



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAROK

ELC MISC NO. 2 OF 2020

LEO INVESTMENTS LTD.....APPLICANT

-VERSUS-

SAMSON OLOOLMAITAI.....1ST RESPONDENT

NTOORIAN KORIATA.....2ND RESPONDENT

STANLEY KOINET KORIATA.....3RD RESPONDENT

SERA NJOKI MUNGE T/A SANJOMU AUCTIONEERS....4TH RESPONDENT

RULING

By a Notice of Motion dated 27/5/2020 the Applicant sought for orders that:-

1. Spent

2. That this honourable court do issue notices to show cause directed upon the 1st, 2nd and 3rd Landlord/Respondent to personally appear before the honourable court and explain as to why they should not be committed to Civil Jail for a period of 6 months for contempt of court.

3. That this honourable court be pleased to order that the 1st, 2nd and 3rd Landlords/Respondents herein be and are hereby committed to civil jail for contempt for such a period as this honourable court may deem fit and just for disobedience of the order of the court issued on the 26th day of March, 2020 by Hon. Chairman Mbichi Mboroki sitting at the Business Premises Rent Tribunal in Tribunal Case No. 60/2020 Nakuru.

4. That all necessary and consequential directions be given by the honourable court.

When the Application was served on the Respondents they raised a Preliminary Objection to the said Application on the grounds that the Application is defective as it offends section 5 (1) and further that the mandatory prescription of part 8 of the English Civil Procedure has not been met and there was no evidence of service of the application on the 1st, 2nd and 3rd respondents. The applicant further contends that no leave of the court was sought.

The Respondents in their submissions contend that the Notice of Motion was defective as the same is not premised on the correct procedure and there was personal service on the respondents. They further stated that the applicant had filed a notice of motion rather than an application notice.

The applicant in opposing the Preliminary Objection stated that the respondents continue to refer to Section 5 of the Judicature Act which Act was repealed and declined unconditional. They also stated contrary to the allegation by the respondents that they must be service of the applicant to be effected on the Attorney General or such other Government Departments of Public Offices as none of the alleged breaches of the court order was done by anyone of them.

I have considered the application before me and the submissions filed by parties herein and I must state that what constitutes the ingredients of Preliminary Objection is now settled by the court as held in the case of **Mukisa Biscuits Manufacturers company limited –versus- Westend Distributors (1969)EA 696** in which the court held that the points raised must be on strictly point of law in which if the same is heard then it will be determined. In the instant case the Respondents Preliminary Objection is based on the legal ground that the application

as framed does not confirm to the provisions of Rule 81 (1) (2) of the English Rules of Civil Procedure. The Respondents contend that the applicants have not sought leave to commence the contempt proceedings.

The respondents further argue that the applicants have not proved that the said application for contempt was served upon the respondents in person.

The respondents further stated that the Notice of Motion bringing the contempt application was not accompanied by statement of facts in which the grounds upon which the application was premised.

The Applicants in their submissions averred that the respondents Preliminary Objection make reference to Section 5 (1) of the contempt of court Act and the fact that the same was repeated by the contempt of court act does not revive the provisions of the Judicature Act. The applicant further stated that there was no duty by the applicant to warrant service on the honourable Attorney General as neither him nor any Government Departments was a party to proceedings.

On the issue of service of the orders of the court the applicant contends that the orders were properly served on the respondents and an affidavit of service duly filed.

Since I am dealing with the Preliminary Objection I don't wish to delve into the merits of the application for contempt. Having perused the pleadings and the submissions filed I find that there was no duty on the applicant to serve the Attorney General with the Application for contempt and that the contention that the applicant ought to have filed an application notice and not a Notice of Motion cannot be said to be a Preliminary Objection on a point of law and in the circumstances, I find that the Preliminary Objection dated 28/7/2020 lacks merit and I therefore dismiss the same and direct that each party to bear its own costs.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAROK ON THIS 23RD DAY OF JULY, 2021

MOHAMED N. KULLOW

JUDGE

23/7/2021

In the presence of:

CA:Chuma

Parties and advocates N/A