



REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA

AT NAIROBI

CIVIL APPEAL 796 OF 2001 (OS)

JOSEPH KAMAU NJIGUA.....APPLICANT

VERSUS

KAIHU KARUGO & OTHERS.....RESPONDENTS

RULING

This suit relates to the dissolution of a partnership between the Applicant and the Defendants wherein the rent collected from partnership property by the by the Plaintiff is an issue. The Applicant herein has moved the Court by way of a Notice of Motion dated 26th June 2004 seeking an order for the setting aside of an order of this Court granting leave to the Respondents to file contempt proceedings against him. The application was filed and argued despite the existence of an order of this Court that

**“: the hearing of the Chamber Summons dated 26th March 2004 and any other application by the Applicant herein be stayed until the Applicant complies with all previous orders of the Court.”**

The said order was made on 25th May 2004 the Court having noted that

**“It is clear the applicant does not care to comply with orders made by this Court or adhere to undertakings made/or given by him `in respect of the matters before the Court.”**

Prior to this the record shows that parties had recorded a consent order whereby a joint account in the names of their respective advocates herein was opened into which account the applicant was ordered to remit all rents received and receivable from the letting of the property forming the subject matter of this suit. The Applicant having failed to comply the Respondents requested the Court for an order for the appointment of an agent to collect rent. The request was made at a mention on 31st April 2004 during which Mr. Kwengu for the Applicant had this to say:

**“I was not aware that rents are not being deposited in the joint account. I will impress it upon my client to do so in respect of all outstanding and future collections.”**

To this the Court noted.

**“It seems...that the 1st Respondent (the applicant herein) is deliberately neglecting to honour terms imposed by the Court as per consents entered between the parties. As he is now not opposed to the idea of rents being paid into the joint account, the Court hereby**

**orders that the 1st Respondent accounts for all the rents he has collected so far and deposit the same into the joint account and to continue remitting all future rent collections into the said account pending further orders of the Court.”**

Again the Applicant did not comply leading the Court to order on 5th June 2004 as follows:

**“The applicant is hereby given the last opportunity to comply with all the previous orders made as to the payment of rent and rent arrears and to render all necessary accounts within the next 7 days and to pay costs previously ordered within the said seven days. In default the Respondents are hereby granted to apply for contempt.”**

**M.G. MUGO**

**AG. JUDGE**

The Applicant did not comply. However on 22nd November when the matter was again listed for mention before this Court, parties intimated to the Court that they had a partial consent which they wished to record. Mr. Kwengu for the Applicant submitted as follows:

**“I think we should take a date to record a full consent.”**

to which other Counsel agreed leading the Court to record as follows:

**“By consent mention on 1st December 2004 to record a full and final consent in the matter.”**

The parties were unable to record a consent on the 1st December 2004. They however recorded a consent to file a consent letter by the end of the said date and to mention the same on 19th January 2005 for confirmation.

Instead of filing the consent letter parties drew swords again leading to date being allocated mysteriously for the hearing of the present application. I say mysteriously because after the matter was stood over generally on 19th January 2005, the Court record does not bear an entry to show how the date 7th February 2005 was taken for the hearing of the Applicants' application.

It is very clear from the record that the Applicant herein has used every trick under the sun to avoid giving account for the rent he collects from the letting of the suit premises. He has not disputed but admitted his liability to account. I am afraid to say that I find his Counsel Mr. Kwengu quite dishonest in the way he has handled this matter as evidenced in the various promises he makes to the Court on behalf of his client and instead of complying he engineers another cause all together. Even at the last hearing he felt no qualms about submitting that he never undertook to advise his client to deposit rents previously collected but to deposit rents as and when the same were collected. The record of 25th May 2004 clearly shows the contrary.

The present application ought not to have been argued since the applicant lost audience when the order of 25th May 2004 which stayed all applications by the Applicant was still in place. It is unfortunate that Counsel for the Respondents did not bring the said order to the attention of this Court on 7th February 2005. Judging from the record the present application lacks merit and is a gross abuse of the process of this Court. It is meant to derail the process completely and to deny the Respondents their claim and/or delay justice as long as possible to the prejudice. It seems to me that the Applicant's as well as his Counsel's do not have much respect for the Court, which they believe can take for granted. I am afraid to say the Court would be failing in its duty as a custodian of justice if it allowed this matter to drag further. A conclusive order must be recorded regarding the outstanding issues. It is over one year since a consent was recorded herein the realization of which has been frustrated by the Applicant and his Counsel. I am not at all inclined to allow this application the same having been brought and argued in the face of glaring contemptuous acts by the Applicant. The same is dismissed with costs to the Respondents.

I order that the Applicant complies forthwith with the order to render accounts by either depositing all the rents collected to date into the joint account herein or by depositing a sum of Shs.10,000,000/= into Court. That he collects a sum of Shs.136,000/= per month has not been disputed. This order must be complied with within 45 days.

Orders accordingly.

Dated and Delivered at Nairobi this 8th day of June 2005

**M.G. Mugo**

**Judge**

**In the presence of:**

***N/A: For the Applicant Mr. Muriithi***

***Ms. Mwendo : for the Respondents as per court file.***