



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KAJIADO

MISCELLANEOUS APPLICATION NO. E042 OF 2021

CALYX RED LIMITED.....APPLICANT

-VERSUS-

DR. RAPHAEL TOROME (The Administrator of the

Estate of GRACE WAIRIMU TOROME).....1ST RESPONDENT

IDEAL AUCTIONEERS.....2ND RESPONDENT

RULING

On the 14th July 2021, the Applicant through counsel on record filed this Miscellaneous Application and a Notice of Motion of the same date.

The main prayer in the Notice of Motion seeks to commit Lord Torome and Christine Torome to Civil Jail for contempt and disobedience of orders granted by the Business Premises Rent Tribunal in Tribunal Case no. 52 of 2019 (Kajiado) on 13th August 2019 by Hon. Chairman Mbichi Mboroki, sitting in Nairobi in this matter.

The said application is supported by two affidavits by Martha Wangui Githinji dated 14th July, 2021 and 29th July, 2021 respectively.

The application is opposed by the Respondents and Lord Torome has sworn a replying affidavit dated 26/7/2021. Christine Torome has also sworn a replying affidavit also dated 26/7/2021 opposing the application.

In addition to the replying affidavits, counsel for the first Respondent and Christine Torome has raised a Preliminary Objection dated 26/7/2021 as follows;

- 1. This application violates the provisions of Section 14 of the Landlord and Tenants (Shops, Hotels and Catering Establishments) Act.*
- 2. The Court has no jurisdiction to entertain this application.*
- 3. This Application is therefore not properly before this Court and should be dismissed with costs.*

I find that I should first and foremost deal with the issue of jurisdiction.

Does this Court have jurisdiction to deal with a breach of an order issued by the Lower Court in a matter pending before the Lower Court?

To me, the obvious answer is no. I give the reasons here below;

Firstly, under **Section 10(1) and 10(3) of Magistrates' Court Act (ACT NO. 26 of 2015)** it is provided as follows:

(1) "Subject to the provisions of any other law, the Court shall have power to punish for contempt

(3) In case of Civil Proceedings the willful disobedience of any Judgment, decree, direction, order, or other process of a Court or willful breach of an undertaking given to a Court constitutes contempt of Court."

4. Secondly, **Section 14 of the Landlord and Tenants (Shops, Hotels and Catering Establishments) Act (CAP 301)** prescribes the

procedure of enforcement of Tribunal Orders and specifically confers the jurisdiction in a subordinate Court of first class.

This particular provision expressly ousts the jurisdiction of this Court in enforcement of Tribunal Orders.

Finally, **Section 15 of CAP 301** expressly confers on this Court Appellate jurisdiction only. No other jurisdiction or power is conferred on this Court in relation to Land Lord and Tenants cases.

From the above, it is clear that this Court has no jurisdiction to entertain the Notice of Motion dated 14th July, 2021. It is therefore dismissed.

Finally on costs, I direct that each party bears its own because the application for contempt could still be filed in the appropriate forum.

Orders accordingly.

DATED SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 15TH DAY OF MARCH, 2022.

M.N. GICHERU

JUDGE