



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MISC. APPL. NO. 97 OF 2015

**IN THE MATTER OF A COMMITTAL APPLICATION FOR CONTEMPT OF THE COURT
ORDER ISSUED ON 24TH OCTOBER 2014**

**IN THE MATTER OF SECTION 5 OF THE JUDICATURE ACT AS READ TOGETHER WITH
PART 81 RULE 81.4 OF THE CIVIL PROCEDURE (AMENDED NO. 2) RULES, 2012 OF
ENGLAND**

CEASER WAREMA GIGHINJIPLAINTIFF

VERSUS

ESTHER IKAMBA1ST RESPONDENT

JOSEPH D. B. K. KIMANI..... 2ND RESPONDENT

T/A PYRAMID AUCTIONEERS

AJAA OLUBAYI

PARNWELL M. MURANGO

T/A AJAA OUBAYI & CO. ADVOCATES..... 3RD RESPONDENT

RULING

1. Ceaser Warema Githinji, the plaintiff herein took out the motion dated 5th March 2015, in which he sought for the following orders:
 1. ***THAT this honourable court do put Esther Ikamba and Joseph D.B.K. Kimani T/a Pyramid Auctioneers the***
 2. ***respondents/contemnor herein liable for punishment for having flagrantly disobeying court orders and for being in contempt of the court order issued on 24th October 2014 and they committed to civil jail for a period not exceeding six (6) months.***
 3. ***THAT costs of the contempt of court proceedings be borne by the respondents.***
2. The respondents opposed the motion by filing the replying affidavit of Esther Ikamba and a notice of preliminary objection.
3. When the motion came up for interpartes hearing, learned counsels recorded a consent order to have the motion disposed of by written submissions.

4. I have considered the grounds stated on the face of the motion plus the facts deponed in the affidavit filed in support and against the motion. I have further considered the written submissions.
5. It is the submission of the applicant that the rent Restriction Tribunal issued an order on 24.10.2014 to restrain the respondent interalia from selling the applicant's household goods. It is said that the aforesaid order was extracted and served upon the respondents but despite service the respondents went ahead to auction the applicant's goods. Consequently the applicant urged this court to find the respondent to be in contempt and proceed to punish them.
6. The respondents vehemently opposed the applicant's application. First, the respondent argued that the Rent Restriction Tribunal has no jurisdiction under Section 15 of the Rent Restriction Act to issue orders stopping the sale and or issue parallel orders to those issued by the Chief Magistrate's Court. It was pointed out that Hon. Ole Keiwa learned principal magistrate on 25.9.2014 issued orders vide Nairobi Chief Magistrates Court Misc. Application no. 919 of 2014 which neither set aside nor varied the decision of the Rent Restriction Tribunal. I have perused the order issued by the Tribunal and it is clear that the respondents were restrained from selling the applicant's attached goods pending the hearing and determination of the application interpartes. The order was issued on 24.10.2014. It is argued that the order was not extended on 2nd December 2014 the day when the Rent restriction cause was marked as settled by consent of the parties. However, the applicant's attached goods were sold on 2nd February 2015. The respondents aver that the proceeds of the sold goods were to be used to settle outstanding rent arrears. The respondents are of the view that at the time of the sale there was no order in force.
7. I have carefully considered the competing arguments and I have come to the conclusion that the 1st and 2nd respondents flagrantly breached the court order. The order issued by the Rent Restriction Tribunal was very clear in its terms. There is no doubt in my mind that the Rent restriction Tribunal had jurisdiction to issue the orders. The respondents should have gone back to court to have the orders set aside instead of attempting to circumvent the same. The respondents were specifically restrained from selling the applicant's property they had attached.
8. Consequently I find the 1st , and 2nd respondents in contempt of the court order. Before sentencing I will give them a chance to mitigate. The case against the 3rd respondent was not properly laid. In any case there was no specific order sought against the 3rd respondent. I make no orders as against the 3rd respondent

Dated, Signed and Delivered in open court this 15th day of March, 2016

J. K. SERGON

JUDGE

In the presence of:

..... for the Plaintiff

..... for the Respondent