



**REPUBLIC OF KENYA**

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

**HIGH COURT CIVIL APPEAL NO. 23 OF 2015**

ZIPPORAH W. NJENGA ..... APPELLANT

VERSUS

MOSES MBUGUA GITHEGI ..... RESPONDENT

**RULING**

On 6<sup>th</sup> October, 2015 this court delivered a ruling in which it declined to issue contempt orders against the respondent herein. There is now before me an application by way of Notice of Motion under Orders 45 Rules 1 and 2, 50 Rule 1 of the Civil Procedure Rules and Section 3A of the Civil Procedure Act, for the order that this court reviews and set aside the orders made on 6<sup>th</sup> October, 2015 in which the applicant's application dated 26<sup>th</sup> March, 2015 was dismissed.

The reasons for seeking such an order are that there was an apparent error on the face on the record in that, the ruling was based on orders issued by the Business Premises Rent Tribunal rather than the order issued by Justice Mabeya on 5<sup>th</sup> February, 2015.

The respondent is said to have acted illegally by trying to enforce an order that had emanated from the Business Premises Tribunal and should not be allowed to get away with it. There is a supporting affidavit sworn by the applicant which more or less reiterates the grounds set out above.

The application is opposed and there is a replying affidavit sworn by the respondent herein. Both parties have filed written submissions to address the application. I have related the application to the record herein and in particular the ruling dated 6<sup>th</sup> October, 2015 which is sought to be reviewed or set aside.

A careful look and reading of the court ruling will demonstrate that the court was alive to both the order of the Business Premises Rent Tribunal, and also the order made by Justice Mabeya on 5<sup>th</sup> February, 2015. Indeed the order by Justice Mabeya was with specific reference to the order of the Business Premises Rent Tribunal. This court was therefore correct in observing that the contravened orders emanated from the pronouncement of the Tribunal whose procedure of enforcement and appealing is clearly set out in Sections 14 and 15 of the Land Lord and Tenants (Shops, Hotels and Catering Establishments) Act, Cap 301 Laws of Kenya.

In that regard, there is no error on the face of the record as contemplated under Order 45 of the Civil Procedure Rules.

In any case, the respondent has pointed out in the replying affidavit that the applicant was evicted from the premises in January, 2015 and therefore there is no longer any landlord and tenant relationship. Since the court does not issue orders in vain I do not consider it appropriate to revisit this matter by way of an application such as the one before me. In the event the application is hereby dismissed with costs to the respondent.

Orders accordingly.

***Dated, signed and delivered at Nairobi this 19<sup>th</sup> of April, 2016.***

**A. MBOGHOLI MSAGHA**

**JUDGE**