused the

orders issued in Kericho ELC Misc. Application No. E023 of 2024.

- 47.** He further deposes that the 3rd to 16th Defendants/Applicants actions have violated the orders issued by the Court of Appeal on 27th October, 2023 and are weaponizing the orders of the Court issued on 14th January, 2025 to hinder the Plaintiff/Respondent's lawful activities.
- 48.** It is his deposition that the application under consideration is intended to frustrate the Plaintiff/Respondent's legitimate operations on the suit parcel of land and the Court should strongly deprecate such misuse of judicial proceedings.
- 49.** It is his deposition that the 3rd to 16th Defendants/Applicants have not discharged the burden of demonstrating any willful or deliberate disobedience of the orders of the Court.

50. It is also his deposition that the Plaintiff/Respondent is a significant employer within the tea industry and operates tea factories which engage numerous employees and contributes meaningfully to the Kenyan economy. He goes on to state that the continued operations on the suit parcel of land are not only essential to the Plaintiff's business but they also sustain the livelihoods of hundreds of individuals.

51. It is further his deposition that the interpretation of the *status quo* orders advanced by the 3rd to 16th Defendants/Applicants if upheld, will result in an absurdity as it will cripple the Plaintiff/Respondent's operations and result in the closure of its tea factories.

52. He ends his deposition by stating that such an outcome will have serious and far reaching socio-economic consequences making this a matter of public interest beyond the private dispute between the parties.

Issues for Determination.

- 53.** The Plaintiff/Respondent filed submissions on 12th November, 2025 while the 3rd to 16th Defendants/Applicants elected not to file submissions.
- 54.** The Plaintiff/Respondent submits on the following issues;
- a. *Whether the Court order was clear and unambiguous and binding on the parties.***
 - b. *Whether the alleged contemnors deliberately disobeyed the terms of the Court order.***
 - c. *Whether the 3rd to 16th Defendants/Applicants are entitled to the orders sought.***
 - d. *Who should bear costs of the application.***
- 55.** The Plaintiff/Respondent relies on the judicial decision of **Mutitika vs Baharini Farm Limited [1985] KLR 229** as was cited in **Republic vs Ahmad Abolfathi Mohammed & another [2018] eKLR**, the judicial decision of **North Tetu Farmers Co. Ltd vs Joseph Nderitu Wanjohi [2016]**

eKLR and submits that the *status quo* orders issued on 14th January, 2025 were meant to preserve the prevailing state of affairs on the suit parcel of land.

56. The Plaintiff/Respondent also relies on the judicial decisions of **Saifudeen Abdullahi & 4 Others vs Commissioner of Lands & 3 Others Mombasa HC Misc. Civil Case No. 11 of 2012, Kenya Airline Pilots Association (Kalpa) vs Co-operative Bank of Kenya & another [2020] eKLR** in support of its submissions.

57. The Plaintiff/Respondent reiterates its averments in its Replying Affidavit and submits that it has been in possession of the suit parcel of land since the year 1957.

58. The Plaintiff/Respondent submits that the *status quo* orders issued on 14th January, 2025 were meant to preserve its possession and use of the suit parcel of land. The Plaintiff/Respondent relies on the judicial decision of **Kalumba vs Kiswii (Environment and Land Case 334 of**

2017) [2025] KEELC 5140 (KLR) (10th July, 2025)

(Ruling) in support of its submissions.

- 59.** On the second issue, the Plaintiff/Respondent submits that the 3rd to 16th Defendants/Applicants have not discharged the evidentially burden required to sustain a claim of contempt of Court.
- 60.** The Plaintiff/Respondent also submits that the photographs attached to the affidavit in support of the application are inadmissible under **Section 106B** of the **Evidence Act** as they are not accompanied by the mandatory certificate of electronic evidence.
- 61.** The Plaintiff/Respondent further submits that even if the Court were to admit them, the photographs bear no date or time stamp and therefore offer no probative value to demonstrate that any of the alleged activities took place after issuance of the *status quo* orders.

62. It is the Plaintiff/Respondent's submissions that in the absence of cogent, contemporaneous evidence, the Court cannot be invited to draw adverse inferences based solely on bare allegations and unverified photographs.
63. The Plaintiff/Respondent relies on the judicial decisions of **Sanders v County Government of Lamu (Civil Case E18 of 2022) [2022] KEELC 13843 (KLR) (26 October 2022) (Ruling), Nelifa Holdings Limited v Kanee (Civil Appeal E026 of 2023) [2024] KEELC 686 (KLR) (15 February 2024) (Judgment)** in support of its submissions.
64. It is also the Plaintiff/Respondent's submissions that any tree harvesting activities that took place after 14th January, 2025, would not constitute contempt of Court orders as the *status quo* orders were meant to allow the prevailing state of affairs.

65. It is further the Plaintiff/Respondent's submissions that the *status quo* orders issued on 14th January, 2025 did not expressly prohibit it from harvesting trees from the suit parcel of land.
66. The Plaintiff/Respondent relies on the judicial decisions of **Mutiria vs Nduki & 2 Others [2025] KEELC 5637, Re Malakwen Arap Cheruiyot [2019] KEHC 2707 (KLR), Grace Khisa Malenya vs Jane Kilimo [2015] KEELC 92 (KLR)** and submits that it has at all times complied with the orders of this Court.
67. The Plaintiff/Respondent also submits that contempt of Court only arises where disobedience of a Court order is deliberate, willful, and in bad faith.

68. The Plaintiff/Respondent further submits that the 3rd to 16th Defendants/Applicants have not met this threshold.

69. The Plaintiff/Respondent reiterates its averments in the Replying Affidavit and urges the Court to dismiss the 3rd to 16th Defendants/Applicants application with costs.

Analysis and Determination.

70. I have considered the 3rd to 16th Defendants/Applicants application, the response thereto and the Plaintiff/Respondent's submissions.

71. It is my view that the following issues arise for determination;

a. *Whether David Korir, Reuben Geni and Ken Odire are in contempt of the orders of this Honourable Court.*

b. *Whether David Korir, Reuben Geni and Ken Odire should be committed to civil jail or whether they should be issued*

with a notice to show cause why they should not be committed to civil jail.

- c. Whether an order should issue prohibiting the Plaintiff/Respondent from cutting down trees in compliance with the status quo orders.*
- d. Who should bear costs of the application.*

A. Whether David Korir, Reuben Geni and Ken Odire are in contempt of the orders of this Honourable Court.

72. Section 5(1) of the Judicature Act provides as follows:

“The High Court and the Court of Appeal shall have the same power to punish for contempt of Court as is for the time being possessed by the High Court of Justice in England, and that power shall extend to upholding the authority and dignity of subordinate Courts.”

73. Section 29 of the Environment and Land Court Act

further provides that:

“Any person who refuses, fails or neglects to obey an order or direction of the Court given under this Act, commits an offence, and shall, on conviction, be liable to a fine not exceeding twenty million shillings or to imprisonment for a term not exceeding two years, or to both.”

- 74.** In the judicial decision of **North Tetu Farmers Co. Ltd v. Joseph Nderitu Wanjohi [2016] eKLR** the Court cited excerpts of the book titled “Contempt in Modern New Zealand”. In the said book, elements of civil contempt are set out as follows;

“There are essentially four elements that must be proved to make the case for civil contempt. The Applicant must prove to the required standard (in civil contempt cases which is higher than Civil cases)

(a)the terms of the order (or injunction or undertaking) were clear and

unambiguous and were binding on the Defendant;

(b)the Defendant had knowledge of or proper notice of the terms of the order;

(c)the Defendant has acted in breach of the terms of the order; and

(d)the Defendant's conduct was deliberate.”

- 75.** The 3rd to 16th Defendants/Applicants contend that this Court issued orders of *status quo* on 14th January, 2025.
- 76.** The 3rd to 16th Defendants/Applicants also contend that while the said orders were subsisting, the Plaintiff/Respondent cut down trees that were planted on the suit parcel of land.
- 77.** The 3rd to 16th Defendants/Applicants further contend that the Plaintiff/Respondent’s actions have destroyed the substratum of the suit and have disobeyed the orders of this Court.

78. The 3rd to 16th Defendants/Applicants have attached to their affidavit in support of the application a copy of the Court order issued on 14th January, 2025. The terms of the said order are as follows;

a. I am not persuaded as to the urgency of the application.

b. The Applicant (sic) shall serve this application upon the Respondents within 3 days of the date hereof and file an affidavit of service.

c. The Respondents shall file their responses within 7 days upon service.

d. The application shall be heard inter partes on 14th February, 2025.

e. I hereby order that the status quo obtaining as at the date hereof shall be maintained pending inter partes hearing of this application.

79. The 3rd to 16th Defendants/Applicants have also attached a bundle of black and white photographs. Some of the photographs are of a lorry and a pile of wood while other

photographs are of persons carrying trees that have been cut down to a lorry. There are also photograph of a pile of wood and others are of persons cutting down trees.

- 80.** In response, the Plaintiff/Respondent submits that the *status quo* order issued by the Court was meant to allow the prevailing state of affairs which include its agricultural and forestry activities.
- 81.** The Plaintiff/Respondent also submits that it, in the ordinary course of its business harvests and plants trees on the suit parcel of land.
- 82.** The Plaintiff/Respondent further submits that the harvested trees are used for fuel in its tea factories.
- 83.** It is the Plaintiff/Respondent's submissions that the *status quo* order issued on 14th January, 2025 did not expressly prohibit it from harvesting trees on the suit parcel of land.

84. It is not disputed that the Court issued a *status quo* order on 14th January, 2025. It is also not disputed that the parties in this suit are aware of the issuance of the said order. It is further not disputed that the Plaintiff/Respondent has been harvesting the trees planted on the suit parcel of land. What is in dispute is whether the harvesting of trees has violated the *status quo* order issued on 14th January, 2025.

85. The *status quo* orders issued on 14th January, 2025 have been set out in the preceding paragraphs but I will nonetheless replicate them as hereunder;

“e. I hereby order that the status quo obtaining as at the date hereof shall be maintained pending inter partes hearing of this application.”

86. It is important to note that the *status quo* was not expressly defined and neither did it expressly prohibit the Plaintiff/Respondent from harvesting trees.

87. In the judicial decision of **Mutiria (Suing for and on Behalf of the Estate of Eunice Wangeci Mutiria) v Nduki & 2 others [2025] KEELC 5637 (KLR)** the Court held as follows;

“It is conceivable that an order of status quo would ordinarily extend to an action such as not interfering with flora and fauna of the land subject of the order, but ideally an order of status quo ought to define and specify the activities that it prohibits and/or describe the status quo to be maintained...”

88. The seriousness with which to treat contempt of Court proceedings and the strictness of the burden of proof that is placed on a person seeking that another or other be found to be in contempt was discussed in **Gatharia K. Mutikika v Baharini Farm Limited [1985] KLR 227** wherein it was held as follows;

“A contempt of Court is an offence of a criminal character. A man may be sent to prison. It must be proved satisfactorily.... It must be higher than proof on a balance of probabilities, almost but not exactly, beyond reasonable doubt. The standard of proof beyond reasonable doubt ought to be left where it belongs, to wit criminal cases. It is not safe to extend it to offences which can be said to be quasi-criminal in nature. However, the guilt has to be proved with such strictness of proof as is consistent with the gravity of the charge... Recourse ought not to be had (sic) to process of contempt of Court in aid of a civil remedy where there is any

other method of doing justice. The jurisdiction of committing for contempt being practically arbitrary and unlimited, should be most jealously and carefully watched and exercised with the greatest reluctance and the greatest anxiety on the party (sic) of the Judge to see whether there is no other mode which is not open to the objection of arbitrariness and which can be brought to bear upon the subject... applying the test that the standard of proof should be consistent with the gravity of the alleged contempt... it is competent for the Court where contempt is alleged to or has been committed, and or an application to commit, to take the lenient course of

granting an injunction instead of making an order for committal or sequestration, whether the offender is a party to the proceedings or not.”

(Emphasis mine)

- 89.** The liberty of **David Korir, Reuben Geni** and **Ken Odire** is at stake. The 3rd to 16th Defendants/Applicants must place evidence before this Court that points to the fact that **David Korir, Reuben Geni** and **Ken Odire** are in willful disobedience of the orders of this Court.
- 90.** The 3rd to 16th Defendants/Applicants must demonstrate that the said persons acted in breach of the terms of the Court order and that their conduct was deliberate.
- 91.** Since the *status quo* was not defined and since the Plaintiff/Respondent was not expressly prohibited from harvesting trees, it is impossible to find that **David Korir,**

Reuben Geni and **Ken Odire** are in contempt of the orders of this Honourable Court.

B. Whether David Korir, Reuben Geni and Ken Odire should be committed to civil jail or whether they should be issued with a notice to show cause why they should not be committed to civil jail.

92. Given my finding on issue (a) above, the question of committal to civil jail and/or issuance of a notice to show cause is not ripe for determination.

C. Whether an order should issue prohibiting the Plaintiff/Respondent from cutting down trees in compliance with the status quo orders.

93. Under prayer **(iv)** of the application under consideration, the 3rd to 16th Defendants/Applicants seek that an order be issued to prohibit the Plaintiff/Respondent from cutting down

trees on the suit parcel of land in compliance with the *status quo* orders.

- 94.** It is important to note that the *status quo* orders issued on 14th January, 2025 were issued pending hearing and determination of the application dated 14th January, 2025.
- 95.** A perusal of the Court record shows that a ruling on the said application was delivered on 13th November, 2025.
- 96.** The *status quo* orders issued on 14th January, 2025 are no longer subsisting as the application has been determined.
- 97.** It shall therefore not be necessary for me to address this issue any further.

D. Who should bear costs of the application.

- 98.** On the question of costs, it is now settled that costs shall follow the event. This is in accordance with the provisions of

Section 27 of the **Civil Procedure Act (Cap. 21)**. A successful party should ordinarily be awarded costs of an action unless the Court, for good reason, directs otherwise.

Disposition.

99. Taking the foregoing into consideration, I find that the 3rd to 16th Defendants/Applicants application dated 17th March, 2025 lacks merit and it is hereby dismissed with costs.

100. It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT KERICHO
THIS 26TH DAY OF FEBRUARY, 2026.**

**L. A. OMOLLO
JUDGE**

In the presence of: -

Miss Cherono for the 3rd- 16th Defendants/Applicants.

**Mr. Odhiambo for Nyaburi for the Plaintiff/
Respondent.**

Mr. Ojwang for 2nd Respondent

Mr. Mugambi for 1st Defendant/Respondent

Court Assistant; Mr. Joseph Makori.

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