



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT NAIROBI**

**ELC MISC APP NO E004 OF 2020**

**JOHN PETER KAMAU RUHANGI.....APPLICANT**

**VERSUS**

**JOHN NGUGI KABOGO**

**T/A CLUB SIDAI OLENG.....RESPONDENT**

**RULING**

1. This is the Notice of Motion dated 13<sup>th</sup> July 2020 brought under section 5 of the Judicature Act; New Civil Procedure Rules (of England) Second Supplement to the 2012 White Book, the inherent jurisdiction of the Court and all other enabling provisions of the law.

2. It seeks orders:-

**1. Spent.**

**2. That the Honourable Court be pleased to order the issuance of summons to JOHN NGUGI KABOGO to appear personally before this court and show cause why he should not be cited for contempt and committed to civil jail for such a term or condemned to such other penalties as the court may deem fit.**

**3. Spent.**

**4. That the Honourable Court be pleased to cite JOHN NGUGI KABOGO for contempt of court and commit him to civil jail for a term of six months and or order him to immediately purge the ongoing contempt of court by vacating the applicant's land LR No 28177 and removing his temporary structures on the demised premises namely Club Sidai Oleng.**

**5. That in the event that the contemnor does not purge the ongoing contempt of court, the OCS Muthaiga Police Station be strictly directed by this Honourable Court to Personally arrest Mr. John Ngugi Kabogo without seeking the directions, approval or permission of any other officer in the National Police Service or any other person whatsoever and to present to the said John Ngugi Kabogo before this honourable court for the purpose of his committal to civil jail.**

**6. That costs of this application be granted to the applicant.**

3. The grounds are on the face of the application and are set out in paragraphs (1) to (10).

4. The application is supported by the affidavit of John Peter Kamau Ruhangi, the applicant herein sworn on the 13<sup>th</sup> July 2020.

5. The application is opposed. There is a replying affidavit sworn by John Ngugi Kabogo but it is not dated.

6. On the 19<sup>th</sup> November 2020 the court with the consent of the parties directed that the application be canvassed by way of written submissions.

7. On the 14<sup>th</sup> December 2020, Mr. Kamuiro for the respondent sought and was granted fourteen (14) days to put in written submissions and that the matter be mentioned on 16<sup>th</sup> February 2021. By the time of writing this ruling the respondent had not put in written submissions.

## The Applicant's Submissions

8. They are dated 11<sup>th</sup> December 2020. Despite the order of the Business Premises Rent Tribunal being explicit, specific and self explanatory, the contemnor/respondent has disobeyed, violated and acted in utter contempt of the said order by failing to remove his temporary structures and continuing with business as usual. The applicant is the bonafide registered owner of LR NO 28177 and he has a title document for the same duly and legally issued by the Nairobi Land Registry. He has put forward the cases of **Ali Soitara Korir & Others vs Josephine Nyambura, Kaiga Macharia & Others [2007] eKLR**; **Mwangi Wangondu vs Nairobi City Commission Nairobi CA 1995 of 1998**.

9. By his continued conduct of business in the demised premises with impunity contrary to the Business Premises Rent Tribunal's orders, the respondent is in contempt of court. He has relied on the case of **Ali Soitara Korir & Others vs Josephine Nyambura & Others (Supra)**. The respondent herein has not been paying rent despite various orders from the Business Premises Rent Tribunal.

10. The respondent has benefited from the disobedience of the orders of the Business Premises Rent Tribunal by continuing with his business and making use of the said premises without paying rent. He prays for the orders in the application.

11. I have considered the Notice of Motion dated 13<sup>th</sup> July 2020, the affidavit in support and the annexures. I have also considered the replying affidavit, the written submissions filed on behalf of the applicant and the authorities cited. The issues for determination are:-

*(i) Whether or not the alleged contemnor is guilty of disobeying orders from the Business Premises Rent Tribunal.*

*(ii) Who should bear costs of this application?*

12. On the 28<sup>th</sup> May 2020 the Chairman of Business Premises Rent Tribunal in his judgment dated 28<sup>th</sup> May 2020 in BPRT Case No 653 of 2019 (Nairobi) John Peter Kamau Rahangi (Landlord vs John Ngugi Kabogo t/a Club Sidai Oleng (tenant) issued the following orders:-

***“3.C The tenant's temporary structures on the demised premises namely Club Sidai Oleng on land reference No 28177 along Kiambu Road within Nairobi City County to be removed and/or demolished”.***

The said judgment was delivered on the presence of Mr. Ng'ang'a for the Landlord and Mrs. Njomo for the Tenant/Applicant. The respondent herein was therefore aware of the said orders and he was represented by counsel.

13. It is the Applicant's case that the respondent herein has failed to remove the said structures from the suit property.

14. In his replying affidavit the respondent states in paragraph 4:-

***“That I wish to state in accordance with order 3(c) reading the order plainly and directly, the court had directed that temporary structures erected on the land reference 28177 be removed, however, there are no temporary structures on the land parcel and I wish to state that there are only permanent buildings on the land which I solely erected (find annexed photographs of the buildings erected on the property marked JNEX1)”.***

In my view the above averments do not answer to the applicant's claim that he has disobeyed the said orders.

15. The said orders have not been set aside and/or vacated. The respondent did not seek an appeal against the said orders. In the case of **Hadkinson versus Hadkinson [1952] All ER 567 at 569**, it was held that ***“court orders whether irregular or not have to be obeyed unless they are varied or set aside”.***

In the instant case the respondent has failed to explain what difficulty he is having in complying with the said orders.

16. I am satisfied that the respondent herein has willfully disobeyed the court orders by failing to remove the structures. In the case of **Econet Wireless Kenya Ltd vs Minister for Information & Communication of Kenya & Another [2005] eKLR**, Ibrahim J (as he then was) stated as follows:-

***“It is essential for the maintenance of the rule of law and order that the authority and dignity of our courts are upheld at all times. The court will not condone deliberate disobedience of its orders and will not shy away from its responsibility to deal firmly with proved contemnors. It is plain and unqualified obligation of every person against whom or in respect of whom an order is made by a court of competent jurisdiction to obey it unless and until that order is discharged. The uncompromising nature of this obligation is shown by the fact that it extends over to cases where the persons affected by an order believes it to be irregular or void”.***

17. I have gone through the applicant's affidavit and annexures. It is clear that the respondent has had enough time to purge the contempt. The applicant's counsel wrote to respondent's counsel on 29<sup>th</sup> May 2020 asking that the respondent vacates the premises. The respondent did not comply. I agree with the applicant's submissions that the respondent has remained defiant.

18. I find that the respondent is clearly in contempt of the orders of Business Premises Rent Tribunal dated 28<sup>th</sup> May 2020. He has failed to comply with the said orders and such failure is deliberate.

19. In conclusion, I find merit in this applicant and he same is allowed in the following terms:-

- (a) That the respondent is found guilty of disobeying the orders issued by the Business premises Rent Tribunal on 28<sup>th</sup> May 2020.**
- (b) That the respondent is given sixty (60) days from the date of the ruling to purge the said contempt *failure to which***
- (c) The respondent is fined Kshs.200,000/- in default to serve four (4) months imprisonment.**
- (d) That the OCS Muthaiga Police Station is directed to arrest Mr. John Ngugi Kabogo and/or present the said John Ngugi Kabogo for purposes of committal to civil jail.**
- (e) That cost of this application be borne by the respondent.**

It is so ordered.

**Dated, signed and delivered in Nairobi on this 22<sup>nd</sup> day of April 2021.**

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**L. KOMINGOI**

**JUDGE**

**In the presence of:-**

Mr. Ng'ang'a advocate for the Applicant

No appearance of the Respondent

Phyllis - Court Assistant