



M'Mboga & another v Kagumba; Autogari Kenya Limited (Intended Interested Party) (Environment & Land Miscellaneous Case E080 of 2022) [2023] KEELC 17476 (KLR) (11 May 2023) (Ruling)

Neutral citation: [2023] KEELC 17476 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND MISCELLANEOUS CASE E080 OF 2022**

LN MBUGUA, J

MAY 11, 2023

BETWEEN

IAN GONJI M'MBOGA 1ST APPLICANT

MEGERIA KIBUCHI MAGERIA 2ND APPLICANT

AND

BENJAMIN KIMERIA KAGUMBA RESPONDENT

AND

AUTOGARI KENYA LIMITED INTENDED INTERESTED PARTY

RULING

1. The substantive suit is active before the Business Premises and Rent Tribunal in the case BPRT No. E010 of 2022 in which Ian Gonji was the tenant. He had sought orders against his landlord Benjamin Kimeria not to be evicted from parcel L.R. 13147/10. The tribunal gave restraining orders against the Land lord pending the hearing of the reference. The orders were not complied with prompting the tenant to initiate contempt of court proceedings through this miscellaneous suit. It follows that this suit is in the nature ancillary proceedings.
2. Vide a ruling delivered by this court on 27.10.2022 (orders extracted on 31.10.2022), the court found that the Land lord was in contempt of the tribunal orders and proceeded to set a date for a notice to show cause as to why the contemnor should not be punished for contempt.
3. As at the time of delivery of the ruling dated 27.10.2022, the tenant was no longer staying in the suit premises and the only pending issue in so far as the issue of contempt was concerned related to collection of their (tenants) goods. The tenant was averring that the land lord had made it impossible for them to collect the said goods.



4. Subsequently thereafter, two applications were filed; one dated 14.1.2023 brought forth by the Land lord seeking orders for the setting aside of the ruling of 27.10.2023, while the other one is dated 25.1.2023 brought forth by an intended interested party who desires to be joined in these proceedings and for the orders of 27.10.2022 to be set aside. This ruling relates to the two applications.

Application dated 25.1.2023

5. The applicant intended Interested party is one Autogari Kenya Limited, who seek orders to be joined in these proceedings as an Interested Party and that the orders given on 27.10.2022 be set aside. The application is supported by the affidavit of its CEO, one Robert Gerishon Maranga Matu, who avers that they are the ones in occupation of the suit premises, having entered into a lease agreement with the Land lord (read Benjamin) in January 2022. The said party contends that the orders allowing the previous tenant (read IAN) to access the premises will interfere with their operations and that in any event, there is nothing belonging to the previous tenants in the said premises.
6. The Land lord through his replying affidavit whose date is not legible is fully supporting the aforementioned application.
7. I have not traced any Replying Affidavit of Ian Gonji. Thus the application dated 25. 1.2023 is unopposed. Be that as it may, this court has a duty in principle to look at what the application is all about; See Supreme Court decisions in *Gideon Sitelu Konchellah v Julius Lekakeny Ole Sunkuli & 2 others [2018]* eKLR and *Tullow Oil PLC & 3 others v PS Ministry of Energy & 15 others [2020]* eKLR.
8. As indicated earlier in this ruling, the main suit is the one before the tribunal and this miscellaneous suit was only filed to enforce the tribunal orders. The orders issued in the BPRT Case no. E010 of 2022 on several dates were against the Land Lord and not anybody else. Thus the joinder of the proposed party in these proceedings would have the net effect of scuttling and convoluting these proceedings as well as the proceedings in the main suit before the tribunal. In the circumstances, I find that the prayer for joinder is not merited. It follows that the said party has no basis of seeking the setting aside of the orders given on 27.10.2022.
9. The totality of the findings of this court is that the application dated 25.1.2023 is not merited, the same is hereby dismissed with costs to the applicant in the main suit (Ian Gonji).

Application dated 14.1.2023

10. In this application, the Land lord seeks the setting aside the ruling of 27.10.2022 on the basis that he was not served with the documents relating to the application dated 18.5.2022. Ian Gonji has opposed the said application vide his replying affidavit dated 3.2.2023.
11. I have duly considered all the arguments raised herein. As rightly indicated by Ian Gonji in paragraph 8 and 9 of his affidavit dated 3.2.2023, the land lord was represented in these court proceedings, an issue also captured in paragraph 12 of this court's ruling dated 27.10.2022. This court will belabour on the said issue no more, save to add that the issues being raised by the land lord post the delivery of the aforementioned ruling ought to be raised during the Notice to Show Cause proceedings.
12. I find that the application dated 14.1.2023 is not merited, the same is hereby dismissed with costs to the applicant in the main suit (Ian Gonji).

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 11TH DAY OF MAY, 2023 THROUGH MICROSOFT TEAMS.

LUCY N. MBUGUA



JUDGE

In the presence of:-

Ambala for Applicants (in main suit)

Chawla for Respondent

M/s Kinyua holding brief for Mr. Njenga for Intended Interested Party

Court assistant: Eddel**

