



**REPUBLIC OF KENYA**

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

**CIVIL SUIT NO. 195 OF 2000**

**WILFRED MUNYAO NDALANA.....PLAINTIFF**

**VERSUS**

**NICHOLAS MULI KIMEU .....1<sup>ST</sup> DEFENDANT**

**THERESIA MUENI MULI .....2<sup>ND</sup> DEFENDANT**

**RULING**

1. The Application before me is dated 29<sup>th</sup> October, 2014. In the Application, the Plaintiff is seeking for the following orders:

- a. That an order to issue citing the Defendants/Respondents for contempt of Court for non-compliance with court orders given on 30<sup>th</sup> November, 2000 and issued on 17<sup>th</sup> January, 2001.*
- b. That the Defendants/Respondents be committed to civil jail for non-compliance with the said court order.*
- c. That the costs of this Application be borne by the Defendants/Respondents.*

2. In support of the Application, the Plaintiff has deponed that this court gave an injunction on 30<sup>th</sup> November, 2000 restraining the Defendants from moving on parcel of land number **Machakos Town Block 3/1144**; that the Defendants were duly served with the order and that the Defendants have entered on the land, cultivated crops thereon and erected illegal structures.

3. In response, the 2<sup>nd</sup> Defendant deponed that they have been in possession of plot number 1144 for more than twelve (12) years; that the orders issued on 17<sup>th</sup> January, 2001 lapsed after twelve (12) months from the date they were issued as per the provision of the Civil Procedure Rules, 2010 and that the structure on the land existed before the order of 17<sup>th</sup> January, 2001.

4. The advocates filed submissions which I have considered. I have also considered the authorities that are on record.

5. It is not in dispute that on 30<sup>th</sup> November, 2000, the court issued an injunction restraining the Defendants from cultivating, constructing any form of structures or interfering with the suit property until the suit herein is heard and final orders given. The said orders were served on the Defendants on 28<sup>th</sup> January, 2001.

6. In response to the Application for contempt, the Defendants have argued that the said order lapsed after the expiry of one (1) year.

7. Although Order 40 Rule 6 of the Civil Procedure Rules provides that an injunctive order will lapse after the expiry of twelve (12) months, the said order should be read alongside the provisions of Section 3A of the Civil Procedure Act which provides that the court has the inherent powers to issue any order as may be necessary for the ends of justice.

8. Where a court issues a temporary injunction “*pending the hearing and determination of the suit*”, such an order cannot be varied on the basis of the provision of Order 40 Rule 6, unless the court itself does so.

9. In my view, the provision of Order 40 Rule 6 of the Civil Procedure Rules comes to play only where the court is silent on when the injunction would lapse.

10. In any event, the injunctive order that was granted in this matter was issued before the enactment of the 2010 Civil Procedure Rules. The Rule is therefore not applicable in this case.

11. The Plaintiff has not stated in his Affidavit when the impugned acts of the Defendants commenced.

12. If the impugned acts of the Defendants commenced from the date when the order was issued, that is on 17<sup>th</sup> January, 2001, then the Plaintiff cannot seek to enforce the order which was issued more than twelve (12) years ago without the leave of the court. In a nutshell, the order is time barred pursuant to the provisions of Section 4 (4) of the Limitation of Actions Act.

13. For those reasons, I dismiss the Application dated 29<sup>th</sup> October, 2014 with costs.

**DATED AND DELIVERED AT MACHAKOS THIS 3<sup>RD</sup> DAY OF MARCH, 2017**

**OSCAR A. ANGOTE**

**JUDGE**