



**REPUBLIC OF KENYA**

**IN THE LAND AND ENVIRONMENT COURT OF KENYA**

**AT KAKAMEGA**

**ELC CASE NO. 68 of 2014**

**MICHAEL MUGERE KIHUGWA**

**ZAKIEL ODIRA LUKE.....PLAINTIFFS/APPLICANTS**

**VERSUS**

**HEBON OBOTE VIKIRU.....DEFENDANT/RESPONDENT**

**RULING**

This application is dated 9<sup>th</sup> February 2016 and is brought under Section 1A, 3A, 63 (e) of the Civil Procedure Act Order 40 Rule 3 of the Civil Procedure Rules seeking the following orders;

- a. That this honourable court be pleased to find that the respondent is in contempt of court for disobedience of court orders issued on 1<sup>st</sup> December, 2014.
- b. That upon grant of prayer (1) above, this honourable court be pleased to order that the respondent be committed to jail for 6 months.
- c. That costs be provided for.

The application is supported by the sworn affidavit of Michael Mugera. The Applicant submitted that the respondent was in court on 12<sup>th</sup> November, 2014 when the court issued the orders of 12<sup>th</sup> November, 2014 by consent. The said orders were extracted and served upon the respondent with a penal notice endorsed. The respondent has disobeyed the said court orders and has prevented the applicants from utilizing the portion of the parcel of land they have been utilizing as per the court orders. The respondent has destroyed trees belonging to the 1<sup>st</sup> applicant and uprooted those belonging to the 2<sup>nd</sup> applicant. The respondent has on various occasions with his agents hired thugs who have threatened to bring down the applicants houses and evict them. The respondent is acting in open defiance of the courts authority and granting of the orders sought will preserve the dignity of this court. That it is the best interest of justice that the orders sought are granted.

The defendant /respondent was served but failed to attend court and the matter proceeded exparte. However, in his replying affidavit filed on the 25<sup>th</sup> April 2016 he stated that he has never prevented the applicants/plaintiff from utilizing the land nor has he tried to evict them. The orders given by the court on 12<sup>th</sup> November 2014 granted status quo orders and the applicants/plaintiffs were not doing any farming at the material time. He states that he harvested a mature tree which he had planted in 2013.

I have considered the submissions from the plaintiff/applicants and the replying affidavit of the defendant/ respondent. I find that from the submissions the applicants have not established a case of contempt. It is not establish what the status quo was on the ground in 2014. I find this application has no merit and I dismiss the same. Parties are encouraged to fix a hearing date for this matter so that the main suit can be heard and determined.

Cost of this application to be in the cause.

Orders accordingly.

**DELIVERED, DATED AND SIGNED AT KAKAMEGA IN OPEN COURT THIS 9<sup>TH</sup> DAY OF  
MAY 2017.**

**N. A. MATHEKA**

**JUDGE**