



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT BUNGOMA
MISCELLANEOUS APPLICATION 53 OF 2004

MOHAMMED YESLAM AWADH APPLICANT

VERSUS

PETER WILBUR MARUMBI RESPONDENT

RULING

Pursuant to leave granted to the applicant on the 22nd day of March 2004, the applicant took out a notice of motion under the provisions of section 5 of the Judicature Act, cap 8 Laws of Kenya and under order XXXIX rule 2 A (2) of the Civil Procedure Rules. The applicant seeks to have Dr Peter Wilbur Marumbu to be cited for contempt and to be punished for it.

The respondent was served with the motion but he did not file a replying affidavit or grounds of opposition as envisaged hence the motion proceeded for hearing *ex parte* pursuant to the provisions of order L rule 16 (3) of the Civil Procedure Rules.

The facts leading to the filing of this motion are that the applicant, Mohammed Yeslam Awadh has been a tenant to the respondent in respect of the premises situate at plot No 499 of Bungoma Township since 31st May 1988. It would appear the applicant runs a hotel or simply trading as New Bungoma Hotel.

The Respondent herein, Dr Peter Wilbur Marumbu served the applicant with a notice of intention to increase rent dated 27th May 2003 pursuant to the provisions of section 4 (2) of the Landlord and Tenant (Shops, Hotels and Catering Establishments) Act cap 301 Laws of Kenya. The applicant then filed a reference at the Business Premises Rent Tribunal to challenge the notice vide Kakamega Business Premises Rent Tribunal Case No 15 of 2003. The matter is said to be pending for hearing. On the 1st day of March 2004 while the reference is still pending, the respondent is said to have locked the applicant's premises ostensibly with a view of evicting him from the demised premises. This prompted the applicant to file an action vide Bungoma HCCC No 30 of 2004 to challenge the respondent's action. The applicant contemporaneously filed an application and sought for an interim order of injunction *ex parte*. He successfully obtained an *ex parte* order on 8th March 2004 which read as follows:

“It is hereby ordered that:

- (a) The suit premises known as Bungoma Hotel situated on plot No. 499 Bungoma Township run by the applicant and illegally locked or closed by the defendant/ respondent be opened forthwith and keys of the said premises handed over to the applicant pending inter partes hearing on 23rd March 2004.
- (b) Pending the hearing and determination of this suit the defendant/respondent, his agents, servants any

person claiming through him be restrained by an order of temporary injunction from trespassing and dispossessing the applicant's quiet and peaceful possession and enjoyment of the suit premises situated on Plot No 499 Bungoma."

It is evident from the affidavit of service of Rasmus Otieno Orano sworn on the 11th day of March 2004 that the respondent was served with the pleadings and the order on the 9th day of March 2004. The respondent even endorsed receiving the documents by appending his signature at the reverse of the aforesaid order. It is the applicant's complaint that the respondent has flagrantly refused to obey the court order which were clear and unambiguous. It is his submission that this has lowered the dignity of this court.

The order required the respondent to restore the applicant to the premises by handing over the keys to the locks placed on the doors leading to Bungoma Hotel or by removing the locks. He has failed or ignored to do so despite having been served with court orders which were clear, and capable of enforcement.

The order served contained the penal notice which read:

"Take notice that this is a lawful order and noncompliance of the same is punishable by court".

I think this is in compliance with the law stated by the court of Appeal in the case of *Mwangi Wangonde v Nairobi City Commission* Civil Appeal No 95 of 1988.

The Court of Appeal stated that no order of court requiring a person to do or abstain from doing any act may be enforced unless a copy of the order has been served personally on the person required to do or abstain from doing the act in question. The copy of the order must be indorsed with a notice informing the person whom the copy is served that if he disobeys the order he is liable to the process of execution to compel him to obey it.

I have considered the submissions of the learned advocate for the applicant. I have also taken into account the material placed before me. I have come to the conclusion that the charge of contempt against Dr Peter Wilbur Marumbu the respondent herein has been established beyond peradventure. The respondent has intentionally and wilfully disobeyed a lawful court order and I will commit him accordingly.

It must be remembered that court orders must be obeyed at all times in order to maintain the rule of law and good order. This of course means that the authority and dignity of our courts must be upheld at all times. This differentiates civilized societies from those applying the law of the jungle at times referred to as banana republics. It is the duty of this court not to condone deliberate disobedience of its orders nor waiver from its responsibility to deal decisively and firmly with proved contemnors. I have not been shown any mitigating factors or apologies by the respondent.

Consequently, the order of this Court is that Dr Peter Wilbur Marumbu is to be detained in prison for 30 days immediately.

Dated and Delivered at Bungoma this 28th day of May 2004.

J.K.SERGON

JUDGE