



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAIROBI

ELC MISC APP. NO. E004 OF 2020

JOHN PETER KAMAU RUHANGI.....RESPONDENT

=VERSUS=

JOHN NGUGI KABOGO T/A

CLUB SIDAI OLENG.....APPLICANT

RULING

1. Coming for determination are two applications. The notice of motion dated 25th June 2021 is brought under Section 1A, 1B 3A of the Civil Procedure Act, Order 42 rule 6 of the Civil Procedure Rules and the inherent power of the honourable court and all other enabling provisions of the law.
2. It seeks orders:-
 1. *Spent.*
 2. *Spent.*
 3. *Spent.*
 4. *That the honourable court be pleased to stay execution of the orders of 3rd May 2021 pending hearing and determination of the intended appeal.*
 5. *That the costs of this application be in the cause.*
3. The grounds are on the face of the application and are set out in paragraphs (a) to (i).
4. The application is supported by the affidavit of John Ngugi Kabogo, the Respondent herein, sworn on the 25th June 2021.
5. There is also the notice of motion dated 12th July 2021 by the applicant seeking to have the respondent be committed to jail for failing to purge the contempt as per this court's orders of 22nd April 2021.
6. On the 29th July 2021, the court directed that the two applications be heard together. It also directed that they be canvassed by way of written submissions.
7. I have considered the notice of motion dated 25th June 2021, the affidavit in support and the replying affidavit. I have also considered the rival submissions. The issue for determination is whether this application is merited.
8. On the 28th May 2020 the Business Premises Rent Tribunal issued the following orders:-

“3. c The tenant’s temporary structures on the demised premises namely Club Sidai Olong on Land Reference NO 28177 along Kiambu Road within Nairobi City County to be removed and or demolished”.

9. When the Respondent John Ngugi Kabogo did not comply with the said orders the Applicant moved to this court under the notice of motion dated 13th July 2020. The court on its ruling of 22nd April 2021 granted the following orders:-

“(a) That the Respondent is found guilty of disobeying the orders issued by the Business Premises Rent Tribunal on 28th May 2020.

(b) That the Respondent is given sixty (60) days 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 one John Ngugi Kabogo and present the said John Ngugi Kabogo for purposes of committal to civil jail.

(e) That costs of this application be borne by the Respondent”.

10. It should be noted that todate the Respondent has not purged the said contempt nor has he complied with order No (c) of the Ruling.

11. I have gone through his supplementary affidavit sworn on the 25th June 2021. There is no single paragraph which mitigates the failure by the Respondent to purge the contempt. He has not given any justifiable reason as to why he has not complied with the orders of the Business Premises Rent Tribunal. The orders of Business Premises Rent Tribunal have not been appealed against.

12. The orders of 22nd April 2021 have not been appealed against. The Respondent’s application has failed to satisfy the conditions set out under order 42 rule 6 of the Civil Procedure Rules.

13. I find no merit in this application and the same is dismissed with costs to the Applicant.

14. Consequently, I find merit in the notice of motion dated 12th July 2021. The Respondent is given a further thirty (30) days to purge the contempt in compliance of order NO (c) failure to which, he will be liable to be arrested and committed to civil jail for a period of four (4) months.

It is so ordered.

DATED, SIGNED AND DELIVERED IN NAIROBI ON THIS 18TH DAY OF NOVEMBER 2021.

.....

L. KOMINGOI

JUDGE

In the presence of:-

Mr. Ng’ang’a for the Applicant

No appearance of the Respondent

Steve – Court Assistant