

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CIVIL DIVISION

HIGH COURT CIVIL MISC. APPL. NO. 311 OF 2018

TRICOM TECHNOLOGIES LTD.....PLAINTIFF/APPLICANT

VERSUS

NEXTGEN OFFICES SUITS LTD....DEFENDANT/RESPONDENT

RULING

1. The application dated 30th May, 2018 is brought under Section 5 (1) of the Judicature Act Chapter 8 Laws of Kenya, Section 3A of the Civil Procedure Act Cap 21 Laws of Kenya, Order 52 rule 2 and 3 of the Civil Procedure Rules (2010) and all other enabling provisions of the law. The application seeks orders that the Honourable court be pleased to grant leave to the Applicant to apply for committal of Ramesh Kumar Amlani and Navinchandra Shah the directors of the Defendant/ Respondent to jail for contempt of court orders given by the Hon. P. Ngare Gesora (Mr.) Chief Magistrate dated 29th January, 2018 and issued on the 1st day of February, 2018.

2. The Application is predicated on the grounds stated in the application and is supported by the affidavit sworn by Johnson Waweru Karanja. The gist of the application is that on the 29th January, 2018 the Chief Magistrate's Court issued orders to the effect that the Defendant/Respondent were restrained from selling or engaging other third parties with a view of selling the suit property pending hearing of the application dated 12th January, 2018. It is stated that although the order was served on the Respondent's counsel, the Respondent is re-selling the property to a third party. The Applicant's contention is that the Respondent is in contempt of the Honourable court's orders, hence the orders sought herein.

3. Order 40 of the Civil Procedure Rules 2010 deals with issuance of temporary and interlocutory restraining orders of injunction. It is against the background of the said provision that the Court of Appeal made the decision in **Ramadhan Salim v Evans M Maabi T/a Murhy Auctioneers & another [2016] eKLR** where it was stated as follows:

“.....the order contravened was in the nature of temporary injunction which the magistrate's court had jurisdiction to punish as opposed to mandatory injunction which the magistrate's court lacked jurisdiction to punish for contempt.”

4. The Magistrates' Courts Act No. 26 of 2015 commenced on 2nd January, 2016. Section 10 (1) of the said Act provides:

“Subject to the provisions of any other law, the Court shall have power to punish for contempt.

(3) In the case of civil proceedings, the willful disobedience of any judgment, decree, direction, order, or other process of a court or willful breach of an undertaking given to a court constitutes contempt of court.”

5. In the case at hand, the trial court which in this case is the magistrate's court therefore has the jurisdiction to deal with the application for contempt of court. Consequently, I strike out the application.

Dated, signed and delivered at Nairobi this 8th day of June, 2018

B. THURANIRA JADEN

JUDGE