



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
CONSTITUTIONAL AND HUMAN RIGHTS DIVISION
PETITION NO 401 OF 2014

HEINZ BROERPETITIONER

VERSUS

LYLLIAN KABOLE1ST RESPONDENT

LASCO SECURITY SERVICES LIMITED2ND RESPONDENT

RULING

1. The petitioner/applicant first approached this court on 5th August 2013 by way of a petition and a notice of motion in which he sought certain orders against the respondents. Majanja J certified the matter urgent and directed that it be served for inter partes hearing. On 12th August 2013, the Court issued an order restraining the 1st and 2nd respondent by themselves their servants and or agents from interfering with the petitioner's vehicles KBC 502J, KBM 357D and KAC 214M pending the hearing of the application and further orders of the court.

2. On 9th September 2013, a consent order was entered between the parties. The consent as it appears on the record is as follows:

1. An order of injunction be and is hereby issued against the respondents, by themselves servants or agents, from interfering with the freedom of movement of the petitioner in and at Komarock phase 11 in fill A Estate Nairobi.

2. The petitioner shall pay mandatory utilities at the Estate (Garbage collection and sewer fees to the Nairobi water and sewerage company).

3. Each party to bear their own costs.

3. The petitioner then approached the court by an application dated 1st January 2014 and filed in court on 8th January 2014. On 27th February 2014, when the matter came up before Majanja J, the learned Judge appointed an Advocate, Mr. Anyega, to appear for the petitioner and fixed the matter for further directions on 6th March 2014. On 6th March 2014, the application dated 5th January 2014 was withdrawn

at the request of Mr Anyiega.

4. The petitioner then appeared in person on 22nd April 2014 when the matter was again fixed for mention on 20th May 2014 on which date the court directed the petitioner to serve his application dated 5th January 2014 for hearing on 18th June 2014. He also issued summons for Mr. Anyiega to appear in court on 29th May 2014, Mr. Anyiega appeared and explained to the court that he had prepared an application for the petitioner but the petitioner had declined to sign stating that he is making his own arrangements.

5. When the matter was placed before me on 18th June 2014, I directed that it be mentioned on 11th July 2014 to enable me read the file. I thereafter directed service on the 1st respondent, who did not appear. Summons were issue for her to appear, and thereafter, warrants of arrest were issued against the 1st respondent.

6. On 25th September, 2014, the court directed the petitioner to appoint a Counsel as the court was having difficulty understanding what he was seeking from the court. The petitioner however, did not do so and instead took a date for mention on 3rd November 2014. On that date, Mr. Broer appeared before the court and indicated that he had filed his application and submissions and was seeking judgment.

7. On 20th November 2014, the 1st respondent applied for the lifting of the warrants of arrest issued against her. She indicated in the said application that she did not intentionally fail to appear in court; that she was unaware of the proceedings and at the time of the issuance of the warrant she was unwell. Upon considering the application, the court was satisfied with the reasons given for non-appearance and lifted the warrants.

8. The problem between the petitioner and the respondents appears to revolve around relations between residents of Komarock Infill Phase 2A, where at one point the 1st respondent appears to have been an official of the residents association. The dispute seems to have arisen as a result of the respondents demanding payment of certain sums from the petitioner for services within the estate. While the initial dispute seems to have been settled though the consent order entered into before Majanja J, the petitioner seems to have had some outstanding grievances, hence his application of 1st January 2014 filed in court on 8th January 2014.

9. I have considered the said application which is headed **“Application for Contempt of Court Order”**. The petitioner makes various factual allegations in the said order, among others, that the 2nd respondent locked him out three times against the orders of the court; that it also locked out the entire court on 3rd December 2013; that the petitioner is now the vice-chairman-presumably of the residents’ association, from 1st December 2013. He also makes allegations against Ms. Kabole, the 1st respondent, among such allegations being that she was never registered by KRA, that she never worked with KRA, and that she refused to deliver some documents to them. It is not clear what the initials ‘KRA’ stand for n or the import of Ms Kabole being registered or not registered with it.

10. Having read the said application and the rest of the pleadings, and with the best will in the world, I am unable to understand the petitioner’s grievance, or to see how there has been a violation of the orders of the court. The petitioner has an obligation, in my view, to abide by such rules as the association formed by persons with whom he resides, and of which he is a member, sets. I also note that he has been the vice-chairman of the residents’ association since December 2013. If the residents still have a problem with the security company that they had contracted to render security services, then they have no obligation to remain bound to it, and can terminate its contract and find a more reliable firm.

11. At any rate, I can find nothing in the application that merits contempt orders being issued against the respondents. The application dated 1st January 2014 is therefore dismissed but with no order as to costs.

Dated Delivered and Signed at Nairobi this 16th day of January 2015.

MUMBI NGUGI

JUDGE

Mr Broer present in person

Mr Asinuli instructed by the firm of Asinuli & Associates Advocates for the 1st respondent