



**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**MISC APPLICATION NO. 163 OF 2011**

**JASON NYAMBUTO KEMBOI.....APPLICANT**

**VERSUS**

**SIRAJ SHEIKH MUSDAF.....RESPONDENT**

**RULING**

**Coram: Mwera J.**

**In Person the Applicant**

**Munyi for Respondent**

**Court clerk Kajuju**

The applicant, acting in person, brought a notice of motion dated 1.4.11 under section 3A of the Civil Procedure Act and section 5 of the Judicature Act. The motion asked for both the leave to cite the landlord/respondent for contempt and also for his committal to civil jail for a term not exceeding 6 months. He added that a tribunal case no. 750/10 be transferred to this court for perusal and the OCS (Embakasi) be directed to assist the applicant in enforcing the court orders that may be made – a rather “mixed grill” of prayers, but then they were understandably laid before court by a layman.

There were two grounds stating that the respondent failed/refused to return the applicants’ goods he confiscated from a business premises contrary to the Business Premises Rent Tribunal (BPRT) order of 16.2.11. The respondent was served with that order.

In a short supporting affidavit the applicant claimed that as per the Business Premises Rent Tribunal (BPRT) order of 16.2.11 the respondent was directed to return the applicant’s goods – a thing he had failed to do. A copy of that order was attached – hence this application. The order read:

**“1. The landlord is ordered to return the tenant’s goods immediately to enable him to vacate the premises.”**

In a replying affidavit sworn by the respondent he denied that he was in contempt of any judicial order. The court had been misled to grant leave to cite him for contempt that he had confiscated the applicant’s goods and declined/refused to return them despite the Business Premises Rent Tribunal (BPRT) order. The applicant had at no time given the details of the goods allegedly confiscated. A member of BPRT had visited the premises and found that the tribunal had no jurisdiction over them and thus directed the applicant to seek redress in ordinary courts. So this application was defective and bad in law.

The applicant argued that the respondent has ignored the tribunal order of 16.2.11, although his BPRT case no. 750/10 had been thrown out by the tribunal Mr. Munyi for the respondent told the court that his client never took any goods of the applicant. The applicant’s BPRT case no. 750/10 was dismissed on 22/3/11 after its member Mr. S. P. Oyuga visited the subject premises and found them to have been **residential** and not **business** place.

In this court’s opinion this application ought to be dismissed. The applicant obtained an **ex parte** order on 16.2.11 that the landlord/respondent should return his goods. But when the tribunal sent its member to investigate the premises it turned out that these were for residential and not business purposes. Then the tribunal found that it had no jurisdiction over such premises and so dismissed the applicant’s case. The applicant did not refute this. Accordingly, the **ex parte** order of 16.2.11 could not survive the dismissal so as to be used as a basis for contempt against the respondent in ordinary courts. This was a misconceived application. It is dismissed with costs.

Delivered on 6/6/11.

**J. W. MWERA**

**JUDGE**