



REPUBLIC OF KENYA

High Court at Nairobi (Nairobi Law Courts)

Civil Case 96 of 2010

ROSE KARUTHU IKUNYUA..... PLAINTIFF

VERSUS

CHARLES KIBITI IKUNYUA..... DEFENDANT

R U L I N G

1. In this application by **notice of motion dated 17th October 2011** the Plaintiff seeks orders that the Defendant be committed to civil jail for six months or as the court may fix for disobeying an order of Court issued on 4th May 2011; that the Defendant be stopped from committing the acts of contempt complained of; and that the Court do take judicial notice of the loss and damage incurred by the Plaintiff as a result of the Defendant's acts.
2. The application is brought under **section 5(1)** of the **Judicature Act, Cap 8, Order 40, rule 3** of the **Civil Procedure Rules** (the **Rules**) and **section 3A** of the **Civil Procedure Act, Cap 21**. There is a supporting affidavit sworn by the Plaintiff.
3. The Respondent has opposed the application vide his replying affidavit sworn on 24th November 2011 and filed the same day. He has deponed as follows-
 - i. That the Plaintiff has never consulted the Defendant on the issue of finding a tenant as ordered by Court.
 - ii. That the house is in a bad state of repair and it would be difficult to get a good tenant without it being repaired first.
 - iii. That on several occasions, he has through his advocate invited the Plaintiff to conduct a joint assessment of repair costs, which invitation she snubbed. That the Defendant therefore took an independent assessment and forwarded the same to the Plaintiff who has never commented upon it.
4. He also denies being in possession of the suit property as he permanently resides in Meru; further he is not deriving any economic benefit from it. He argues that the reason why the suit property is still vacant is the Applicant's fault. He urges the Court to dismiss the application and order for a quick hearing of the main suit.
5. The application was canvassed by way of written submissions. I have duly considered them. On the part of the Plaintiff it is submitted that the order of 4th May 2011 was clear on the issue of a tenant moving in to the suit property and rent proceeds to be put in a joint interest-earning account. If the

Defendant wishes to have the house repaired he should move the court appropriately.

6. As for the Defendant, he submits that he cannot be held to be in contempt of court for seeking to repair and prepare the house for habitation after it was left in a state of disrepair by the Plaintiff. He further submits that the Plaintiff should have provided evidence to show that she has found a tenant who is willing to occupy the suit property as it is.

7. Court orders must be obeyed. Disobedience of a court order is a challenge to its authority and must be punished at once.

8. In the present case, as happens elsewhere, a house that is vacated after long occupation by a family, will normally require repairs, minor or major, and general sprucing up so that a new tenant can feel that he is getting his money's worth. So it is not out of the ordinary that the suit property would require repairs and maintenance after the Plaintiff vacated it. Otherwise, it would not attract a good tenant and hence realize a good rental income.

9. I do not find it unreasonable that the Defendant would want the house repaired and brought up to the mark in order to attract a good tenant. He has no desire himself to occupy it, unlike the Plaintiff, as he resides in Meru. As long as the house remains unoccupied by a tenant, he, just as much as the Plaintiff, will not derive any income from it. He would have no reason at all to delay occupation of the house by a tenant.

10. I do not find the conduct of the Defendant as set out above to be in contempt of the order of 4th May 2011. On the contrary, from the material now before the court, it is the Plaintiff who, by not cooperating in the repair of the house in readiness for occupation by a tenant, that is hindering the full effectuation of the said order.

11. In the circumstances, I find no merit in the Plaintiff's contempt application. It is hereby dismissed with costs to the Defendant. It is so ordered.

DATED AND SIGNED AT NAIROBI THIS 6TH DAY OF FEBRUARY 2013

H. P. G. WAWERU

JUDGE

DELIVERED AT NAIROBI THIS 8TH DAY OF FEBRUARY 2013