



Kamau & another (Suing as the legal representatives of the Estate of David Kamau Njoroge) v Ali & another; Kamau (Interested Party) (Environment & Land Case 447 of 2018) [2023] KEELC 18511 (KLR) (16 March 2023) (Ruling)

Neutral citation: [2023] KEELC 18511 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 447 OF 2018
LC KOMINGOI, J
MARCH 16, 2023**

BETWEEN

SAMUEL NDUNG’U KAMAU 1ST PLAINTIFF

GRACE WAIRIMU KAMAU 2ND PLAINTIFF

**SUING AS THE LEGAL REPRESENTATIVES OF THE ESTATE OF DAVID
KAMAU NJOROGE**

AND

IBARAHIM MOHAMED ALI 1ST DEFENDANT

YUSUF ADAN MAALIM 2ND DEFENDANT

AND

ERNEST GICHERU KAMAU INTERESTED PARTY

RULING

1. The subject matter of this suit which was commenced by a plaint dated 17th October 2018, is a lease to the Defendants over the property known as LR No.36/41/1 situated at Eastleigh Estate, Nairobi.
2. On 23rd November 2021, this court directed that rent should be deposited in a joint interest earning account of the Plaintiffs’ and the Defendants’ Advocates.
3. It appears that the said order was not complied with. The Plaintiffs then filed an application dated 19th January 2022. It was brought under Section 5 of the *Judicature Act* Cap 21, Laws of Kenya and all other enabling provisions of law. The Plaintiffs seek orders;
 - a. Spent.



- b. That this Honourable Court makes an order that the contemnors: Ibrahim Mohammed Ali and Yusuf Adan Maalim, the 1st and 2nd Defendants, are in contempt of court for the disobedience of the Court Order issued on 23rd November 2021.
 - c. That this Honourable Court to impose on the Defendants an appropriate sanction in form of committal to civil jail for being in contempt of the order of this Honourable Court granted on 23rd November 2021.
 - d. That the Court makes an order that until the contemnors purge their contempt to the satisfaction of the Court, the contemnors; the Defendant, ought not to be heard by this Honourable Court or participate in these proceedings.
 - e. That costs of this application be provided for.
4. The application is based on grounds on its face and on the joint supporting affidavit sworn on 19th January 2022 by the Plaintiffs. The Defendants opposed the application vide the 2nd Defendant's replying affidavit sworn on 18th August 2022. They deponed that their Advocate had ceased acting by the time of filing the instant application thus it was impossible to deposit money in a nonexistent account.
 5. Before the court could make a determination on the application for contempt, they filed the a second Application which is the Notice of Motion application dated 6th May 2022.
 6. It is brought under Article 159(d) of *the Constitution* of Kenya, Section 1A,1B,3A and 63 (e) of the *Civil Procedure Act* and all other enabling provisions of the law.
 7. The Defendants seek orders;
 - a. That the order of the court of 23rd November 2021 that the rent be deposited in a joint interest account in the name of the Advocates be reviewed and rent deposited in an account belonging to the judiciary.
 - b. That any income generated from the suit property in LR No.36/41/1 Eastleigh be deposited in an account belonging to the judiciary.
 - c. That the Respondents bear the costs of this application.
 8. The application is based on grounds on its face and the Plaintiffs' joint supporting affidavit sworn on 6th May 2022. They depose that the Defendants' rent arrears for the suit property have accrued to kshs.44,500,000/= being 3 years and 6 months of rent owed to the beneficiaries of the estate of David Kamau Njoroge.
 9. They further depose that on 23rd November 2021, this Honourable Court issued an order that the rent be deposited in a joint interest earning account of the Advocates representing the Plaintiffs and the Defendants herein but the Defendants have not complied.
 10. They also depose that they made an application for contempt against the Defendants dated 19th January 2022 that came up for mention for directions on 20th April 2022 and on that day, several applications were allowed unopposed. They pointed out that an application by the Interested party dated 24th January 2022 and an application to cease acting for the Defendant by the firm of M/S Gekonge & Associates Advocates dated 16th February 2022 were allowed.
 11. They further depose that whereas the directions given on that day are just, it becomes difficult to comply and thus there is need to review the orders made on 23rd November 2021 so that the rent is



deposited in an account belonging to the Judiciary instead of a joint interest earning account belonging to Advocates for the parties. They aver that unless the orders sought are granted, the Defendants will continue enjoying proceeds of rent despite being in breach of the lease agreement and in full contempt of the order issued on 23rd November 2021.

12. The Defendants failed to file a response.
13. I have considered the notice of motion dated 6th May 2022 and the affidavit in support. The issue for determination is whether the application is merited.
14. On 23rd November 2021, this court directed that rent should be deposited in a joint interest earning account of the Plaintiffs' and the Defendants' Advocates. There was no compliance with the orders. Advocates for the Plaintiffs then filed an application for contempt dated 19th January 2022. Immediately after, the record indicates that Advocates for the Defendants filed an application to cease acting dated 16th February 2022 and it was allowed by this court on 20th April 2022. I note that the firm of Makungu Wathome & Co. Advocates have subsequently filed pleadings for the Defendants though there is no Notice of Change of Advocates on record.
15. The orders of 23rd November 2021 were directed to the Advocates for the Parties and the Defendants themselves who have the responsibility to deposit rent as ordered. In the absence of Advocates for the parties, the orders cannot be enforced. It appears that Defendants took steps to employ tactics to smartly evade the orders; as clearly there is no firm of Advocates on record.
16. The Defendants actions amount to an abuse of the court process. A court does not issue orders in vain. I find that the Plaintiffs'/Applicants' application seeking to review the orders of 23rd November 2021 is unopposed.
17. I find merit in the application dated 6th May 2022 and the same is allowed in the following terms:-
 - a. That the orders of the court issued on 23rd November 2021 that rent be deposited in a joint interest earning account in the names of the Advocates are hereby reviewed and that the rent be deposited to an account belonging to the judiciary within fourteen (14) days from the date of this ruling.
 - b. That any rent generated from the suit property being LR NO 36/41/1 be deposited in an account belonging to the judiciary pending hearing and determination of this suit.
 - c. That costs of this application do abide the outcome of the main suit.

It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 16TH DAY OF MARCH 2023.

L. KOMINGOI

JUDGE

In the presence of:-

Mr. Kogi for the Plaintiffs

Mr. Juma for the Defendants

Mr. Kimani for Mr. Kiarie for the Interested Party

Mutisya- Court Assistant

