



**St.Mary Rescue & Nursing Home & another v Muriuki & another (Miscellaneous Application E018 of 2022) [2022] KEELC 13301 (KLR) (22 September 2022) (Ruling)**

Neutral citation: [2022] KEELC 13301 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
MISCELLANEOUS APPLICATION E018 OF 2022  
JA MOGENI, J  
SEPTEMBER 22, 2022**

**BETWEEN**

**ST.MARY RESCUE & NURSING HOME ..... 1<sup>ST</sup> APPLICANT**

**JOSEPH GITHUKA KIHU ..... 2<sup>ND</sup> APPLICANT**

**AND**

**SAMUEL MUREITHI MURIUKI ..... 1<sup>ST</sup> RESPONDENT**

**AUCKLAND AGENCIES AUCTIONEERS ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. This ruling is in respect to the notice of motion dated February 1, 2022 brought under section 8 (1) of the *Judicature Act* Caps 8, and Order 51 rules 1, 2, 3 of the *Civil Procedure Rules* and sections 1A & B, 3A and all the other enabling provisions of the Laws.
2. It seeks orders: -
  - a. Spent
  - b. That the contemnors Samuel Mureithi Muriuki and BM Gathuri t/a Auckland Agencies Auctioneers be personally summoned to appear before this Honorable Court immediately to show cause why they should not be condemned to serve both civil and criminal contempt of court by being imprisoned to serve sentence for six (6) months for being in blatant contempt of valid and lawful orders of the Rent Restriction Tribunal dated November 15, 2021.
  - c. That the OCS Muthaiga Police Station be ordered to effect service of the court summons on the contemnors to personally appear before this court and plead to the contempt application.
  - d. That in the meantime, this honorable court be persuaded to order stay of further proceedings in Rent Restriction Tribunal Case No E757 of 2021 and direct the Respondents to re-open



the suit premises House No 7, Harai Road, Ridgeways Estate in Nairobi and allow the tenants access therein, pending further orders and/or direction of this court

- e. That the costs of this application be provided for
3. The grounds are on the face of the application and are set out in paragraphs (a) to (g).
  4. The application is supported by the affidavit of Joseph Githuka Kihiu the 2<sup>nd</sup> applicant herein sworn on February 1, 2022.
  5. The application is opposed. There is a replying affidavit sworn by Samuel Mureithi Muriuki, the 1<sup>st</sup> defendant/landlord, on the February 28, 2021.
  6. On the March 1, 2022 the court directed that the application be canvassed by way of written submissions.

### **The Plaintiff's/Applicant's Submissions**

7. That the respondents have willfully neglected and disobeyed the Order of the honorable tribunal issued on November 15, 2021. Despite being served by one Ambrose Muthama on November 15, 2021 and an affidavit of service dated November 16, 2021 filed, the landlord respondent in flagrant disobedience of the court order went ahead and changed the locks to the suit premises thus denying the applicant access and also disconnected water and electricity.
8. That the terms of the tribunal order issued by the honorable tribunal was clear and unambiguous capable of being executed. That the respondents were required not to interfere with the applicant's tenancy till the matter is heard inter partes. Further that obedience of court orders is fundamental to the rule of law and administration of justice and the respondent's failure to comply with the court order should be punished.
9. Further that despite the 1<sup>st</sup> respondent being aware of the court order and even alluding to it in their replying affidavit at paragraphs 6 and 7 the respondent went ahead and changed the padlocks to the main house and denied the applicant/plaintiff access to the house in clear contravention of the issued court order of November 15, 2021.
10. Moreover, the 2<sup>nd</sup> applicant Joseph Githuka Kihiu swore a supplementary affidavit on March 11, 2022 in support of the instant application. He averred that the matter before court is about the disobedience of the court order issued on November 15, 2021 and is not about rent arrears which is an issue before another court. Further the 1<sup>st</sup> respondent has not tendered any evidence as proof that the suit pending before the tribunal on rent between the parties has been dismissed. He therefore contends that the applicants have rightly moved this court on the issue of contempt against the respondents.
11. Where a court finds that a person willfully disobeyed a court order, it has only one recourse; make an order citing the person for contempt of court. They have relied on the cases of *Kenya Human Rights Commission v Attorney General and Another* {2018} eKLR; *Republic v Kajiado County & 2 Others Ex-parte Kilimanjaro Safari Club*; *Republic vs Returning Officer of Kamkunji Constituency & The Electoral Commission of Kenya* HMCA No 13 of 2008; *Christine Wangari Gachege v Elizabeth Wanjiru Evans & 11 Others* [2014]eKLR; *Cecil Miller v Jackson Njeru & Another* HCCC No 111 of 2016; and *Econet Wireless Limited v Minister for Information & Communication of Kenya & Anor.*
12. The order was effected and the respondent willfully disobeyed the same by changing the locks to the main house therefore denying the plaintiff/applicant access to the house.



13. The court directed its rent inspector to visit the suit premises and file a report on the accessibility and the connectivity of water and rent. This report is filed and has been produced as an annexure to the affidavit of the applicant JGK3. The inspector's report indicate that the suit premises were locked and the water and electricity was disconnected.

#### **The Respondent's submissions**

14. The respondent submit that the application is bad in law and that it is frivolous. They contend that the applicant never cleared water, electricity bills nor rent arrears. That the applicant has not come to court with clean hands since in the court order of November 15, 2021 they had been ordered to clear all the rent arrears and the applicant has not done so.
15. Further the respondents have a right under the law to carry out rent distress and their actions are not to harass the applicant but to distress for rent The respondent denies breaching any court order since in his submissions the applicant lived in the suit premises till February 17, 2022 when their suit was dismissed
16. The respondent contends that the applicant has lived in the suit premises for over a year without paying rent which prompted the 1<sup>st</sup> respondent to instruct the 2<sup>nd</sup> respondent to levy distress for the rent owed. The applicant then moved to the Rent Tribunal and obtained an order barring the distress promising to pay the rent in 60 days. Further that it is the applicant who breached the court order by not paying the rent nor electricity bills or water bills leading to their disconnection.

#### **Analysis and Determination.**

17. The application under consideration was filed on February 1, 2022. The applicant seeks two substantive orders, namely, that the respondents herein be held in contempt of the court order, and secondly that the court orders stay of further proceedings in Rent Restriction Tribunal Case No E757 of 2021 and direct the respondents to re-open the suit premises.
18. Having found as herein above, I find the following issues stand out for determination: -
  - i. Whether the respondents are guilty of contempt of court order issued on the November 15, 2021.
  - ii. Whether this court can order stay of further proceedings in Rent Restriction Tribunal Case No E757 of 2021
19. According to *Black's Law Dictionary, 9th Edition* at page 360:

“Contempt is a disregard of, disobedience to, the rules or orders of a legislative or judicial body, or an interruption of its proceedings by disorderly behavior or insolent language, in its presence or so near thereto as to disturb the proceedings or to impair the respect due to such a body.”
20. *Halsbury's Laws of England, 4th Edition* volume 9 at paragraph 52 stated as follows concerning civil contempt of court:

“It is a civil contempt of court to refuse or neglect to do an act required by a judgment or order of the court within the time specified in the judgment or order...A judgment or order against a corporate body may be enforced by an order of committal against the directors or other officers of the corporation.”



21. The claimant herein contends that the respondent has violated the order of the honorable tribunal of November 15, 2021, by locking the suit premises and disconnecting supply of water and electricity. The applicant further submitted that the respondent's actions were made in bad faith and in complete disobedience to the said court order that restrained the respondent and their agents from interfering with their tenancies pending the hearing of the application *inter-partes*.

22. In *Teachers Service Commission v Kenya National Union of Teachers & 2 Others*, Petition No 23 of 2013 Lady Justice L Ndolo stated as follows:

“The reason why courts will punish contempt of court then is to safeguard the rule of law which is fundamental in the administration of justice. It has nothing to do with the integrity of the judiciary or the court or even personal ego of the presiding judge. Neither is it about placating the applicant who moves the court by taking out contempt of court proceedings. It is about preserving and safeguarding the rule of law. A party who walks through the justice door with a court order in his hands must be assured that the order will be obeyed by those to whom it is directed. A court order is not a mere suggestion or an opinion or a point of view. It is a directive that is issued after much thought and with circumspection. It must therefore be complied with and it is in the interest of every person that this remains the case. To see it any other way is to open the door to chaos and anarchy and this court will not be the one to open that door. If one is dissatisfied with an order of the court, the avenues for challenging it are set out in the law. Defiance is not an option.”

23. I have considered the affidavits on record, the annexures, the submissions of counsel and authorities relied on. *Black's Law Dictionary (Ninth Edition)* defines contempt of court as: -

“Conduct that defies the authority or dignity of a court. Because such conduct interferes with the administration of justice, it is punishable usually by fine or imprisonment.”

In *Johnson v Grant* (1923) SC 789 at 790 Clyde L J noted: -

“The phrase ‘contempt of court’ does not in the least describe the true nature of the class of offence with which we are here concerned.... The offence consists in interfering with the administration of the law; in impeding and perverting the course of justice..... it is not the dignity of court which is offended – a petty and misleading view of the issues involved, it is the fundamental supremacy of the law which is challenged.” (Emphasis mine).

24. In the case of *Woburn Estate Limited v Margaret Bashforth* [2016] eKLR the Court of Appeal held as follows:

“For many years in the history of the Judiciary of Kenya the courts have, pursuant to section 5 (1) of the *Judicature Act*, resorted to the prevailing law of England in the exercise of the power to punish for contempt of court.....

Today that position has drastically changed, starting with the establishment of the Supreme Court which was not envisaged when section 5 of the *Judicature Act* was enacted. By Act No 7 of 2011, Article 163 (9) of *the Constitution* was operationalized by the enactment of the *Supreme Court Act* (CAP 9A), which among other things, makes express provision for the power of the Supreme Court to punish for contempt.

Under section 29 of the *Environment and Land Court Act*, it is an offence punishable, upon conviction to a fine of not exceeding Kshs 20,000,000 or to imprisonment for a term not



exceeding two years, or to both, if any person refuses, fails or neglects to obey an order or direction of the court given under the Act....

We have gone to this great length to demonstrate how, before the passage of these legislations the powers of the High Court and this court to punish for contempt of court were dynamic and kept shifting depending on the prevailing laws in England. Today each level of court has been expressly clothed with jurisdiction to punish for contempt of court. The only missing link is the absence of the rules to be followed in commencing and prosecuting contempt of court applications”.

25. Section 29 of the *Environment and Land Court Act* is clear to the effect that;

“Any person who refuses, fails or neglects to obey an order or direction of the court given under this Act, commits an offence, and shall, on conviction, be liable to a fine not exceeding twenty million shillings or to imprisonment for a term not exceeding two years, or to both”.

26. It must be noted on the one set that although the application dated the February 1, 2022 was served upon all the parties only the 1<sup>st</sup> respondent filed his response to the same.

27. Since contempt proceedings are quasi criminal in nature. The proof required is not on a balance of probabilities but on a higher standard. In *Halsbury’s laws of England* at para 463 vol 9(1) ( Re-issue) 3, it was stated as follows:-

“.....and a person not a party against whom any judgement or order may be enforced is liable to the same process for enforcing obedience to it as if he were a party”.

28. In the instant case, the alleged contemnors are the landlord as the 1<sup>st</sup> respondent and the auctioneer hired to levy distress by the 1<sup>st</sup> respondent as the 2<sup>nd</sup> respondent. If they committed any act of contempt of a court order they can be punished even if they were not party to the suit. It is not contested that they were aware of the order of the honorable tribunal issued on the November 15, 2021 as well as the order that the tribunal inspector was mandated to visit the premises and confirm whether same is locked as alleged and file a report to confirm the issue of water and electricity connectivity. The question which then arises is whether the alleged contemnors disobeyed the said order by locking the suit premises and disconnecting water and electricity.

29. To answer this question, it was upon the applicant to prove satisfactorily that the respondent denied him entry to the suit premises and disconnected supply of water and electricity as alleged. I have considered the annexures herein annexed to the applicant affidavit as well as seen the inventory report marked as JGK4 by one Emmanuel C Ndune dated December 6, 2021 and I am convinced beyond a shadow of doubt the respondents herein jointly with the interested parties acted in contempt of the court orders of November 15, 2021. The applicant had therefore proved that the respondents had indeed acted in contempt of court orders.

30. On the second issue as to whether this court can order stay of further proceedings in Rent Restriction Tribunal Case No E757 of 2021. The court will refer to the established jurisprudence on this matter.

31. The *Halsbury’s Law of England 4<sup>th</sup> Edition* vol 37 pages 330 and 332 states that;

“The stay of proceedings is a serious, grave, and fundamental interruption in the right that a party has to conduct his litigation towards the trial on the basis of the substantive merits of his case, and therefore the court’s general practice is that a stay of proceedings should not



be imposed unless the proceeding beyond all reasonable doubt ought not to be allowed to continue.”

This is a power which, it has been emphasized, ought to be exercised sparingly, and only in exceptional cases.

“It will be exercised where the proceedings are shown to be frivolous, vexatious or harassing or to be manifestly groundless or in which there is clearly no cause of action in law or in equity. The applicant for a stay on this ground must show not merely that the Plaintiff might not, or probably would not, succeed but that he could not possibly succeed on the basis of the pleading and the facts of the case.”

32. It is therefore clear that in determining whether or not to grant an order for stay of proceedings, the court must bear in mind the general rule that once a suit is filed, proceedings ought to continue without interruption until the suit is determined. This is premised on the right of every person to a fair trial which includes the right to have the trial begin and conclude without unreasonable delay as enshrined in article 50(2) (e) of the *Constitution* as well as the principle that justice delayed is justice denied, being a cardinal principle that guides courts in the exercise of judicial authority. It is against this background that orders for stay of proceedings ought to be sparingly granted and only in exceptional circumstances that demonstrate that there are compelling reasons and it would go against all that is deemed just and fair to proceed with the suit. The threshold for such proof is beyond reasonable doubt.
33. In the instant application, the applicant has not presented any argument before this court to convince the court that stay of proceedings is warranted. There is not appeal before this court with regard to Rent Restriction Tribunal Case No. E757 of 2021. There is no evidence presented in this court with regard to the stage at which the suit in the tribunal is at. I take it that the suit in the tribunal is yet to be determined. This court therefore will sit on appeal in that matter and it would not be proper to stay the suit without considering the compelling circumstances. It is therefore my considered view that there is no justification for staying the Rent Restriction Tribunal proceedings.

### **Disposition**

34. In the end, I find all the respondents herein are in contempt of court orders of issued on November 15, 2021 and proceed to punish them for contempt.
35. In conclusion, I find merit in this application and the same is allowed in the following terms: -
  1. That the respondents are found guilty of contempt for willfully disobeying the court order issued on November 15, 2021.
  2. That the respondents are hereby fined Kshs 100,000 each in default to serve a term of 30 days’ imprisonment effective immediately.
  3. The costs of this application be borne by the respondents.

It is so ordered.

**DATED, SIGNED AND DELIVERED IN NAIROBI ON THIS 22<sup>ND</sup> DAY OF SEPTEMBER 2022**

.....

**MOGENI J**

**JUDGE**

In the Virtual presence of:-



Mr Matwere for the Applicants

Mr Wahome for the Respondents

Court Assistant: Vincent Owuor

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**MOGENI J**

**JUDGE**

