



**Koroga v Sufra Garden Restaurant Limited; Matharu (Intended Interested Party) (Civil Appeal E104 of 2022) [2023] KEELC 21720 (KLR) (23 November 2023) (Ruling)**

Neutral citation: [2023] KEELC 21720 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
CIVIL APPEAL E104 OF 2022  
AA OMOLLO, J  
NOVEMBER 23, 2023**

**BETWEEN**

**LETS KOROGA ..... APPELLANT**

**AND**

**SUFRA GARDEN RESTAURANT LIMITED ..... RESPONDENT**

**AND**

**KALVINDER MATHARU ..... INTENDED INTERESTED PARTY**

**RULING**

1. The Appellant/Applicant filed a Notice of Motion dated 3<sup>rd</sup> July 2023 supported with an affidavit sworn by Kamal Singh Bhullar on the same day seeking for the following orders;
  1. Spent
  2. That this Honourable Court be pleased to Review its Ruling/ Orders made on 29<sup>th</sup> June, 2023 and order the Respondent Abdulwahid Q. Abdo trading as Sufra Gardens Restaurant Ltd and the intended interested party herein Mr. Kalvinder S. Matharu to release the Applicants goods as follows:

Bar supplies, glassware, equipment & cutlery.Bar furniture (steel and plastic).Electrical light fittings, terminal box, switches & sockets.Kitchen utensils, cutlery & equipment.Stainless steel sink and plumbing.Dartboards belonging to clients.Pool tables belonging to suppliers.Wine chiller, box freezer, kitchen fridge. - Beverage fridges belonging to suppliers.Bar Steel and timber structure.TVs, Android boxes and Internet routers with cables.Beverages and crates.Various hanging artwork.Various Bar Equipment and cutlery.Potted plants.
  3. That this Honourable Court issue summons to the Respondent Mr. Abdulwahid Q. Abdo trading as Sufra Gardens Restaurant Ltd and the intended interested party Mr. Kalvinder



Matharu to show cause why they should not be cited for contempt of Court and jailed for failing to obey orders that restrained themselves, their servants, agents or any person acting on their behalf from evicting, attaching, selling, subleasing or interfering with the Applicants peaceful enjoyment of its tenancy and Land Reference No. 1870/ VI situated on Mvuli Road off Rafta Road in Nairobi Westlands.

4. Costs of this Application be provided for.
2. The motion was based on the grounds that the Applicant has discovered new and important matter of evidence which after the exercise of diligence was not within the knowledge of the Court when the Ruling/ Orders were made on 29<sup>th</sup> June, 2023. The Appellant/Applicant stated that Mr. Abdulwahid Q Abdo trading as Sufra Gardens Restaurant Ltd, the Respondent herein and Mr. Kalvinder MATHARU the lawful owner and proprietor of Land Reference Number 1870/ VI situated on Mvuli Road off Rafta Road in Nairobi Westlands illegally, unlawfully, arbitrarily and acting ultra vires to the orders of this Honourable Court and the law locked out the Applicant from the business premises and stopped or prohibited it from accessing and removing its goods from the Respondents' premises.
3. The Applicant further stated that the intended interested party Kalvinder Matharu is illegally and unlawfully demanding a sum of USD 500 per day from it before releasing its goods and that it is exposed to loss of business, loss of customers and loss of investment if this court fails to intervene. The Applicant contended that this court is mandated under Section 80 of the *Civil Procedure Act* and Order 45 of the *Civil Procedure Rules* to Review its Ruling.
4. The Respondent opposed the motion through a replying affidavit sworn on 26<sup>th</sup> September 2023 by Abdulwahid Oassim Abdo. He contended that he did not participate in the forceful eviction of the Appellant herein and never locked the premises as he was not present at the time of the eviction.
5. He added that the action by Mr. Kalivinder S. Matham is justified as the one (1) year tenancy agreement between the Appellant and Respondent expired on 31<sup>st</sup> December 2022. Further that the Appellant had not paid service charge from February 2022 and rent from June 2022 to the Respondent together with arrears from the time of the proceedings in the Tribunal and before this Court.
6. The Respondent deposed that the Appellant has not been paying rent and that the Respondent has not disobeyed any court order. He added that the Appellant has filed numerous applications and that litigation must come to an end with a finality on an issue without it being opened over and over.
7. The motion was heard in court on 27<sup>th</sup> September 2023, with parties placing reliance on the pleadings filed. The Applicant submitted that court orders must be respected and the third party/Intended interested party was served but has not acted thus urged the court to allow the motion.
8. The Respondent submitted that the relationship between Abdulwalid and the Appellant ceased when the lease came to an end on 31.12. 2022. Secondly, that the Respondent was not part of the locking of the suit premises and such that he is not to answer to the issues raised in the motion, particularly Order 3 in so far as the contempt is concerned. The appellant urged that the application be dismissed.
9. The application is brought on the basis of discovery of new and important evidence which was not available to the Appellant at the time of arguing the application dated 7<sup>th</sup> March 2023 which the subject of the ruling sought to be reviewed. The Court of Appeal in the case of *Otieno Ragot and Co Advocates v National Bank Ltd* (2020) eKLR stated thus,

“Order 45 Rule 3(2) provides that an application for review shall “...not be granted on the ground of discovery of new matter or evidence which the applicant alleges was not within his knowledge or could not be adduced by him when the decree was passed or made without



strict proof of such allegation. Order 45 rule 1 does not excuse every error or mistake, even if inadvertent. It excuses those mistakes and allows a party to introduce documents which it could not lay its hands on even after the exercise of due diligence.”

10. Thus, the Appellant is under obligation to demonstrate that the information they now invite the court to re-look to review the orders of 29<sup>th</sup> June 2023 is new and important. The Applicant/Appellant pleaded that the intended interested party Kalvinder Matharu is unlawfully demanding for USD 500 per day before releasing the goods. In the supporting affidavit, the Applicant deposes that at the time of making the order on 29<sup>th</sup> June 2023, the court was not made aware of the locking out of the Appellant and that they were stopped from collecting their goods. That the Applicant is exposed to loss of income, of business and damages unless the court reviews the order.
11. I glean from the affidavit in support of the application that the new issue according to the Applicant is the locking of the suit premises and that they have been denied access to their goods which are their tools of trade. On the first limb, I hold the view that if the applicant were indeed locked out of the suit premises, such information was within their knowledge at all times. This is on the basis that the Applicant was using the premises daily for their business and any interference with the premises was information available at the finger tips of the Applicant.
12. The probable new evidence is the allegation that the intended interested party is demanding for payment of USD 500 from the Applicant before the itemised goods are released. The Intended Interested Party did not file any affidavit or grounds of opposition to contradict this averment. Similarly, the Intended interested party has not denied carting away the listed goods. In any event there exists no landlord-tenant relationship between the Appellant and the Kalvinder Matharu, he has no basis to make demand of payment before releasing the Appellant’s goods.
13. There is evidence presented by the Appellant to show that the Intended Interested Party was duly served with the previous court order and the current application but the Appellant is still disenfranchised by his inaction. Consequently, this court does find there is sufficient cause shown by the Appellant for review because his goods removed from the suit premises are held illegally by Kalvinder Matharu. Therefore, in exercise of its powers under sections 1A, 1B, 3A and 80 of the Civil Procedure Act, I do allow prayer 2 of the application as against Kalvinder Matharu, the owner of the suit premises.
14. Since there is no evidence linking the Respondent to the locking up of the premises and or demanding of payment, there is no reason to review the earlier orders made as against him. In conclusion, the application dated 3<sup>rd</sup> July 2023 partially succeeds in terms of prayer 2 which is granted as against Kalvinder Matharu referred to as the Intended Interested Party. The said party is directed to release the goods itemised above forthwith to the Appellant.

Costs of the application to the Respondent.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 23<sup>RD</sup> DAY OF NOVEMBER, 2023**

**A. OMOLLO**

**JUDGE**

