



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
(MILIMANI LAW COURTS)
CIVIL CASE 2974 OF 1995

GODFREY NJOGU NGUGI & OTHERS..... PLAINTIFF

VERSUS

PRISCILLA NYAMBURA KIRINADEFENDANT

R U L I N G

The Chamber Summons herein, dated and filed on 13/11/06, under Order 39 Rules 2A(a) and 9 of the Civil Procedure rules and Section 3A and 63(c) and (e) of Cap. 21, Laws of Kenya, seeks the following orders:

1. The Court do find the Respondent herein guilty of disobeying a lawful court order and/or order for the arrest and detention of the Respondent in prison for a term not exceeding six months for such disobedience.
2. Alternatively the court do order the attachment of the Respondents properties for disobeying the court order issued on 8.8.06.
3. The Respondent be ordered to return to the applicant all the attached goods unconditionally and such return be supervised by the O.C.S. Kabete Police Station.
4. The court do order the reinstatement of the applicant back to the suit premises under the supervision of O.C.S. Kabete.
5. That the Respondent do pay the costs of this application.

The application is on the grounds, **inter alia**, that:

- a. The Respondent evicted the applicant from the suit premises on 10/11/06, thereby interfering with the applicant's quiet possession and enjoyment and use of the suit premises despite the court's order issued on 8/8/06.
- b. The Respondent is still entering and trespassing into the suit premises in total violation of this court's orders, which undermines the power and authority of the court.

c. The applicant has been granted leave to commence these contempt proceedings against the Respondent by this court.

In the applicant's Supporting Affidavit, he states that the Respondent was served with the court order on the same day it was issued by the Court, that is on 8/8/06, in the presence of O.C.S. Kabete on 6/9/06, which the Respondent refused to accept.

The Order was to the effect that the **applicant remains and retains possession of the premises known as Plot No. T/451 Kangemi till the application is heard on 21/9/06 and that the Respondent not to interfere with the applicant's peaceful enjoyment of the premises till 21/9/06.**

In defence, vide her Replying Affidavit, filed in Court on 22/6/07 the Respondent averred **inter alia**, that:

- a) The Respondent did not evict the applicant from the suit premises as alleged; and that the eviction by a court appointed Bailiff pursuant to the Orders of this court in HCCC 792 of 2006, dated 2/11/06.
- b) The applicant did not occupy the premises which were occupied by the applicant's then co-Plaintiff Charles Ndungu Mwaura.
- c) The said Charles Ndungu Mwaura and Michael H. Kimani have withdrawn from this suit and the Plaintiff has not been amended to reflect the changes.
- d) The dispute ought to be between the Plaintiffs [including the Applicant herein] as they were without involving the Respondent.
- e) The **orders of the court herein, were affected by that of Kihara, J. and I am unable to comply.**

Having carefully read the pleadings herein and considering the submissions of learned counsel for both sides, I have reached the following findings and conclusions.

The documentary evidence before me clearly shows that the so-called defence by the Respondent herein was obtained through material non-disclosure to Kihara, J. First it is evident the case – HCCC No. 792 of 2006, was filed and handled secretly without disclosing the subsistence of the HCCC 2974 of 1995, which had not been, and is still not disposed off. The Applicant herein is not a party to HCCC 792 of 2006.

In my considered view, that was not only fraudulent and dishonest on the part of the Respondent herein, but led to the issuance of the purported order of this court, vide Kihara, J. which could not and would not have been granted or issued by this court, had the full facts been disclosed to the court.

As a matter of fact, the validity of HCCC 792 of 2006 cannot stand in light of the HCCC 2974 of 1995, on the same issue and suit premises, which existed when the purported order of this court, dated 2/11/06, were issued not only through non-disclosure, but also under total concealment from the court of the earlier case.

Accordingly, for the Respondent to aver that she cannot comply with this court's order because of another order of this same court, is total abuse of the court process. The Respondent knows that she concealed the (truth) material facts from the court when she was issued with the court order of 2/11/06 without disclosing that HCCC 2974 of 1995 was still subsisting and was as yet to be finally determined.

I accordingly find and hold that the Respondent has no defence to the contempt of this court's orders, dated 8/8/06. The Respondent has shown the worst disregard and disobedience of this court's orders. She deserves to be punished if the court's authority and dignity is to be preserved and upheld for the good of all those who cherish and respect the Rule of law.

All in all, the Chamber Summons herein, dated 13/11/06 succeeds, and I find and hold the Respondent to

be in contempt of this court's orders. Accordingly, I order that the Respondent:

- a) be imprisoned for one month or pay a fine of K.Shs.150,00/- in lieu of the prison term.
- b) The Respondent do reinstate the applicant back to the suit premises under the supervision of the O.C.S., Kabete.
- c) The Respondent do return to the applicant all the attached goods unconditionally, under the supervision by the O.C.S. Kabete.
- d) The Respondent not to interfere with the peaceful possession and enjoyment of the suit premises of the Applicant herein until the final hearing and determination of HCCC 2974 of 1995.
- e) The Respondent to pay the costs of this application to the Applicant.

It is so ordered.

Dated and delivered in Nairobi, this 27th Day of September, 2007.

O.K. MUTUNGI

JUDGE