



Let's Koroga v Sufra Garden Restaurant Limited (Environment and Land Appeal E104 of 2022) [2023] KEELC 18401 (KLR) (29 June 2023) (Ruling)

Neutral citation: [2023] KEELC 18401 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND APPEAL E104 OF 2022**

**AA OMOLLO, J
JUNE 29, 2023**

BETWEEN

LET'S KOROGA APPLICANT

AND

SUFRA GARDEN RESTAURANT LIMITED RESPONDENT

RULING

1. The applicant filed the notice of motion dated March 7, 2023 premised on the provisions of section 5 of the Judicature Act and Part 81 of the English Procedure Rules seeking for the following orders;
 - i. Spent
 - ii. That the main landlord of the respondent namely, Mr.Kalivinder S.Matham and Mr.Abdulwahit Q.Abdo trading as Sufra Garden Restaurant Limited, do appear before this honorable court and show cause why they should not be cited for contempt of court and jailed for failing to obey stay orders as given by thishonourable court and denying the applicant access to their business premises.
 - iii. That this Honourable Court be pleased to find and hold that Mr. Kaivinder S. Matham, the main landlord of Sufra Garden Restaurant limited and Mr. Abdulwahit Q. Abdo trading as Sufra Gardens Restaurant Limited, the Respondents herein are in contempt and have disobeyed the order of the court issued on February 28, 2023.
 - iv. That this honourable court grants any other order it deems fit to meet the ends of justice.
 - v. That cost of this application be borne by the Respondent.
2. The motion was supported by grounds outlined in the supporting affidavit sworn by Kamal Singh Bhullar on March 7, 2023 stating that they are tenants to Sufra Garden Restaurant Limited on part of



LR No. 1870/VI/ Nairobi month to month and on February 20, 2023, the respondent instructed M/s Dalali Traders Auctioneers to levy distress against them claiming unpaid dues.

3. The applicant stated that they filed an application for stay dated February 21, 2023 before this court, the same was heard on merit and the court issued an Order in their favour for interim injunction against the respondent dated February 28, 2023 and the respondent have disregarded the said court order and proceeded to lock out the Directors of the applicant from their business premises greatly inconveniencing them and resulting in damages.
4. The applicant further added that they served the respondents with a Penal Notice in relation to the disregard of the Court Orders issued on February 28, 2023 but continued to disobey the said orders which action amounts to undermining the authority of this court.
5. The applicant also stated that they have filed a Memorandum of Appeal for hearing and determination in regards to the suit matter and the same is pending before this court.
6. The respondent filed a replying affidavit sworn by Abdul Wahid Qassim Abdo on March 18, 2023 stating that he had permission from the respondent to sub-let to the appellant herein for a period of one (1) year and that he did not participate in the forceful eviction of the appellant and was only informed of the evictions after returning from his Advocates office.
7. The respondent stated that the action by Mr. Kalivinder S. Matham would be justified as one year tenancy agreement between the appellant and respondent expired on December 31, 2022, therefore he was not guilty of disobeying any court order.
8. The respondent stated that he was copied in an email sent by Mr. Kalvinder on Saturday, March 4, 2023 4:53 PM informing the parties that the Appellant agreed to vacate the premises by Monday March 6, 2023 9:00 AM failure to which they would be trespassers on the property and was also copied to the email correspondence by the Appellant's Advocates to Mr. Kalvinder and vice versa on Monday March 6, 2023 10:17 and 10:20 am respectively.
9. The applicant filed submissions and further submissions dated March 22, 2023 and March 24, 2023 respectively. I have not seen any submissions from the respondent.
10. The applicant submitted that they have incurred an average loss of Kshs 28,464.45 per month for servicing the ablution block, 25% net profits to Lets Koroga not paid by the respondent to date and loss of business and clientele including abatement of rent.
11. The applicant submitted that the existence of the court order is not disputed and that there is a deliberate intention not to comply with the interim orders of injunction issued inter partes citing the case of *Republic v Principal Secretary Ministry of Defence Ex parte George Kariuki Waititirika* where the court found the Respondent guilty of Contempt for failing to satisfy a Court decree.
12. The applicant further submitted that Mr. Kalivinder Matharu had been receiving the service charge from Kamal Bhullar, the Director of the Applicant hence was aware of the sub lease between Lets Koroga and Sufra Gardens Restaurant.



Analysis

13. I have read and considered the applicant's motion and the accompanying supporting affidavit, replying affidavit and annexures thereof and the applicant's submissions. This court issued the following orders on February 28, 2023;
 - i. That the respondent granted 7 days to file a response to the application with corresponding leave to the applicant to file supplementary affidavit if need be within 3 days of service.
 - ii. That the application be heard on March 8, 2023;
 - iii. That an interim order of injunction is granted until the March 8, 2023 pending further orders from court.
14. The applicant alleges that the respondent locked them out of the premises in dispute, disobeying the court's interim orders of injunction given which allegations were denied by the respondent who argued that the one-year tenancy agreement between the appellant and respondent expired on December 31, 2022.
15. The issue for determination in this matter is whether or not the respondent is in contempt. I can see that the order of interim injunction was issued so as to give time for the applicant's application to be heard. It is also noteworthy that the one-year term lease expired in December 2022. The applicant filed the application dated February 20, 2023 after the respondent levied distress for rent. There is also mention of emails exchanged between the parties alleging that the applicant agreed to vacate the suit premises by March 6, 2023 and in default they were to be evicted.
16. Contempt is the willful disobedience or disregard of a court order and decree or directions which conduct impairs the fair and efficient administration of justice. I am conscious of the standard of proof in contempt matters that is well established. In the case of *Mutitika v Babarini Farm Limited* [1985] KLR 229, 234 the Court of Appeal held that:

“In our view, the standard of proof in contempt proceedings must be higher than proof on the balance of probabilities, almost but not exactly, beyond reasonable doubt...”
17. The applicant did not in their affidavit comment on the defence put by the respondent that through email exchanged they consented to vacate the suit premises by the 6th of March 2023. From a reading of the affidavit in support of the application, the applicant is stating that the premises were locked by the respondents (paragraph 5 of affidavit in support) but there is only one respondent named in the application. Mr. Kalvinder Matharu with whom the applicant's advocate wrote to (annex AOA2 in the replying affidavit) was not joined to the application citing him for contempt and if this court were to issue any orders without his participation, it would be contrary to the rules of natural justice.
18. The applicant ought to have told this court with precision who locked them out of the suit premises. In paragraph 7 of the supporting affidavit, the applicant deposed that he was informed by his Advocate that the disobedience by Kalvinder Matharu and Mr. Abdulwahit Q. Abdo undermines the authority of the court. The distinction of who locked out the applicant was necessary to prove who between the two was in disobedience as it appears Kalvinder Matharu and Mr. Abdulwahit Q. Abdo are different entities and so none should be punished for the actions of the other. However, on the face of the application, the court is unable to distinguish who locked out the applicant from the suit premises,



19. It is therefore my opinion and I hold that the applicant's motion has not met the standard of proof for contempt of court order. The same is dismissed with costs to the respondent.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 29TH DAY OF JUNE 2023

A. OMOLLO

JUDGE

In the Presence of

Mr Wakasha Were h/b for Wachakana for Applicant

Ms Akello for the Respondent

