



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NYERI
CIVIL CASE NO. 504 OF 1993

JOHN GITONGA MAINA.....APPLICANT/PLAINTIFF

VERSUS

MUNICIPAL COUNCIL OF NYERI.....RESPONDENT/ DEFENDANT

RULING

John Gitonga Maina, the Plaintiff/Applicant herein, took out the Motion dated 4th October 2011 in which he applied for the following orders:

- (1) That the application be certified urgent and heard ex parte in the first instance.***

- (2) That the defendant/Respondent, its servants or agents be restrained from harassing, evicting or in any other manner interfering with the plaintiffs possession of NYERI MUNICIPALITY/BLOCK III the suit premises until further orders of the court.***

- (3) That the Defendant has violated the court orders of 1st August 1997 and its actions are to this extent null and void.***

- (4) That the cost of this application be provided for.***

The Applicant swore an affidavit he filed to support the Motion. Municipal Counsel of Nyeri, filed grounds of opposition to oppose the Motion.

I have considered the grounds set out on the face of the Motion plus the facts deponed in the supporting affidavit. I have also taken into account the grounds of opposition together with the oral submission of learned counsels. It is the submission of Mr. Waruingi, learned advocate for the Plaintiff/Applicant that judgment in this case was entered by the consent order recorded on 1st August

1997. In the aforesaid judgment the Plaintiff was to get a tenancy of the premises standing on Plot No. **NYERI MUNICIPALITY/BLOCK III** at a monthly rent of Kshs.500/= with effect from 1st October 1997 without vacant possession. The Plaintiff stated that he complied with the court order. It is alleged that the Defendant unilaterally increased the rent and has threatened to evict the Applicant thus he has come for the protection of this court. The Defendant is of the view that Motion lacks merit and amounts to an abuse of the court process. It is argued that the decree lapsed at the end of twelve years hence the court cannot go back to it. After a careful consideration of the rival submissions, it is clear in my mind that this suit was compromised on 1st August 1997 when the parties involved recorded a consent order. It is clear from the consent judgment that the Plaintiff was given a fresh tenancy for the kitchen and the open space in the premises standing on Plot No. **NYERI MUNICIPALITY/BLOCK III** at a monthly rent of Ksh.500 with effect from 1st October 1997. It is alleged that the Defendant has breached the consent judgment by unilaterally increasing the rent and by threatening to evict the Plaintiff. The Plaintiff avers that the Defendant is in contempt of court orders. I have anxiously considered the allegations made against the Defendant. The Defendant has not controverted those allegations. The main order sought for by the Plaintiff is that of injunction. I am not convinced that the order is available using these proceedings. In my view the court became *functus officio* when it adopted the consent judgment as its decision. If either party breaches the terms of the judgment then it is upon the aggrieved party to take out contempt proceedings which is not the case here. The record indicates that the Plaintiff had a renewal tenancy relationship with the Defendant for five years each. If the Plaintiff was given a fresh tenancy to run from 1st October 1997, I presume that the same was to run for five (5) years and would automatically be renewed at the expiry of each term. In the end I find the Motion to be without merit and incompetently before this court. The same is ordered struck out and dismissed with costs to the Defendant.

Dated and delivered at Nyeri this 20th day of January 2012.

J. K. SERGON

JUDGE

In open court in the presence of Mayaka holding brief Wahome Gikonyo for the Respondent and Mr. Waruingi for the Applicant.