



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT MALINDI**

**CIVIL APPEAL NO. 2 OF 2018**

**EVANS TUMA KALUME.....PLAINTIFF**

**VERSUS**

**MOSES MASIVAI BARASA.....DEFENDANT**

**RULING**

1. By this Notice of Motion application dated 22<sup>nd</sup> January 2020 Evans Tuma Kalume (the Appellant) prays for orders as follows:-

*b) That the Respondent herein be deemed (to be) in contempt of this Court's Orders issued on 29<sup>th</sup> February 2019;*

*c) That the Honourable Court directs for the arrest and committal of the Respondent and/or his agents in jail for disobedience of Court Orders issued on 29<sup>th</sup> February 2019;*

*d) That the Respondent do pay compensate (sic) the Applicant for loss of user and value of the property damaged as assessed by a valuer; and*

*e) That the costs of this application be provided for.*

2. The application which is supported by an affidavit sworn by the Appellant is premised on the grounds that:-

*a) The Appellant lodged an Appeal on 26<sup>th</sup> June 2018 against the Ruling and orders of the Business Premises Rent Tribunal;*

*b) That subsequently the Appellant sought and was granted orders of stay of execution pending Appeal.*

*c) That on various dates unknown to the Appellant in December 2019, the Respondent proceeded to enter the suit property and destroyed the structures erected thereon in disobedience of the orders of stay; and*

*d) That the Respondent should be deemed to be in contempt of the Court Orders and should be arrested and committed to jail for his contemptuous acts.*

3. From an Affidavit of Service filed herein on 10<sup>th</sup> February 2020, it was apparent that the Respondents were served with the application on 3<sup>rd</sup> February 2020. The Respondent did not however respond to the application.

4. Black's Law Dictionary (9<sup>th</sup> Edition) defines contempt of Court as:-

***“Conduct that defies the authority or dignity of a Court. Because such conduct interferes with the administration of justice, it is punishable usually by a fine or imprisonment.”***

5. The Respondent herein as the Landlord had sued the Appellant as his Tenant in ***Mombasa BPRT Case No. 35 of 2018; Moses Masivai Barasa –vs- Evans Tuma Kalume***. Upon hearing the suit, on or about 18<sup>th</sup> May 2018, the Tribunal allowed the Respondent's claim and made orders that:-

***i) The Tenant/Respondent is ordered to vacate the Applicant's business premises they occupy owned by the Landlord/Applicant.***

**ii) The Tenant is ordered to pay the Landlord the rent arrears amounting to Kshs 35,000/- before giving vacant possession.**

**iii) The said premises to be vacated under the supervision of the Third Party particularly the OCS Kilifi Police Station to enforce compliance and that peace prevails.**

**iv) The Tenant shall pay the Landlord cost of Kshs 10,000/- which shall be recorded as part of arrears of rent.**

6. Aggrieved by the said decision, the Appellant moved to this Court and filed an Appeal pursuant to Section 15 of the Landlord and Tenants (Shops, Hotels and Catering Establishments) Act, Cap 301 of the Laws of Kenya. By an application dated 26<sup>th</sup> June 2018, the Appellant sought inter alia, an order of stay of execution of the said orders.

7. Having heard both the Appellant and the Respondent on the said application, this Court found merit in the application and granted a stay of execution pending the Appeal on 24<sup>th</sup> January 2019.

8. By the application before me, the Appellant submits that in spite of the orders made by this Court aforesaid, the Respondent moved into the suit premises sometimes in December 2019 and demolished the structures thereon. In support of the application, the Appellant has annexed photographs of the damage he says was brought upon the suit premises.

9. Despite having been served with the application, the Respondent failed to reply to the same and the Appellant's submissions and averments were therefore uncontroverted.

10. As it were, the rationale of the law on contempt is to protect the dignity of the Court and uphold the rule of law. As was stated in *Econet Wireless Kenya Ltd –vs- Minister for Information & Communications of Kenya & Another (2005) 1 KLR 828:-*

***“It is essential for the maintenance of the Rule of law and order that the authority and the 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.”***

11. In the premises, I am satisfied that the Respondent herein is in contempt of the Orders of this Court issued on 29<sup>th</sup> February 2019. It was however my view that Prayer 'd' of the application seeking an order directing the Respondent to compensate the Appellant for loss was premature.

12. This matter will accordingly be mentioned on 17<sup>th</sup> June 2020 to enable the Respondent to attend Court for mitigation and sentencing.

13. Orders accordingly.

**Dated, signed and delivered at Malindi this 27<sup>th</sup> day of May, 2020.**

**J.O. OLOLA**

**JUDGE**