



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)**

Misc. Appli. 462 of 2008

FRANCIS WAHOME THUITA.....APPLICANT

VERSUS

JANNIFFER WANGARI KAMAU.....RESPONDENT

RULING

1. This is an ex-parte Notice of Motion brought under Order XXXIX Rule 2(3) of the Civil Procedure Rules and Section 5 Judicature Act, Cap 8 seeking ORDERS:-

1. *THAT this Honourable Court be pleased to grant leave to the Applicant to commence contempt proceedings against the Respondent JANNIFFER WANGARI KAMAU for her committal in prison for the period of six months for disobeying a court order issued on the 25th June 2008 by the Business Premises Rent Tribunal in Tribunal Case Number 373/08.*

2. *THAT costs of this application be provided for.*

2. The application is premised on the sworn affidavit of FRANCIS WAHOME THUITA dated 21/07/2008. The deponent says that at all times material to this matter, he was a tenant in those premises known as Plot No. B – O1C II Komarock, paying a monthly rent of Kshs.5500/= to the Respondent; that sometime in June 2008, a dispute arose between the Applicant and the Respondent as a result of which the Respondent filed BPRT case No.373 of 2008 simultaneously with a Notice of Motion dated 24/06/2008. That the said application was certified urgent on the same 24/07/2008 and a temporary order of injunction issued. The application was fixed for hearing on 30/07/2008; that when upon service of the application and the order of the court on the 29/06/2008, the Respondent made derogatory remarks about the court saying that both the application and orders were mere papers and of no consequence; that on the 27/06/2008, the said application was sent to the Respondent by registered post as per annexure marked “FWT 3” being a copy of a Certificate of Posting dated 27/06/2008; that on the same 27/06/2008, the deponent affixed a copy of the order on the door of the premises in a conspicuous place; that on 30/06/2008, the Respondent with the use of hirelings descended upon the premises and locked the same up despite the court order which prohibited the Respondent from evicting the Applicant from the suit premises pending inter parte hearing of the application on 30/07/2008. The deponent contends further that on 1/07/2008, the Respondent struck again at the suit premises and violently threw out all the Applicant’s belongings from the said suit premises, and that this action by the Respondent was in blatant breach of the second limb of the order issued by the court on 24/06/2008. The order *inter alia*, restrained the Respondent/landlord and/or his agents from seeking to unlawfully terminate, harass, evict, close, demolish and/or interfere with the Applicant’s quiet enjoyment of the business premises pending the

hearing and determination of this suit. The deponent says that it is clear from the Respondent's conduct that she had no intention whatsoever of obeying the court Order and that she (Respondent) blatantly and flagrantly breached the said order; hence the prayer that the Applicant be granted leave to commence proceedings to commit the Respondent to civil jail for breach.

3. I wish to observe at the outset that there is no rule 2(3) under Order XXXIX of the Civil Procedure Rules. However, Rule 2A(2) of the said order provides that-

“(2). 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.”

4. Section 5 of the Judicature Act is the one that clothes this court with the power and jurisdiction to punish for contempt of court similar to the power exercised by the High Court of Justice in England and that power is to be exercised in such a way that it will uphold the authority and dignity of the subordinate courts.

5. In the instant case, there is a clear order issued by the BPRT on 24/06/2009 prohibiting the Respondent from seeking to unlawfully terminate harass, evict, close, demolish and/or interfere with the Applicants quiet enjoyment of the premises pending hearing and determination of the suit. There are allegations by the Applicant that this order has been breached by the Respondent with a high degree of impunity. The point here is that courts do not and should not appear to make orders in vain. Further the authority and dignity of the courts should be maintained.

6. In the circumstances and for reasons that the Respondent was duly served with the Order that is alleged to have been breached by her, I do hereby grant leave to the Applicant to commence contempt proceedings against the Respondent JANNIFFER WANGARI KAMAU for her committal to prison for a period of six months for disobeying a court order issued on the 25/06/2008. Costs shall be in the cause.

It is so ordered.

Dated and delivered at Nairobi this 28th day of November, 2008.

R.N. SITATI

JUDGE

Delivered in the presence of:-

.....For the Applicant

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