



**JEN v LN (Civil Case 77 of 2017) [2024] KEHC 13763 (KLR)
(Family) (7 November 2024) (Ruling)**

Neutral citation: [2024] KEHC 13763 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
CIVIL CASE 77 OF 2017
HK CHEMITEI, J
NOVEMBER 7, 2024**

BETWEEN

JEN APPLICANT

AND

LN RESPONDENT

RULING

1. The parties in this case vide a consent dated 11th February 2019 and recorded on 14th February 2019 compromised this suit.
2. The Applicant through an application dated 11th January 2021 sought contempt proceedings against the Respondent for failing to remit a sum of Kshs 4,894,000 which she had been collecting from two tenants at LR No. 1160/1219.
3. The court, Muchelule J (as he then was) vide a ruling dated 3rd November 2022 directed the parties to comply with the consent and in the “wider interest of justice “directed the Deputy Registrar to oversee the implementation of the consent.
4. It appears from the record that part of the consent has not been finalized and specifically the issues surrounding the rent collected from the aforesated property.
5. The Applicant filed the application dated 2nd August 2023 seeking orders that:-
 - (a) The Respondent/Contemnor be ordered to deposit the sum of Kshs. 8,448,510 she illegally collected as rent in LR No. 1160/1344 for the two houses.
 - (b) In default the Applicant, be allowed to execute against her.



6. The application is based on the sworn affidavit of the Applicant dated the same date as well as the grounds thereof.
7. The Applicant has in the affidavit reiterated the terms of the consent and the efforts he has made in trying to collect the rent from the premises as agreed.
8. That he was now aged (76 years old) and suffering from age related ailments and consequently he needed funds from the said premises for his treatment and upkeep. All efforts he deponed have been frustrated by the Respondent who has continued to receive and collect rent from the tenants up to a tune of Kshs 8,485,510
9. In her replying affidavit sworn on 24th January 2024 the Respondent inter alia deponed that she was not responsible for the Applicant's ailment associated with his old age. That as far as she was concerned, she had complied with the orders of the court and in any case, there was no monetary decree which she was supposed to comply with.
10. The Respondent went on to argue that the application was res judicata since the same had been decided by the ruling of this court dated 3rd November 2022.
11. The court directed the parties to file written submission which they have complied and the court has perused them together with the cited authorities.
12. The Applicant reiterated that the Respondent was in contempt of the court orders and decree as per the consent and she should be punished if she does not purge her contempt. That she willfully disobeyed the orders by refusing to permit the Applicant take over the rents collected from the two houses.
13. The Respondent on the other hand argued that there was no order directing that the Applicant collects the rent and in any case the issue had been exhaustively dealt with by the ruling of 3rd November 2022.
14. The court has perused the history of this matter and the issues captured by the parties in their submissions and the first issue is whether the application is res judicata as provided under section 7 of the *Civil Procedure Act*.
15. It was the Respondent's argument that Muchelule J (as he then was) dealt with the issue in his ruling of 3rd November 2022.
16. I have read the said ruling and under paragraph 5 the learned judge stated that, thus:-

“The bottom line is that the consent that was recorded on 14th February 2019 has not been fully complied with and each side has some complaint or against the other.”
17. The court proceeded thereafter to direct the Deputy Registrar to oversee the implementation of the same.
18. The Deputy Registrar indeed acted on the directives and her report is on record.
19. Based on the above, I do not agree with the Respondent that the issue of the rent was dealt with either by the ruling of 3rd November 2022 or the Deputy Registrar in her implementation. Despite the fact that the application dated 11th January 2021 was dealing with the issue at hand, the court did not delve into it but instead directed the Deputy Registrar to oversee the implementation of the consent.
20. It should also be noted that there was an application by the Respondent dated 25th February 2022 seeking to cite the Applicant herein for contempt. The same was not dealt with as well for the reason



that the court directed the Deputy Registrar in “the wider interest of justice “to manage the consent by the parties.

21. As a matter of fact, the Deputy Registrar directed the issue of the rent to be raised before the judge. The same is not therefore res judicata.
22. Back to the claim on whether or not the Applicant was entitled to the rent, I think it is better to quote verbatim the terms of the consent as contained under paragraph 8. The same states as hereunder:-

“The 1st defendant shall have occupation of the property until the subdivisions and title in favour of the plaintiff/Applicant is issued.” (Underlining mine).
23. My understanding of the above portion of the consent is that the Applicant was meant to occupy the property pending the subdivision and issuing of title in his favour. That is the plain meaning which I doubt needs any clarification.
24. The occupation thus meant managing the property in the manner appropriate to the occupant including renting, leasing, carrying out any repairs or such other necessary acts to ensure control over the property.
25. For the Respondent to argue that it never meant renting out the same is to say the least dishonest. Once she agreed that the Applicant was to occupy the same pending the conveyancing processes, I do not think it gave her any rights over the property again whatsoever including collections of rent.
26. Her argument is simply splitting hairs and is meant to ensure that pending the transfer to the Applicant she continues enjoying the rent accruing therefrom. I bet if not wrong that the Respondent is enjoying the use of her portion without any let or hinderance from the Applicant.
27. This court however is unable to know whether the figures advanced by the Applicant of Kshs 8,448,510 is the real amount or not. He has not attached any proof either from an estate agent or such other professional manager to back the claim.
28. That however does not exonerate the Respondent from liability. She must refund the amount she has been collecting from the two premises from the period of the consent to date. In reality what was so difficult in her surrendering the premises to the Applicant just as she had complied with the other 7 grounds of the consent?
29. For the above reasons, and although I find the Applicant in contempt, this court shall spare her the sanctions. She must however at the delivery of this ruling hand over the premises unconditionally to the Applicant.
30. Further, I direct that a professional valuer be appointed by the Applicant and the Respondent either jointly or separately to assess the amount collected so far by the Respondent from 11th February 2019 to the time of the delivery of this ruling or the period of the Respondent handing over the premises. The same be undertaken within 30 days from the date hereof and a report be filed to this court.
31. The amount so far that shall be found by the said professionals shall be paid by the Respondent to the Applicant within 30 days and in default the Applicant be at liberty to apply to execute.
32. The other terms of the consent in my view and in line with the report by the Deputy Registrar of the court seems not in contention.
33. In conclusion this court directs as hereunder:-



- (a) The Applicant and the Respondent do agree on a professional valuer to value the rent collected from 11th February 2019 to date.
- (b) In the event of any disagreement on valuers, each of the parties shall be at liberty to engage separate valuers and the reports be filed to this court within 30 days from the date herein.
- (c) Each party shall be responsible for the costs of the valuation.
- (d) The Respondent to immediately hand over the management of the premises to the Applicant and in default the Applicant can engage the services of the nearest police station to oversee the said compliance without notice to the Applicant.
- (e) This matter be mentioned before the Deputy Registrar to oversee compliance.
- (f) Costs to the Applicant.

DATED SIGNED AND DELIVERED AT NAIROBI VIA VIDEO LINK THIS 7TH DAY OF NOVEMBER 2024.

H K CHEMITEI

JUDGE

