



**Dewdrop Enterprises Limited v Abdullahi (Civil Appeal E285 of 2021)
[2024] KEHC 16247 (KLR) (Civ) (15 November 2024) (Judgment)**

Neutral citation: [2024] KEHC 16247 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

CIVIL

CIVIL APPEAL E285 OF 2021

REA OUGO, J

NOVEMBER 15, 2024

BETWEEN

DEWDROP ENTERPRISES LIMITED APPELLANT

AND

ABDIRIZAK ADAN ABDULLAHI RESPONDENT

(Appeal from the ruling/orders of the Chief Magistrate's Court at Milimani Commercial Courts, Nairobi (Hon. Mr D.A. Ocharo, PM) dated 28th October 2019, in MCCC No. 1 of 2019)

JUDGMENT

1. The appellant filed a plaint at the lower court alleging that the respondent had habitually breached their tenancy agreement. The appellant sought a permanent injunction against the respondent restraining him from committing and/or continuing breach of the tenancy agreement dated 22/06/2018.
2. Subsequently, the appellant filed an application dated 23/01/2019 seeking a temporary injunction against the respondent restraining him from committing and/or continuing breach of the tenancy agreement dated 22/06/2018. At the hearing, the respondent did not turn up in court and the lower court allowed the application.
3. The applicant the filed an application dated 14/05/2019 at the lower court seeking the following orders:
 1. That the defendant/respondent be cited for contempt of the orders of 14th February 2019 herein and consequently be committed in civil jail for a period to be determined by this Honourable Court;
 2. That the defendant/respondent's property be attached



4. The respondent filed his response at the lower court and alleged that he had fully paid the rent according to the tenancy agreement. He also filed grounds of opposition. He argued that the application for civil jail did not meet the required threshold and the orders had been rendered moot, as the respondent had already paid the rent arrears.
5. The trial magistrate dismissed the appellant's application on grounds that the respondent had not breached the order issued on 14/02/2019.
6. The appellant dissatisfied with the ruling of the subordinate court has now filed an appeal on the following grounds:
 1. The learned magistrate erred in law and in fact in failing to find that the defendant was as of 28th October 2019 in breach of the tenancy agreement dated 22nd June 2018.
 2. The learned Magistrate erred in law and in fact in failing to find that the defendant was as at 28th October 2019 in breach of the orders dated 14th February 2019.
 3. The learned Magistrate erred in law and in fact in failing to find the defendant be cited for contempt of the orders dated 14th February 2019.
 4. The learned Magistrate erred in law and in fact in failing to order that the defendant's property be attached.
 5. The learned magistrate erred in law and in fact in deciding that the plaintiff bears the costs of the application dated 14th May 2019.
7. The appellant in a further affidavit dated 3/08/2023 advanced that the respondent left the suit property to strangers contrary to the tenancy agreement. He failed to give lawful notice of termination, pay rent interest and water charges, carry out repairs, and hand over vacant possession. The appellant on 20/6/2023 paid Kshs 91,080/- that were water charges in arrears and carried out renovations amounting to Kshs 67,454/-.
8. The appellant in his submissions argues that in the absence of a defence the contents of paragraphs 4 & 5 of the plaint are admitted by the defendant. Therefore, the respondent had the obligation under the tenancy agreement to hand over the suit property in a clean and painted state to the approval of the plaintiff on or before 30/6/2019. It faulted the trial court for failing to find that the respondent was in breach of the tenancy agreement. The respondent wilfully disobeyed the order dated 14/2/2019. They cited the case of Bio Tosha Distributors Limited v Kenya Breweries Limited & 6 Others (Petition 15 of 2020) [2023] KESC 14 (KLR).
9. The respondent submits that overturning the trial court's ruling would mean the court is enforcing a non-existent tenancy agreement. The respondent maintains that he has paid all the rent and has relocated to a new house. He advanced that he has not been on the appellant's premises since 23/11/2021.

Analysis And Determination

10. In this case, the main issue raised by the appeal is whether the respondent was in contempt of court orders. In Samuel M. N. Mweru & Others v National Land Commission, Nairobi City Water and



Sewerage Company Limited & Nairobi City Water County [2020] KEHC 9233 (KLR), Mativo J (as he then was) while citing the Book titled “ A contempt in New Zealand” stated:

“ There are essentially four elements that must be proved to make the case for civil contempt. The applicant must prove to the required standard (in civil contempt cases which is higher than civil cases) that:-

- a. the terms of the order (or injunction or undertaking) were clear and unambiguous and were binding on the defendant;
- b. the defendant had knowledge of or proper notice of the terms of the order;
- c. the defendant has acted in breach of the terms of the order; and
- d. the defendant’s conduct was deliberate.

11. The respondent was served with the order made on 14/2/2019 and the order itself was not ambiguous. The order of 14/2/2019 granted a temporary injunction restraining the respondent from committing and/or continuing breach of the tenancy agreement dated 22/06/2018.
12. On whether the respondent breached the terms of the tenancy agreement, I find it premature to reach this conclusion, as the respondent claims to have paid the rent. In any event, the issue of breach of the tenancy agreement should be considered after a full hearing of the appellant’s suit. It is important to note that the main suit is yet to be set down for hearing. It is prudent that the issues of rent arrears, water bill arrears and renovation costs be determined after calling witnesses to testify and subjecting them to cross-examination.
13. The respondent cannot be said to have deliberately disobeyed the orders of the court when it is his case that he has cleared all the arrears. Therefore, the issue of breach of the tenancy agreement should be determined by the lower court after conducting a hearing.
14. In conclusion, I find no merit in the appeal and direct that the appellant should move the trial court to set the main suit for hearing. There shall be no orders as to costs.

DATED, SIGNED AND DELIVERED AT BUNGOMA THIS 15TH DAY OF NOVEMBER 2024

R.E. OUGO

JUDGE

In the presence of:

Mr. Ododa -For the Appellant

Mr. Musana -For the Respondent

Wilkister -C/A

