



REPUBLIC OF KENYA

High Court at Nairobi (Nairobi Law Courts)

Environmental & Land Case 929 of 2004

DOROTHY WANGARI INDERI

EDWARD NDERI MARINE

LUCY WANJIRU MARINE.....PLAINTIFFS/APPLICANTS

VERSUS

HABIB BANK LIMITED.....1ST DEFEDANT/RESPONDENT

JOSEPH MURIITHI MWANGI2ND DEFENDANT/REDPONDENT

STEPHEN ONYANGO JUMA T/A INTIME SERVICES....3RD DEFENDANT/RESPONDENT

RULING

1. The applicants have filed a notice of motion dated 25/4/12 under Order 40 rule 3, 51 Rule 1 of the Civil Procedure Rules 2010, sections 3, 3A, 1A, 1b and 63 (c) of the Civil Procedure Act Cap. 21 Laws of Kenya, seeking the following orders;

i. Spent.

ii. That upon hearing this application this honourable Court be and is hereby pleased to commit Joseph Muriith Mwangi (the contempnor herein) to civil jail for a period of Six Months for having disobeyed and/or disregard the orders of this honorable Court entered into by the consent of both parties on the 19th March, 2007 before the Hon. Lady Justice Mary Ang'awa requiring that the parties maintain and observe the status quo then obtaining.

iii. That costs of this application be provide for.

The application is premised on the following grounds;-

a) That the applicants herein filed a chamber summons application dated 9th march, 2006 seeking among other orders that the 2nd respondent be prevented from interfering, with the property described as land Reference No. 4480/149 Ngong Town pending the hearing of that application.

b) That when the said application came up for mention before the Honourable Lady Justice Mary Ang'awa by the consent of parties the Court ordered that the status quo then obtaining be maintained while the matter was being heard.

- c) That the net effect of the said order was that both the plaintiffs/applicants and the 2nd defendant/respondent were to remain in control of the rooms in their possession and/or under their respective tenants as clearly set out in the said order.]
- d) That the 2nd defendant extracted the said consent order and served a copy thereof upon the applicants herein.
- e) That on 27th March 2007, when the same application came up for hearing before the Hon. Lady Justice Mary Ang'awa, the Learned Judge by a further consent order, ordered that pursuant to the earlier order of 19th March 2007, the plaintiffs were to retain the rents collected respectively, while the 2nd defendant/respondent was to equally retain the rents collected respectively.
- f) That the consent order was extracted and served after approval by both parties.
- g) That notwithstanding the said consent orders, the 2nd respondent has blatantly ignored, refused, and/or neglected to obey the same in that he has interfered with the rooms under the applicant's control by painting, leasing, constructing an illegal outer-metal staircase and/or threatening to evict the tenants directly under the applicant's control.
- h) That the foregoing action by the 2nd defendant are not only detrimental to the applicant's interest in the disputed property which is the subject of the pending case which is now partly heard, but is a deliberate attempt to not only to disparage the honorable court to also subject it to disrepute.
- i) That despite being served with this orders and being warned to obey the same, the 2nd respondent has deliberately ignored the wise counsel on the need to obey court orders.
- j) That the only recourse to compel the 2nd respondent is to have him committed to Civil Jail for six months for the said disobedience.
- k) That it is only fair and in the interest of justice that the orders sought herein are granted to forestall the continued disobedience.

2. In the Supporting affidavit of Dorothy Wangari Nderi, 1st plaintiff dated 25/4/2012. She avers that: That on or about the 13th March, 2006 the applicants filed a chamber summons application which sought inter alia injunctive orders to prevent the 2nd respondent from interfering with the property being a house erected on Land Reference No. 4480/149 Ngong town pending determination of the said application. That the application was subsequently heard and when the matter came up for mention before the Honourable Lady Justice Mary Ang'awa ordered that the status quo be maintained while the matter awaited conclusion. That in effect the said order contemplated that both the plaintiffs and the 2nd respondent were to retain control of the rooms in their possession and/or those occupied by their respective tenants without any side interfering with the other. That consequently thereafter, the matter came up before the Hon. Lady Justice Mary Ang'awa on 27th March, 2007 when the learned Judge yet again by consent of both parties recorded a further consent order which order reaffirmed the earlier one on the issue of status quo and further provided that the plaintiffs were to retain the rents collected from the rooms under their control, whereas the 2nd defendant was also to retain the rents collected respectively for the rooms under his control. That the said court orders despite being entered into by consent were nevertheless extracted and served upon the 2nd defendant/respondent notwithstanding that he was present in court and was in attendance when the same were entered into. That the observance and/or maintenance of the status quo included among others the need not to carry out any kind of further constructions, renovations, painting and/or in whatever way dealing with the property in a manner that could defeat the actual status of both parties respective interests in the property under dispute. That notwithstanding the said court orders, the 2nd defendant has blatantly disobeyed, disregarded and/or ignored the same in the sense that he has interfered with the physical look of the building by effecting different paintings, constructing an outer iron rod staircase, leasing out some rooms that were empty as at the time of the said order and has indeed issued threats to

evict the tenants under the control of the applicants by hiring goons who have visited the tenants place of aboard while armed with claw bars while issuing threats of harming them if they do not leave the premises. That the 2nd defendant is aware of the said Court orders and there is need for this honorable Court to preserve the suit property while the suit herein is pending determination.

3. In the Replying affidavit of Joseph Muriith Mwangi dated 29/6/12. He avers as follows: That the said application is misplaced and untenable in law and ought to be dismissed with costs. That the application is in any event based on a distortion of facts obtaining on the ground, a selective and wrongful interpretation of the orders given by this court with an intention of creating a false impression and misleading the Court. That the court record will be a witness to the fact that way back in between the year 2005 to 2007, parties in this case had filed various interlocutory applications seeking various injunctive orders against the parties in this suit. That the record will further bear witness to the fact that when the parties appeared before Hon Lady Justice Mary Ang'awa who was then set to hear the applications, it was agreed by consent of the respective parties that the various interlocutory application be withdrawn to pave way for the setting down of this suit for hearing on its merits. That it was further agreed in the interim that a preservatory order be issued that would obtain on the ground as the hearing of the suit went on and Hon. Lady Justice Mary Ang'awa proceed to define the import and meaning of the status quo order for the avoidance of doubt. That it will be evident from the Court record Hon. Lady Justice Mary Ang'awa directed that in the interim, the plaintiffs on the one and the 2nd defendant do retain control of certain areas that were clearly demarcated in the said orders. That contrary to what is suggested by Dorothy Wangari Nderi in her affidavit of 25th April 2012 nowhere did the said orders stop the 2nd defendant from carrying out construction work or improvements on the areas under control. That the Court record will bear witness to the fact that in fact judge addressed herself to this fact and in fact directed that while she could not prohibit construction or improvements on his part the only caveat was that in the event the plaintiffs ever succeeded in their claim, he could not claim the costs of the construction or improvements from them. That he is not in any way in contempt of any court order issued by this court. That it is also absurd for the applicants to allege that repainting or making improvements to the suit property could amount to wasting of the suit premises. That he has not threatened or evicted any of the plaintiff's tenants and no evidence has been presented in the affidavit indication that he has done son. That this application is further brought in bad faith and with a view to delay the conclusion of this case as the record will show that despite this case being part heard, the plaintiffs have for over a period of over one year failed to refix this suit for hearing and have now resorted to reviving interlocutory application contrary to directions given in this case. That the plaintiff's application is misplaced and ought to be dismissed with costs.

4. I have considered the affidavits and Counsels oral submissions in Court. The order the applicant states the respondents is in contempt of is the order of Justice Ang'awa dated 19th March 2007. The Order was as follows;

“ IT IS SO ORDERED BY CONSENT

That the status quo of the occupancy is as follows:

(i) *Ground floor* *Post Office*

Shop No. 2 *Vacant*
 Six Single rooms *plaintiff*

(ii) *1st Floor*

Hall *2nd defendant*

5 Single Empty Rooms *2nd defendant*
 4 Single Rooms *Plaintiff*

(iii) *2nd Floor*

<i>2 Bedroom apartment</i>	<i>2nd defendant</i>
<i>1 extra single room</i>	<i>2nd defendant</i>
<i>2 empty single store</i>	<i>Leave vacant</i>
<i>1 Room</i>	<i>plaintiffs.</i>

In the said Court order the parties consented very specifically on which floor, shop and room they were to occupy. The order specifically gives the status quo of occupancy. In the application the applicant is referring to construction painting of the premises and interference with the empty rooms and tenants. The Order cited was very clear on what the parties were to do. It did not refer to other rooms or that any of the party was barred from construction, renovation and painting of the premises. It does not mention other rooms/properties apart from the ones specifically there. If indeed there was need to specify these other rooms the applicant is referring to and maintenance of the premises then the parties ought to have clearly consented on the same. I also find that the applicant has failed to demonstrate how the defendants are interfering or threatening their tenants. In my view the applicant is not in contempt of any Court order. The parties should fix this matter for further hearing so that the suit is heard and determined. I find no merit in the application and dismiss it with costs to the defendants.

Order accordingly.

Dated, signed and delivered this 15th Day of November 2012.

R. OUGO
JUDGE

.....Plaintiffs/Applicant

.....Defendants/Respondent

.....Court Clerk