



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

LAND CASE NO. 160 OF 2016

THE BOARD OF TRUSTEES KENYA GOOD NEWS

OUTREACH CHURCHES.....PLAINTIFF

VERSUS

MASINDE MULIRO PRIMARY SCHOOL.....DEFENDANT

RULING

1. The application dated **28/7/2017** seeks the following orders:-

(1) That this application be certified urgent and be heard *ex-parte* in the first instance.

(2) That this Honourable Court be pleased to commit JOHN MUNGO SHIMANYULA the Head teacher who is the Secretary, School Management Committee of Masinde Muliro Primary School to Civil Jail for a period of six (6) months for disobedience of the Court Orders dated 15/12/2016 and 27/4/2017.

(3) Costs be provided for.

2. The applicant's case is that an order was issued by this court on **15/12/2016** restraining the defendant, from any further construction on the suit property until the hearing and determination of the main suit.

3. The applicant states that the head teacher of the Masinde Muliro Primary School was served with the Court Order issued on **3/4/2017** but he is nevertheless proceeding with the construction on the suit premises.

4. Willful disobedience of a Court Order is a serious matter. Court Orders are supposed to be complied with by all persons against whom they are issued. It is for a purpose that the orders are issued.

5. In this case the orders were issued in order to preserve the status quo pending the hearing and determination of the mains suit. It is now alleged that the headmaster of the Masinde Muliro Primary School has been going on with the construction despite service upon him of the order.

6. However as it will be clear to any person the application dated **28/7/2017** does not contain evidence that the said John Mungo Shimanyula is going on with the construction.

7. The applicant has just attached a few pictures and made conclusory statements without any kind of rationalization to demonstrate that it is John Mungo Shimanyula who is doing the construction and secondly, that the construction is actually going on.

8. For this reason I find that the application is unsupported by evidence and this court is not able to issue the orders sought at present. The application dated **28/7/2017** is hereby dismissed with costs.

Dated, signed and delivered at Kitale on this **30th** day of **October, 2017**.

MWANGI NJOROGE

JUDGE

30/10/2017

Coram before Mwangi Njoroge Judge

Court Assistant – Isabellah/Picoty

Ms. Mwemeke for Chelashaw for the defendant/respondent

Plaintiff is in person through (Pastor Pius)

COURT

Ruling read in open court in the presence Pastor Pius for applicant and counsel for the respondent.

MWANGI NJOROGE

JUDGE

30/10/2017