



REPUBLIC OF KENYA



Ngattah (Suing as the legal representative of the Estate of Leah Wangui Ngata (Deceased) v King'ori & another (Civil Case 161 of 2006) [2022] KEHC 10438 (KLR) (23 June 2022) (Ruling)

Neutral citation: [2022] KEHC 10438 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
CIVIL CASE 161 OF 2006
HK CHEMITEI, J
JUNE 23, 2022**

BETWEEN

JOEL KARUMBA NGATTAH (SUING AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF LEAH WANGUI NGATA (DECEASED)) PLAINTIFF

AND

FRANCIS NGATA KING'ORI 1ST DEFENDANT

RESMA COMMERCIAL AGENCIES 2ND DEFENDANT

RULING

1. The applicant vide a Notice of motion dated 29th September 2020, brought under Section 5 (1) of the *Judicature Act*, 3A of the *Civil Procedure Act* and Order 51 Rule 1 of the *Civil Procedure Rules*, 2010 seeks orders that summons be issued against the plaintiff /respondent to appear before open court at the earliest time and show cause why he should not be held for contempt of the court order issued on 11th July 2016. That in the alternative, this honourable court be pleased to issue a warrant of arrest for the plaintiff/respondent and the Officer-commanding Nakuru Central Police Station be directed to enforce the said warrants.
2. The applicant further seeks that the plaintiff/respondent or his servants, agents and/or employees be held in contempt of court orders and be committed to civil jail for a period of 6 months or as the court deems fit for disobedience of orders issued by this Honourable Court on 11th July 2016 staying the execution of judgement delivered on 7th April 2016 and further issuing preservatory orders to maintain the status quo in respect of Nakuru Municipality Block 3/3285.
3. The application was based on the grounds on the face of it. According to the applicant, the plaintiff/respondent disregarded the court order issued on 11th July 2016 and him, his agents and/or servants had recently in autocratic fashion descended on the suit property and started construction and conversion



of the residential house into shops and a butchery thereby interfering with the status quo of property Nakuru Municipality Block 3/325.

4. The applicant stated that the appeal, Nakuru Court of Appeal Civil Appeal No. 16 of 2019, was still pending determination and the same is yet to be set down for hearing. That it continues to suffer great prejudice as the residential house thereon has been converted to commercial shops and butchery and the plaintiff/respondent continues to benefit unfairly through the aforesaid contempt. It stated further that it was in the interest of justice that the plaintiff /respondent suffers the consequences of his actions.
5. The application is also supported by the affidavit of Samuel Kimani Maigua, the managing director of the applicant sworn on 29th March, 2021. He reiterated the facts and the grounds on the face of the application.
6. There was no response to the application by the respondent despite his counsel on record being aware of the matter as at 4th October 2021.
7. The application was disposed of through written submissions but only the applicant complied.
8. The applicant in its submissions identified three issues for determination. The first issue being whether the respondent is in contempt of the court order of 11th July 2016. The applicant submitted that the said court order had directed that the state of affairs in respect of suit property Nakuru Municipality Block 3/325 remain unchanged and as existed then, which was that the property was always a residential house until the intended appeal was fully determined. That the appeal was yet to be heard and determined and considering the order preempted the conclusion of the appeal, any acts contrary to the orders of court amount to contempt. That therefore the construction and conversion of the structures thereon during the pendency of the orders are clear acts of contempt. He draws the court's attention to the cases of *Econet Wireless Kenya Ltd vs Minister for Information & Communication of Kenya & another* [2005]1KLR 828.
9. On the second issue, whether the respondent ought to be purged for his contemptuous actions he submitted that the respondent was aware of the order, he was knowledgeable of the orders contents and besides that he went ahead to disobey the said orders for his own benefit. Lastly, on who should bear the costs of the suit the applicant submitted that upon finding the respondent in contempt, this court should award costs of the application in its favour.

Analysis and Determination

11. I have perused carefully the plaintiff/applicant's application, the supporting affidavit and submissions. The application is not opposed despite the respondent's counsels being on record and being present in court.
12. There is sufficient evidence that this court stayed its decree pending the outcome of the appeal at the Court of Appeal.
13. At the same time, it appears that the respondent did change the structure of the suit premises contrary to the directives of this court. The photographs produced attest to this. The same have not been controverted. The affidavit of service sworn on 17th March 2021 indicates that he was duly served with the decree at least by 16th March 2021.
14. In the premises this court finds the application has merit. The court shall however not issue the orders to jail the respondent as prayed by the applicant but shall instead grant him an opportunity to purge his contempt.



15. The respondent Joel Karumba Ngattah is hereby ordered to appear before this court to show cause why he should not be punished for contempt after violating this courts orders dated 11th July 2016.
16. Costs of this application to the applicant.

DATED SIGNED AND DELIVERED AT NAKURU VIA VIDEO LINK THIS 23RD DAY OF JUNE 2022.

H K CHEMITEI.

JUDGE.

