



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MISCELLANEOUS CIVIL CAUSE NUMBER 600 OF 2013

JEREMIAH KALACHI OLULENYI. TENANT/APPLICANT

VERSUS

WILLIAM NGOTIEK. LANDLORD/RESPONDENT

R U L I N G

The application before the court is the Notice of Motion dated 27th June, 2013 brought under Judicature Act, Cap 8, Section 1A, 1B and 3A of the Civil Procedure Act and also Order 51 of the Civil Procedure Rules. It mainly seeks an order that the Respondent be cited for contempt of court and be committed to civil jail as the court may deem just and/or until he complies with the lawful order issued by the Chairman of the Business Premises Rent Tribunal.

The Applicant deponed that the respondent was served with the order of the Tribunal on 4th April, 2013 restraining and prohibiting him from evicting the applicant from the premises known as Unic Pub, at Isinya, Room No. 3 on Plot No. 4443. That the Respondent disobeyed the court order by proceeding to lock the said room and also starting construction on the area surrounding the premises in utter contempt and disregard of the Tribunals order.

Furthermore on 18th November, 2013 this court ordered the Deputy Registrar of the court to issue Notice to the Respondent to appear in court on 29th November, 2013 to Show Cause why the Respondent should not be penalized for disobeying the Tribunal's order. He failed to appear before this court as a result of which a Warrant of Arrest was ordered issued to be effected by the Officer Commanding Isinya Police Station. On 12th February, 2014 the Respondent was finally produced in court after being arrested as per the Warrant of Arrest aforesaid and was released on cash bail of Ksh.500,000/-.

The Respondent had opportunity to defend himself. He had filed an affidavit dated the 27th November, 2013. He denied having been served with the order of the Tribunal and the order of this court ordering him to appear before the court on 18th November, 2013 to show cause. He averred that the orders should have been served on him personally instead of leaving them with his secretary. He further testified that he had travelled out of Kenya on 28th November, 2013 only to return on 12th December, 2013. That he then travelled to Loitokitok from where he called his advocate who informed him that he had settled matter of the premises with the advocate of the applicant. That their agreement was that the applicant was at liberty to re-enter and occupy the premises, only to learn later that there was a warrant of arrest seeking for him for failing to attend court. The Respondent blamed his former advocate for misleading him that the matter was already settled. The Respondent also then denied having evicted the

tenant.

On his part the OCS, Isinya Police Station testified before this court on 14th February, 2014. He said that he had wanted to execute a Warrant of Arrest against the Respondent after it was served on him but on 13th January, 2014, 18th January, 2014 and 30th January, 2014 he failed to get him at his home on each occasion.

As the court understands, there are two questions that must be resolved. The first one is whether having been ordered by the Tribunal not to evict the Applicant from the relevant premises, he nevertheless defied the order and did so. Secondly whether his conduct all through demonstrated that he knew of the order and its effect and whether he actually evicted the Respondent from the premises.

I have carefully perused and considered the facts and evidence on the record. The Respondent has not denied that the Tribunal made an order against eviction from the relevant premises as claimed by the applicant. He has neither denied that the applicant was evicted whether by him directly by his servants or agents. What he categorically denied is that he was served with the order from the tribunal and that he was not personally served with the court order that required him to attend court to show cause.

On the other hand, however, the Respondent did not deny having full knowledge of the Tribunal or court order which according to him was served upon his secretary instead of it being served on him personally. Even with the order of this court ordering his presence in court on 29th November, 2013 which admittedly was served upon his secretary, was ignored. Indeed even after a warrant of arrest was issued for failure to attend court the Respondent filed court process to lift it instead of running to court to purge his unlawful conduct. His conduct in the view of this court, was so infectious that the police and the court process-server who were given orders to serve on him, began to behave without integrity as the court record shows.

If the Respondent accordingly, was not personally served as he claims, he nevertheless properly knew of the existence of the Tribunal's order and of the court order. It is not surprising therefore, that even when the court took a harsh and strict view of the Respondent's conduct, he was not arrested as ordered by the court, but walked to court freely. As stated in the case of **HADKINSON VS HADKINSON [1952] ALL .E.R 567**: -

“it was the plain and unqualified obligation of every person against, or in respect of whom an order was made by the Court of Competent jurisdiction to obey it unless and until it was discharged and disobedience of such an order would, as a general rule, result in the person disobeying it being in contempt and punishable by committal or attachment and in an application to the court by him not being entertained until he purged his contempt....”

As to whether the court can act against a contemnor where he may not have been personally served but had knowledge, the court in **KENYA TEA GROWERS ASSOCIATION VS FRANCIS ATWOLI & 5 OTHERS [2012]EKLR** stated: -

“In the case before me, I am more than satisfied that even at the highest level of beyond reasonable doubt, when an individual has been served with and/or has knowledge of a court order but not only ignores it but in fact incites others to do the same the threshold for contempt has been met.”

In this case the court holds that there is sufficient evidence from the process-server that the Respondent was served. However, suppose he was not served, the court has evidence beyond reasonable doubt that he had knowledge of the two court orders. He in addition, was told by his former advocate of the presence of the orders although he alleged he was misled by him which this court did not believe or accept.

The result is that the court finds the Respondent guilty of disobedience of lawful orders of the Tribunal and of this court and convicts him of contempt. The court will listen to his mitigation before

sentencing him. Orders accordingly.

Dated and delivered at Nairobi this 23rd day of September, 2014.

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D A ONYANCHA

JUDGE