



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS**  
**ELC. CASE NO. 116 OF 2016**  
**BENJAMIN KASEE MUNGUTI.....PLAINTIFF**  
**VERSUS**  
**FELIX KIOKO KISALU.....1<sup>ST</sup> DEFENDANT**  
**JAMES KILONZO.....2<sup>ND</sup> DEFENDANT**  
**RAPHAEL KAMUTI .....3<sup>RD</sup> DEFENDANT**  
**MWAU KYOA .....4<sup>TH</sup> DEFENDANT**  
**JOSEPH MULAA .....5<sup>TH</sup> DEFENDANT**  
**TIMOTHY MWINA .....6<sup>TH</sup> DEFENDANT**  
**PETER STEEL.....7<sup>TH</sup> DEFENDANT**  
**ISAAC BASILO.....8<sup>TH</sup> DEFENDANT**  
**NYAMAI WAMBUA.....9<sup>TH</sup> DEFENDANT**  
**TELESIA KILONZO .....10<sup>TH</sup> DEFENDANT**  
**LEAH MUTAVI.....11<sup>TH</sup> DEFENDANT**  
**COUNTY GOVERNMENT OF MACHAKOS....12<sup>TH</sup> DEFENDANT**

**RULING**

1. In the Application dated 24<sup>th</sup> May, 2017, the Plaintiff wants the Defendants to be committed to six (6) months imprisonment for disobeying the orders of the court of 9<sup>th</sup> February, 2017 and issued on 24<sup>th</sup> February, 2017.
2. The Application is premised on the grounds that the contemnors were duly served with the court orders of 9<sup>th</sup> February, 2017; that the conduct of the contemnors has brought the honour and dignity of the court

into disrepute and that the Respondents should be committed to jail.

3. In his Affidavit, the Plaintiff has deponed that even after being served with the order of the court, the Defendants have continued to uproot his banana plants besides cultivating maize on the suit land; that they have continued to cut trees, burn charcoal and carry out other acts of wastage on the land and that the Defendants have also demolished his house and chased him from the suit land.

4. Although the Defendants were served with the Application, they did not respond to it.

5. The Plaintiff's advocate appeared before me on 18<sup>th</sup> September, 2017 and urged that the Application should be allowed.

6. The record shows that on 7<sup>th</sup> February, 2017, this court issued an order restraining the Defendants or their agents from "interfering, trespassing, cutting trees, alienating, wasting, damaging or interfering with the Plaintiff's quiet use and enjoyment of land parcel number 186 located in Mwea Farms Company Limited pending the hearing and determination of the suit.

7. The Affidavit of the process-server sworn on 16<sup>th</sup> May, 2017 shows that the 1<sup>st</sup> – 11<sup>th</sup> Defendants were served with the order of the court on 9<sup>th</sup> March, 2017.

8. However, despite being served with the order, the Defendants have continued to disobey it by cutting down trees, burning charcoal and even demolishing the Plaintiff's house.

9. The Plaintiff has annexed on his Affidavit the acts of wastage of the suit land by the Defendants including the debris that remain after the demolition of his house.

10. It would appear that the Defendants herein have no respect for the rule of law. Indeed, their disdain for the rule of law is exemplified by the fact that they did not oppose the Application dated 17<sup>th</sup> August, 2016 which gave rise to the impugned orders and the current Application.

11. As was held in the case of *Commercial Bank of Africa Limited vs. Isaac Kamau Ndirangu (1991) eKLR*, it is only by acting swiftly and firmly when an order of the court is flouted that the dignity of the court can be held.

12. Considering that the Defendants have not rebutted the Plaintiff's disposition that they disobeyed the orders of this court, and in view of the photographic evidence of their contemptuous acts, I find and hold that the 1<sup>st</sup>- 11<sup>th</sup> Defendants, jointly and severally, disobeyed the orders of this court made on 9<sup>th</sup> February, 2017.

13. Having found the 1<sup>st</sup> – 11<sup>th</sup> Defendants to be in contempt of the orders of this court, I shall, which I am obliged to do, proceed to punish the said Defendants after I have heard them in mitigation.

14. Considering that the 1<sup>st</sup> – 11<sup>th</sup> Defendants are not in court, I shall make the following order:

***a. The officer commanding Kithimani Police Station do arrest the 1<sup>st</sup> – 11<sup>th</sup> Defendant and arraign them in this court within fourteen (14) days of the date of this Ruling for the purpose of mitigation and sentence.***

***b. The 1<sup>st</sup> – 11<sup>th</sup> Defendants to pay the costs of the Application.***

**DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 9<sup>TH</sup> DAY OF NOVEMBER, 2017.**

**O.A. ANGOTE**

**JUDGE**