



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (MILIMANI COMMERCIAL COURTS)

Civil Case 1038 of 2008

JOHN KINOTI SAMMY t/a KIN INTERGRATED SOLUTIONSPLAINTIFF

VERSUS

INNSCOR KENYA LIMITEDDEFENDANT

MORNE DEETLETS1ST RESPONDENT

CHURCHHILL MUINDE2ND RESPONDENT

RULING

The amended notice of motion dated 27th March 2009 is brought under order **XXXIX rule 2(a) of the Civil Procedure Rules** among other provisions of the law. The plaintiff/applicant seeks for an order to punish the respondents for disobeying, disregarding or defying or aiding or abetting the disobedience of the order of the Chief Magistrates Court (Hon. Miss Mokaya) issued on 1st July 2009. The plaintiff/applicant filed **Milimani CMCC 351 of 2008** against the 1st defendant and M/s K. Wanjohi Trading Kindiest Auctioneers. On 1st July 2008 Hon. Miss Mokaya acting Principal Magistrate gave the following orders:-

1. That a mandatory injunction be and hereby issued against the 1st defendant compelling it to restore the plaintiff back to the suit premises on condition that:-

(a) That the plaintiff to pay all rent arrears due up to the time this suit has filed.

(b) That the period from the date of filing this suit to the date of this ruling is excluded.

(c) That once the plaintiff is reinstated then the 1st defendant can proceed to issue the relevant notice to vacate (i.e. one month Notice) as required by law and the process of eviction to follow the law.

(d) That plaintiff shall pay rent arrears within 15 days from today, thereafter he shall be reinstated into the premises.

(e) That failure to do so within this time shall mean that the orders granted by the Court have lapsed.

(f) That parties to set down the suit for hearing.

(g) That costs of this application shall be in the cause.

According to the applicant he duly paid the sum of Ksh.40,500/- as ordered by the court and the payment was honored by his bank. However the defendants refused to reinstate him into the premises as ordered by the court. The order was duly served upon the defendants and it was received by the Managing Director of the 1st defendant **Mr. Morne Deetlets** together with the penal notice. The same was also served upon **Mr. Churchill Muinde** also a director of the 1st defendant. The defendant persisted in the disobedience of the order despite several written requests and demands made by counsel for the plaintiff. The defendants were also served with this application as per the affidavit of service sworn by **Tom Kayere** on 29th July 2009. However the defendants did not attend the court at the hearing of this application. By the records before this court an order was issued in **CMCC NO.2351 of 2008** against the 1st defendants as stated above.

It is determinable from the affidavit of service and correspondence by counsel for the plaintiff addressed to the 1st defendant that the order was duly served as well as penal notice and several reminders to comply with the court order. The orders have not been complied with and the applicant have sought compliance by filing the application for contempt against the defendants. Under the provisions of **Order 39 of the Civil Procedure Rules** the court may punish for contempt if:-

“In cases of disobedience, or of breach of any such terms, the court granting an injunction may order the property of the person guilty of such disobedience or breach to be attached, and may also order such person to be detained in prison for a term not exceeding six months unless in the meantime the court directs his release.”

A party found in contempt can be committed to a jail sentence and attachment of his property. It is obvious the defendants has disobeyed an order of this court and has continued in fragrance disobedience for no explained reasons whatsoever. The court cannot condone deliberate disobedience of its orders and will not shire away from its responsibility of establishing its authority and dignity by dealing with contemnors firmly. The court is charged with the responsibility of the protection of the rule of the law thus court orders must be obeyed all the time even if the party does not accept them. See the case of **Refrigerator and Kitchen Equipment utensils Ltd Vs Gulabchand Shah & Others Civil application Nairobi 39 of 1990.**

I find the 1st defendant was fully served with the order. The defendant has failed to obey and continues to disobey the order. I find the 1st defendant guilty of contempt and hereby impose a fine of Ksh.100,000/- to be paid within the next 7 (seven) days and in default attachment of the 1st defendant's property be effected in accordance with **Order XXXIX rule 2(a) 3 of the Civil Procedure Rules.**

The defendants to comply with the orders issued on 24th July 2008 within 7 (seven) days of this order in default the court bailiffs with the assistance of the OCS Central Police Station are hereby authorized to reinstate the plaintiff in possession of the suit premises on the ground floor Plot **No. L.R. 209/8523 Union Towers Moi Avenue Nairobi** as per the court order.

This order be served upon the directors of the 1st defendant i.e. Morne Deetlets and Churchill Muinde to ensure compliance in default the said directors would be personally liable. Matter be mentioned on the 16th of September 2009 to ensure compliance. The plaintiffs shall pay the costs of this application.

RULING READ AND SIGNED AT NAIROBI ON 31ST DAY OF JULY 2009.

M.K. KOOME

JUDGE