



**REPUBLIC OF KENYA**

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

**ELC CASE NO. 94 OF 2016**

**MILLENNIUM MANAGEMENT LIMITED.....PLAINTIFF**

**VERSUS**

**HAMISI ALI MBWALAME.....1<sup>ST</sup> DEFENDANT**

**KATANA K. MUMBAR.....2<sup>ND</sup> DEFENDANT**

**GRACE N. WASHE.....3<sup>RD</sup> DEFENDANT**

**KATANA KAZUNGU KITSAO.....4<sup>TH</sup> DEFENDANT**

**LARRY K. TUVA.....5<sup>TH</sup> DEFENDANT**

**BEATRICE ZABLON.....6<sup>TH</sup> DEFENDANT**

**SARA KACHE FUNDI.....7<sup>TH</sup> DEFENDANT**

**RUTH FUNDI MWANJE.....8<sup>TH</sup> DEFENDANT**

**LURRY THUVA.....9<sup>TH</sup> DEFENDANT**

**AGNES CHARO.....10<sup>TH</sup> DEFENDANT**

**RIZIKI ISMAEL.....11<sup>TH</sup> DEFENDANT**

**RUBEA AMANI.....12<sup>TH</sup> DEFENDANT**

**RULING**

1. In the Application dated 9<sup>th</sup> May, 2016, the Plaintiff is seeking for the following orders:

*a. The Respondents be committed to civil jail for a term of six (6) months for contempt of court for having deliberately disobeyed orders of this court issued on 27<sup>th</sup> April, 2015.*

*b. Order compelling the Officer Commanding Kilifi Police Station to appear in court and explain why he has failed/refused to help in enforcing the injunction of 27<sup>th</sup> April, 2015.*

***c. Any other or further orders of the court geared towards protecting the dignity and authority of the court.***

***d. Costs of this Application be provided for.***

2. The Application is supported by the Affidavit of the Plaintiff's General Manager who has deponed that the Plaintiff is the registered proprietor of land known as L.R. No. MN/IV/5046/4 Kilifi; that an ex-parte order was issued by the court on 27<sup>th</sup> April, 2016 restraining him from trespassing on the suit land and that the order was served on the Defendants on 28<sup>th</sup> April, 2016.

3. According to the Plaintiff's General Manager, he inspected the suit land and confirmed that on 29<sup>th</sup> April, 2016, the Defendant's trespassed on the suit land and that the Defendants are undertaking new constructions on the suit land despite the order of 27<sup>th</sup> April, 2016 being in force.

4. In response, the 1<sup>st</sup> Defendant deponed that he is the Organizing Secretary of Kibarani Ward Progressive Association; that there are more than 4000 residents occupying the suit land; that there is no evidence as to the person that is in contempt of the order of the court and that they have always been in possession of the land.

5. In his Further Affidavit, the Plaintiff's General Manager deponed that all the Defendants were personally served with the order of the court; that the orders were specific as against the twelve Defendants and that despite the order of the court, the Defendants have kept on developing the suit land.

6. The advocates filed their respective submissions which I have considered. I have also considered the filed authorities.

7. It is true, as deponed by the Plaintiff's General Manager, that this court issued a temporary injunction on 27<sup>th</sup> April, 2016 restraining the Defendants either by themselves or their agents from trespassing or interfering with land known as L.R. No. MN/IV/5046 Kilifi for fourteen (14) days.

8. Although in his Affidavit the process-server has deponed that all the Defendants agreed that the 4<sup>th</sup> Defendant could receive the court order on their behalf, I have not been told why the said Defendants were not personally served with the said order.

9. In view of the admission by the process-server in his Affidavit that he did not personally serve the eleven Defendants with the Ex-parte order, I do not see why I should hold them to be in contempt of the order of the court.

10. In any event, there is no evidence before me to show that it is the twelve Defendants who put up the structures depicted in the Plaintiff's Affidavit and when those structures were put up.

11. In the circumstances, I decline to hold that the Defendants are in contempt of the order of the court.

12. I therefore dismiss the Application dated 9<sup>th</sup> May, 2016 with no order as to costs.

**DATED AND SIGNED AT MACHAKOS THIS 8<sup>TH</sup> DAY OF NOVEMBER, 2017.**

**O.A. ANGOTE**

**JUDGE**

**DATED, DELIVERED AND SIGNED AT MALINDI THIS 15<sup>TH</sup> DAY OF NOVEMBER, 2017.**

**J.O. OLOLA**

**JUDGE**