



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

MISC. CIVIL APPLICATION NO.34 OF 2002

JOHN OTIENO OCHUKA t/a OCHUKA & CO. ADVOCATES...PLAINTIFF/APPLICANT

=V E R S U S=

KENYA POWER & LIGHTING CO. LTD.....DEFENDANT/RESPONENT

IN THE MATTER OF APPLICATION FOR LEAVE TO APPLY FOR

ORDERS OF COMMITTAL TO PRISON FOR CONTEMPT

A N D

**IN THE MATTER OF SECTION 5 OF THE JUDICATURE ACT CAP.8 OF THE LAWS OF
KENYA**

AND ORDER 52 RULE 2 OF THE RULES OF THE SUPREME COURT OF ENGLAND.

R U L I N G

The Applicant/Plaintiff by an ex parte application by Chamber Summons dated 12th February, 2002 seeks for an order for committal to jail for contempt of the orders made by the Chief Magistrate Mombasa in Civil Suit No.494 of 2002 on 12th February, 2002 and 13th February, 2002. The first order restrained the Defendants/Landlord, its agents, servants and employees from distraining, taking away or in any way alienating the Plaintiff/Tenant's goods or in any manner interfering with the Applicant's enjoyment of the tenancy until the hearing and determination of that application inter partes as well directing them to release and return the Applicant's properties taken by the Defendants. The 2nd order was an order for the enforcement of the aforementioned order with the help of the O.C.P.D., Urban Police Station.

From what I can gather from the material before me, the above order were served upon the Defendant through its Regional Manager at Mombasa named Joseph Masibo on 12th February, 2002 at 4.45 p.m. The said manager appeared to have consulted his senior officers in Nairobi and the Defendant's lawyers and decided not to obey the order on the advice of his lawyers. Instead the Defendant tightened security surrounding the premises in dispute and even changed locks to completely deny entry into the premises as well as prevent enforcement of the court orders. It was only after the Police ordered by the court to enforce the order and the applicant, threatened to regain entry by force, even by cutting the locks with the help of the locksmith, that the Defendants yielded. They released the keys to the new locks to the Police and the Plaintiff who finally regained entry.

It is under the above circumstances that the Applicant applies to this court as aforesaid, to be granted

leave to file contempt proceedings against the Defendants, to commit them to jail for disobedience of courts lawful orders. The targeted persons are Samuel Gichuru, the Managing Director, the Coast Regional Manager Mr. Joseph Masibo and the Kenya Power & Lighting Company Ltd. I confirmed from the record before me that Notice to the Registrar of this court was properly served before the application came for a hearing. The orders from which this application arise are annexed to the application. The application is supported by an affidavit of the Applicant sworn on 15th February, 2002.

I therefore see no impediment to granting the leave sought. Before I make final orders, however, I wish to point out that the nature of this matter were purely civil. This court has occasionally expressed its open disapproval against any party or tribunal involving the Police in matters purely of a civil nature. The Civil Procedure Act and Rules are not inept in dealing with situations such as this. In this case the applicant should have applied under the said Act and/or rules to obtain an effective remedy instead of seeking the involvement of the Police. This court once more expresses its strong disapproval.

Having said what I have, I hereby make the order following:-

ORDER:

1. The leave to file contempt proceedings is hereby granted as prayed.
2. The contemnor is hereby ordered to put right whatever conduct arising from the orders said to have been disobeyed, that they have so far not corrected or obeyed.
3. Costs of this application to await the result of the contempt proceedings.

Dated and delivered at Mombasa this 11th day of March, 2002.

D. A. ONYANCHA

J U D G E

Delivered in the presence of:-

Gichana - for Magolo -for Applicant/Plaintiff

.....for Defendant/Respondent