

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MISCELLANEOUS CIVIL APPLICATION NO. 174 OF 2013

PETER MARERA GIKONYO.....APPLICANT

VERSUS

GERALD MACHARIA.....RESPONDENT

RULING

1. The notice of motion dated 6th March 2013 is brought under **section 5(i) of the Judicature Act (Cap 8) Laws of Kenya, order 50 rule 1& 6 of the Civil Procedure Rules, 2010, section 3 and 3A of the Civil Procedure Act Cap 21 Laws of Kenya**. It is brought by the applicant seeking for an order that the respondent be committed to civil jail for contempt of court.
2. The application is based on the grounds on the face of the application and is supported by the supporting affidavit of Peter Marera Gikonyo sworn on 6th March 2013.
3. The applicant's case is that the respondent has gone against the business premises rent tribunal order of 9th August 2012 which barred him from evicting the applicant without giving him notice under cap 301 Laws of Kenya. He avers that on 7th October 2012 the respondent declined to receive his rent payment stating that he would issue him with a notice to vacate his premises. Subsequently, on 26th October 2012, his goods, tools of trade and documents were taken away from the premises by people who alleged to be personnel from Fantasy Auctioneers. He laments that he was not served with any notice to vacate or proclamation notice by the said auctioneers.
4. The respondent swore a replying affidavit on 11th March 2013 in opposition to this application. The respondent contends that he served the applicant with a notice of termination of tenancy in July, 2012. After the issuance of the said notice, the applicant opted to utilise the deposit as rent for the month of August, 2012 but failed to vacate the premises. He avers that it is after the issuance of notice of termination of tenancy that he instructed Fantasy Auctioneers to levy distress for non-payment of rent which they did.
5. This application was dispensed with by way of submissions which reiterate the averments in the affidavits. I have considered the affidavits and the rival submission. The issue for this court's determination is whether the respondent is liable for contempt or not.
6. Contempt proceedings are quasi criminal in nature and may affect the liberty of the person. Its standard of proof is therefore higher than that of a balance of probabilities. This position is fortified by the Court of Appeal's holding in *Mutitika v. Baharini Farm Ltd [1985] KLR 227* where it was held that the guilt of a contemnor must be proved strictly as is consistent with the gravity of the charge.
7. The Business Premises Rent Tribunal order of 9th August 2012 given to the respondent was to the effect that for him to evict the applicant, he had to give him notice. Contrary to the applicant's mere allegations, the respondent has provided this court with sufficient evidence and established that he indeed issued notice of termination of tenancy before evicting the applicant. He cannot be said to have disobeyed the said order. I find no merit in the application and accordingly dismiss it with costs to the respondent.

Dated, Signed and delivered in open court this 24th of October 2014.

J.K.SERGON

JUDGE

In the presence of:

N/A for the Applicant

N/A for the Respondent