



M'mboga & another v Kagumba (Environment and Land Miscellaneous Application E080 of 2022) [2022] KEELC 14490 (KLR) (27 October 2022) (Ruling)

Neutral citation: [2022] KEELC 14490 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E080 OF 2022
LN MBUGUA, J
OCTOBER 27, 2022

BETWEEN

IAN GONJI M'MBOGA 1ST APPLICANT

MEGERIA KIBUCHI MAGERIA 2ND APPLICANT

AND

BENJAMIN KAGUMBA RESPONDENT

RULING

1. Before me is a Notice of Motion application dated 18/05/2022 brought under Sections 1A,3A and 63 of the *Civil Procedure Act*, Order 40 Rule 3(1) of The *Civil Procedure Rules* 2010, Sections 13, 14, and 29 of the *Environment and Land Court Act* and the inherent jurisdiction of this Honourable Court. The Applicants seek orders to cite the Respondent for contempt of court orders issued by the Business Premises Rent Tribunal in Tribunal Case No.E010 of 2022 on January 10, 2022, January 13, 2022, January 26, 2022 and March 22, 2022 and be committed to prison for 6 months or any period determined by the court and /or until he purges the contempt. The Applicants also seek orders that the contemnor does purge the contempt by forthwith granting them access to the business premises known as LR No.13147/10 to unconditionally collect all their goods.
2. The Applicants also seek orders that the contemnor be ordered to pay them Ksh.585,800/= being expenses incurred for the logistics on their failed attempt to collect their goods from the suit premises as well as orders that the OCS Hardy Police Station does assist in enforcing the orders issued by the tribunal.
3. The application is based on grounds on its face and on the supporting affidavit of the 1st Applicant sworn on May 18, 2022. He avers that on January 6, 2022, their advocates filed an application dated January 5, 2022 seeking to restrain the Respondent from seeking to unlawfully terminate, harass, close, evict and /or interfere with their quiet enjoyment of the business premises known as LR



No.131457/10 pending the hearing and determination of the reference filed therein, of which, the said orders sought were granted by the Tribunal on January 7, 2022.

4. He avers that when they forwarded the orders to the OCS Lang'ata Police Station for assistance in enforcement, they were informed that the suit premises was out of his jurisdiction thus they filed another application seeking enforcement by OCS Hardy Police Station which orders were granted on January 13, 2022 and were served upon the Respondent who acknowledged receipt.
5. He deponed that at the time of effecting service of the orders dated January 7, 2022 and January 13, 2022 on the Respondent, they were still in occupation and possession of the suit premises but upon service, the Respondent together with other 3rd persons who were not familiar to them unleashed violence on them and their employees which they reported at Hardy Police station. Subsequently, they learned that the Respondent purportedly leased the suit premises to a 3rd Party and when they appeared before the Tribunal on January 26, 2022, they informed it that it was no longer tenable for them to continue with their business at the suit premises and the Tribunal ordered that they be allowed to collect their goods, which orders they served upon the Respondent who has disobeyed them.
6. He avers that the Tribunal re-enforced its orders of January 26, 2022 on March 22, 2022 and stated that there was no condition precedent for them to collect their goods. He deposes that the order was served and the Respondent was sufficiently notified that the Applicants would collect their goods on March 31, 2012, but the Respondent frustrated their efforts and demanded unwarranted charges with the net effect of denying them access to collect their property prompting them to incur logistic charges as they had sought service providers to transport the heavy goods.
7. He avers that he is aware that the Respondent sent further letters to their Advocates asking the Applicants to collect their goods but they were apprehensive owing to the Respondent's previous conduct. He contends that their property illegally and unlawfully detained in the suit premises is worth ksh.24,158,000/= and they are incurring massive loses and have been exposed to potential lawsuits by their clients whose motor vehicles are detained in the suit premises.
8. The Respondent did not file any response herein despite the fact that they were represented by an Advocated in this court who was directed by this Court to regularize his appointment and file the relevant responses on July 19, 2022.
9. I have duly considered all the arguments raised herein including the submissions of the parties. I discern that the Applicants herein were tenants in the suit premises running a business known as Synergy Autotech Garage while the Respondent herein was their Landlord. The Respondent issued them with a termination of lease notice, prompting the applicants to challenge the said Notices at the Business Premises Rent Tribunal in Tribunal Case No. E010 of 2022. The applicants obtained orders in their favour issued on January 7, 2022, January 13, 2022, January 26, 2022 and March 22, 2022 which they claim that the Respondent is in contempt of.
10. Courts are called upon to ensure that their orders are obeyed without question. In [*Shimmers Plaza Limited v National Bank of Kenya Limited*](#) [2015] eKLR the court of Appeal stated thus;

“The courts should not fold their hands in helplessness and watch as their orders are disobeyed with impunity left, right and Centre. This would amount to abdication of our sacrosanct duty bestowed on us by *the Constitution*. The dignity, and authority of the Court must be protected, and that is why those who flagrantly disobey them must be punished, lest they lead us all to a state of anarchy”



11. In an application for contempt, it must be proved that the alleged contemnor was aware of the orders he/she is cited for and it must also be proved that he is in contempt. In *Mutitika v Baharini Farm Ltd* [1985] eKLR, the Court of Appeal stated that;

“...In our view, the standard of proof in contempt proceedings must be higher than proof on the balance of probabilities, almost but not exactly, beyond reasonable doubt. We envisage no difficulty in courts determining the suggested standard of proof. The standard of proof beyond reasonable doubt ought to be left where it belongs, to wit, in criminal cases...”

12. The Respondent was represented by an Advocate in the proceedings at the Business Premises Rent Tribunal. He was also served with the all the orders issued in those proceedings and had even filed a replying affidavit. An advocate also appeared before this court on July 19, 2022 and was granted an opportunity to defend this suit. There was however no compliance with the said directions.

13. The applicants have given a cogent account of how they obtained orders before the tribunal on January 7, 2022 restraining the respondents from evicting them. However, it became untenable for them to stay in the said premises. The orders of January 26, 2022 provided in part, “Tenant is at liberty to collect his goods from the landlord.” The Applicants contended that they were assaulted when they went to collect their goods from the suit premises as per that court order. They annexed OB 26/23/1/2022 indicating that they reported the assault at Hardy Police station.

14. The Business Premises and Rent Tribunal reinforced its earlier orders and directed the Applicants to collect their goods from the suit premises in its orders of March 22, 2022.

15. The back and forth exchange including the email communication and the reports to the police is a tell tale sign that the Applicants were frustrated by the Respondent on March 31, 2022 when they attempted to collect their goods from the suit premises. I must however point out that this is not a substantive suit, it is a miscellaneous case filed only because the tribunal has no mandate to conduct contempt proceedings. Thus the court cannot deal with issues appertaining to the logistical expenses. In the circumstances, the application dated May 18, 2022 is allowed in terms of prayer no 2, 3 and 5; the costs of the application shall be borne by the Respondent. A notice to show cause is hereby issued to the Respondent to explain why he should not be punished for contempt.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 27TH DAY OF OCTOBER, 2022 THROUGH MICROSOFT TEAMS.

LUCY N. MBUGUA

JUDGE

In the presence of:-

Ambala for the Applicants

Kubai holding brief for Murimi Karani (Advocate who was to come on record for Respondent)

Court assistant: Eddel

