



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**CIVIL MISC. APPL. NO. 238 OF 2015**

**LEAH WANGECHI GIOCHE.....APPLICANT**

**V E R S U S**

**BESTLADY COSMETICS SHOP LTD.....1<sup>ST</sup> RESPONDENT**

**DANIEL MUNYAKA.....2<sup>ND</sup> RESPONDENT**

**DAVID KARIMI T/A KINYANJUI KIRIMI & CO. ADVOCATES..... 3<sup>RD</sup> RESPONDENT**

**RULING**

1. Leah Wangechi Kioche, the applicant herein, took out the motion dated 18<sup>th</sup> November 2015 in which she sought for the following

orders *inter alia*:

***1) The directors of the 1<sup>st</sup> respondent Bestlady Cosmetics Shop Limited, Daniel Munyaka the 2<sup>nd</sup> respondent and the manager of the 1<sup>st</sup> respondent and David Kirimi, advocate for the 1<sup>st</sup> and 2<sup>nd</sup> respondents be committed to civil jail for contempt of the orders of the Business Premises Rent Tribunal made on 21<sup>st</sup> October, 2014 and 4<sup>th</sup> December 2014 and which are still in force.***

***2) The court be pleased to make any other further orders to punish the contemnors.***

***3) That costs of this application be provided for.***

2. The motion is supported by the supporting and further affidavits sworn by the applicant. When served, the respondents filed a replying and a further replying affidavit sworn by Daniel Munyaka to oppose the same. When the motion came up for interpartes hearing this court gave directions to have the motion disposed of by written submissions.

3. I have considered the grounds set out on the face of the motion and the facts deponed in the affidavits filed in support and against the application. The applicant avers that she was a tenant operating shop no. 4 on L.R no. 209/785/30 along Ronald Ngala Street owned by Best Lady Cosmetics Shop Ltd. It is said that the 1<sup>st</sup> respondent issued a notice to terminate the aforesaid tenancy by 1<sup>st</sup> September 2016. This notice prompted the applicant to move to the Business Premises Rent Tribunal to file a reference vide BPRT case no. 517 of 2016. Leah Wangechi Gioche =vs= Bestlady Cosmetics Shop Ltd. It is argued that despite filing the reference the 1<sup>st</sup> respondent closed down the applicant's shop on 1<sup>st</sup> September 2014. It is stated that the applicant obtained orders directing the landlord to allow the applicant access of

the shop by opening the same. It is said that the 1<sup>st</sup> respondent complied with the orders by opening the premises as directed by the court. The applicant paid rent in the sum of 91,700 to the landlord, the 1<sup>st</sup> respondent vide account no. 0940297891462. On 3.10.2014 the Business Premises Rent Tribunal made an order to ascertain whether the applicant being the tenant was in possession of the premises and whether goods are in the premises. The court proceeded to also issue an order to have the status quo to be maintained. The report was presented to court on 21.10.2014 after which the tribunal made orders to the effect that the applicant was to continue to enjoy quiet and peaceful tenancy of the suit premises pending the hearing and determination of Business Premises Rent Tribunal case no. 517 of 2014. The applicant has averred that despite the respondents receiving rent for September 2014 and orders made by the Business Premises Rent Tribunal for the applicant to continue to have peaceful occupation of the premises, the 1<sup>st</sup> respondent through its lawyer, the 3<sup>rd</sup> respondent herein, moved to court on 6<sup>th</sup> November 2014 vide C.M.C.C. Nairobi C.M.C.C Miscellaneous application no. 1065 of 2014 and obtained breaking orders to remove the applicant's/tenant's items from the suit premises. The applicant avers that the 1<sup>st</sup> respondent eventually evicted her from the premises and proceeded to lease the premises to someone else. The applicant has also claimed that in the process of eviction she lost all her stock in the shop she had occupied for over 10 years. The applicant is now before this court seeking for the respondents to be cited and punished for contempt of court.

4. The respondents on their part have strenuously opposed the motion. The 3<sup>rd</sup> respondent has stated that he was never served with any orders asking the landlord to open the premises and the same were never reopened by the landlord. It is the applicant's contention that the orders said to have been breached were made in the presence of the counsel for the respondents. It is also the argument of the respondents that the inspection report did not represent the whole truth on the situation on the ground which shows that the premises were all along locked. The applicant contended that the respondents cannot be heard to complain yet they did not challenge the veracity of the inspection report or order directing the applicant to continue occupying the premises pending the hearing and determination of the Business Premises Rent Tribunal case no. 517 of 2014.

5. The respondents have further argued that the applicant had moved out thus paving way for the premises to be leased out to another person. The respondents also contend that there was no eviction order at all as the premises were opened as directed by an order of court which still remains unchallenged.

6. Arising from the material placed before this court and the rival submissions, the main question which has been posed to this court to give an answer is whether or not there was contempt of the court orders and by who?

7. There is no dispute that all persons must obey court orders which are within their knowledge or brought to their attention. The 3<sup>rd</sup> respondent has submitted that he was not served with any order asking the landlord to open the premises. I have examined the Business Premises Rent Tribunal's proceedings and I am satisfied that the 3<sup>rd</sup> respondent was aware of the proceedings and orders issued. In fact he is the one who applied for the breaking in orders before the chief magistrate's court to have the applicant evicted from the suit premises yet he knew about the issuance and existence of the orders by the Business Premises Rent Tribunal. In **Shimmers Plaza Ltd =vs= National Bank of Kenya Ltd, (2015) eKLR**, the Court of Appeal held interalia

8. That rule 81.8 of the English Civil Procedure (Amendment no. 2) Rules, 2012, subjects the dispensation of service of copies of the judgment or order to the issue of notice of judgment and the court's discretion. For example, in the case of judgment or order requiring a person not to do an act, the court may dispense with service of a copy of the judgment or order in accordance with rule 81:5 or 81:7 if it is satisfied that the person has had notice of it by being present when the judgment or order was made or by being notified of its terms by telephone, email or otherwise.

9. I am also satisfied that the applicant has shown that the orders issued by the **Business Premises Rent Tribunal vide Business Premises Rent Tribunal case no. 517 of 2014, Leah Wangechi Gioche =vs= Bestlady Cosmetics Ltd** were to the effect that the applicant was to continue having quiet possession of

shop no. 4 on plot no. L.R 209/785/30 along Ronald Ngala Street. The applicant continued to remain in the premises and that is why the respondents were forced to apply for a breaking in order vide **C.M.C.C Misc. Application no. 1065 of 2014** to effectively evict her and remove her goods on 6.11.2014.

10. The respondents were under a duty to obey the order issued by the Business Premises Rent Tribunal on 21.10.2014 even if the disputed inspection report did not give a true picture on the ground. I am convinced that the order was made in the presence of the 3<sup>rd</sup> respondent, the learned advocate for the 1<sup>st</sup> and 2<sup>nd</sup> respondents. It is presumed that the 3<sup>rd</sup> respondent being the agent of the 1<sup>st</sup> and 2<sup>nd</sup> respondents to have informed them of the orders issued by Business Premises Rent Tribunal.

11. In the end and on the basis of the above grounds, I find the respondents guilty for contempt of the orders issued by the Business Premises Rent Tribunal issued on 21.10.2014. Having convicted the respondents for contempt they are now invited to submit on mitigation to enable this court pronounce the appropriate sentence.

Dated, Signed and Delivered in open court this 29<sup>th</sup> day of September, 2016.

**J. K. SERGON**

**JUDGE**

In the presence of:

..... for the Applicant

..... for the Respondent