



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (MILIMANI COMMERCIAL COURTS)
Civil Suit 1727 of 1996

SAMUEL MWANIKI NGUI..... PLAINTIFF

VERSUS

RUTH KAVINDU NGUIRESPONDENT

RULING

On 17th October 2006, I did direct the defendant to serve the plaintiff personally, with the application dated 28th February 2005. The defendant was also required to serve the plaintiff with an appropriate Hearing Notice.

The court records show that on 15th January 2007 the defendant filed an Affidavit of Service, which showed that the plaintiff had been duly served, personally. He is said to have been served on 3rd January 2007, at his home in Kyaume Village, Matungulu, Kangundo, in Machakos District.

Having satisfied myself that the plaintiff was duly served, I find that this is now an appropriate moment to proceed from the point which I had reached in my ruling dated 17th October 2006.

As at that date, I had gone through the history of this case, as from 10th June 1998, upto 8th November 2000.

On that date (8th November 2000) the plaintiff was brought to court under a warrant of arrest. But the defendant's advocate was absent from court, prompting the learned judge to comment that in the absence of the defendant, the court had no way of verifying whether or not the plaintiff was complying with the orders which the court had issued regarding the collection of rents.

By the said earlier orders the court had directed the plaintiff to refrain from collecting any rents from the tenants. The court had also directed the plaintiff to refund to the defendant all the rents which he may have already collected.

It is now the defendant's case that the plaintiff had continued to blatantly disobey the orders of the court. It is for that reason that the defendant moved the court for the re-issuance of warrants for the arrest of the plaintiff.

In what manner is the plaintiff said to have disobeyed the orders of the court?

By an affidavit sworn on 17th February 2005, the defendant states that upto January 2005, she was receiving the rents from the suit premises.

On 27th December 2004 the plaintiff is said to have written to all the tenants, notifying them that he had decided to **"exercise sole control of my said property. In so doing, I have withdrawn all cases I have filed against my sister, Ruth Kavindu, who has been using the said cases to frustrate my enjoyment of my property, including collecting the rental from yourselves."**

He concluded the said letter by making it clear to the tenants that:

"nothing should be paid to Kavindu or any of her agents forthwith."

It is that letter which prompted the defendant to bring the application dated 28th February 2005, with a view to having the plaintiff committed to civil jail, for contempt of court.

When the plaintiff was served with the application, he failed to respond thereto. He neither attended court nor filed any affidavit in reply to the assertions made against him.

In the circumstances I find that the evidence tendered by the defendant is uncontroverted. In other words, the plaintiff is now collecting rent from the tenants.

By so doing, the plaintiff is acting in total disregard of the court orders which barred him from collecting the rents. And if the court did not take appropriate action against the plaintiff, the dignity of the judicial system would have been completely eroded. Accordingly, in an endeavour to safeguard the dignity of the court, I do hereby order that the warrants for the arrest of the plaintiff should be re-issued forthwith.

Upon the arrest of the plaintiff, the court will determine the period which he is to be incarcerated in civil jail.

The costs of the application dated 28th February 2005 are awarded to the defendant.

Dated and Delivered at Nairobi, this 5th day of February 2007.

FRED A. OCHIENG

JUDGE