



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**CIVIL APPEAL NO. 547 OF 2011**

**GODFREY KIMANI MWANGI.....APPELLANT**

**- V E R S U S -**

**KANORERO WENDANI CO. LIMITED.....RESPONDENT**

**RULING**

1) Godfrey Kimani Mwangi, the appellant herein, took out the motion dated 29.5.2018 whereof he sought for the following orders:

***a) THAT this honourable court be pleased to allow the appellant to collect rent in respect of L.R PLOT NAIROBI/BLOCK 36/VII, KANORERO WENDANI HOUSE, EASTLEIGH SECTION 7 and L.R PLOT NAIROBI/BLOCK 116/630 for purposes of paying property rates to Nairobi City County pending the hearing and determination of this appeal.***

***b) THAT this honourable court be pleased to order the respondent's directors to render full statement of rent they have collected in respect of L.R PLOT NAIROBI/BLOCK 36/320/VII, KANORERO WENDANI HOUSE, EASTLEIGH SECTION 7 and L.R. PLOT NAIROBI/BLOCK 116/630 as at May, 2018.***

***c) THAT the costs of this application be paid by the respondent.***

2) The appellant filed an affidavit he swore in support of the motion while Kanorero Wendani Co. Ltd, the respondent herein, filed the replying affidavit of Andrew Macharia Gikuyu to oppose the motion. When the motion came up interpartes hearing this court issued orders directing the parties to file written submissions.

3) I have considered the grounds stated on the face of the motion and the facts deponed in the affidavit filed in support and against the application plus the rival written submissions.

4) It is the averment of the appellant that he is the registered owner of plot no. Nairobi/Block 36/329/vii, Kanorero Wendani House, Eastleigh Section 7 and plot no. Nairobi/Block 116/630.

5) He further submitted that the directors of the respondent have failed to pay rates in respect of the above mentioned properties to the tune of ksh.65,624/= and ksh.113,581/= respectively. He averred that his properties risk being sold to recover the outstanding land rates. It is for the above reason that the appellant is before this court praying to be granted the orders sought in the motion dated 29.5.2018.

6) The respondent on the other hand argued that the motion is a non-starter, incompetent defective and amounts to an abuse of process. It is the respondent's submission that the motion lacks merit. It is argued that the appellant lacks the *locus standi* to collect rent in respect of the aforementioned properties since he is not a director of the respondent.

7) It is also stated that the respondent has not passed any resolution to authorise the appellant to collect rent on its behalf. The respondent stated that it has been paying land rates therefore it cannot lie in the mouth of the appellant to allege that land rates have not been paid. The respondent attached to the replying affidavit of Andrew Macharia Gikuyu copies of property rates payment request which indicates that the outstanding land rates stood at ksh.25,500/= and 4,375/= respectively as of 21.6.2018.

8) The main ground in which the appellant bases his application to be allowed to collect rent is that the properties are in arrears of land rates to a cumulative sum of ksh.179,000/= as of 28.5.2018. It would appear the aforesaid amount had been settled by the respondent as of 21.6.2018. It is therefore not true that the properties are in danger of being sold to recover land rates.

9) The other prayer sought is for an order to direct the respondent's directors to render a full statement of rent they have collected in respect of the suit properties as of May 2018.

10) The appellant did not lay any basis for this prayer in his application and in his submissions. Consequently, I find no merit in the prayer.

11) In the end, the motion lacks merit, it is dismissed with costs to the respondent.

**Dated, Signed and Delivered in open court this 19<sup>th</sup> day of October, 2018.**

**J. K. SERGON**

**JUDGE**

In the presence of:

.....for the Appellant

.....for the Respondents