



REPUBLIC OF KENYA



Malala v Omondi & 4 others; Oluanda (Interested Party) (Miscellaneous Application E017 of 2022) [2022] KEELC 3217 (KLR) (9 June 2022) (Ruling)

Neutral citation: [2022] KEELC 3217 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
MISCELLANEOUS APPLICATION E017 OF 2022**

OA ANGOTE, J

JUNE 9, 2022

BETWEEN

HUSSEIN SHABAN OKONJI MALALA APPLICANT

AND

JACKSON OMONDI 1ST RESPONDENT

WILSON OTIENO 2ND RESPONDENT

HESBON SUNGU 3RD RESPONDENT

JOSHUA ONYANGO 4TH RESPONDENT

IRENE BUGUTSA 5TH RESPONDENT

AND

MOSES OCHIENG OLUANDA INTERESTED PARTY

RULING

1. In the Notice of Motion dated 26th January, 2022, the Applicant has sought for the following orders;
 - a. That the Respondent be cited for contempt of the orders issued by the rent Restrictions Tribunal in Tribunal case number 290 of 2015; Hussein Shaban Okonji Malala versus Jackson Omondi & 4 others and be committed to civil jail and be fined the sum of Kenya Shillings Two Hundred Thousand Shillings (Ksh 200,000.00) only;
 - b. That the Respondents be ordered to pay the sum of Kshs. 1,322,800.00 to the applicant being the outstanding rent areas;
 - c. That Respondents be ordered to pay the sum of Ksh 445,000.00 to the Applicant being the outstanding electricity bills, and



- d. That the costs of this Application be provided.
2. The application is premised on the grounds that the Respondents have failed to comply with the orders of the Rent Restriction Tribunal issued on 7th May, 2015 and 27th October, 2015 and that the Applicant has over a long period of time been denied from his property.
 3. In his Affidavit in support of the application, the Applicant deponed that on 3rd June, 2009, he bought a house with several rooms at Kibera Mashimoni from one William Otieno Odore; that as at the time of the purchase, the rooms had been rented out by several tenants, including the Respondents and that in the course of the tenancy, the Respondents failed to remit rent to him.
 4. It is the Applicant's deposition that he instituted a case in the Rent Restriction Tribunal being case number 290 of 2015 against the Respondents seeking for payment of the outstanding rent.
 5. According to the Applicant, in the course of the proceedings before the Tribunal, a dispute arose as to the ownership of the rental house; that the Tribunal ordered the Respondents to pay rent to the Tribunal on the 10th day of every month and that those orders have never been set aside.
 6. The Applicant lastly deponed that the Respondents are still living in his premises and enjoying the use of the same; that the Respondents have refused to pay their electricity bills which has accumulated to the tune of Kshs 445,000 as at January, 2022 and that the application should be allowed. The Respondents and the Interested Party did not file any affidavit in reply to the application.
 7. The documents annexed on the Applicant's Affidavit show that on 7th May, 2015, the Chairman of the Rent Restriction Tribunal directed the Respondents to pay rent through the Tribunal on or before the 10th day of every month in advance. On 13th October, 2015, the Chairman of the Tribunal further made the following orders;
 1. That the matter is stayed to await the outcome of the High Court proceedings on the issue of succession and ownership.
 2. That the Plaintiffs/Tenants are to continue paying rent through the Tribunal hence forth."
 8. Although the Applicant has sought for an order committing the Respondents to either civil jail or payment of a fine, the *Rent Restrictions Act* provide the manner in which a contemnor should be dealt with by the Tribunal. Section 7 of the *Rent Restriction Act* provides as follows;

“Penalty for failure to comply with lawful order of the tribunal

Any person who fails to comply with any lawful order or decision of the tribunal after the expiration of the time allowed for an appeal therefrom, or, if an appeal has been filed, after such order or decision has been upheld, shall be guilty of an offence and liable to a fine not exceeding two thousand shillings or to imprisonment for a term not exceeding six months, or to both such fine and imprisonment.”
 9. Considering that the *Rent Restriction Act* provides the manner in which the alleged contemnors should be punished by the Tribunal in the event they disobey the Tribunal's orders, and under the doctrine of exhaustion, it is my view that the Applicant should have moved the Tribunal appropriately before coming to this court.
 10. That being the case, and in view of the fact that the matter is still pending in the Tribunal, this court declines to exercise its original jurisdiction to punish the alleged contemnors under the provisions of the *Judicature Act*.



11. For those reasons, the Notice of Motion dated 26th January, 2022 is dismissed but with no order as to costs.

DATED, SIGNED AND DELIVERED VIRTUALLY IN NAIROBI THIS 9TH DAY OF JUNE, 2022.

O. A. Angote

Judge

In the presence of;

Hussein Shaban for the Applicant

No appearance for the Respondents

Court Assistant – June Nafula

