



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**

**CIVIL APPEAL NO. 278 OF 2012**

**VINCENT SHIMENGA & 10 OTHERS..... APPELLANTS**

**- V E R S U S -**

**LUCY WAITHIRA MUSA..... 1<sup>ST</sup> RESPONDENT**

**PROMAST ENTERPRISES AGENTS..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. The subject matter of this ruling is the motion dated 1<sup>st</sup> November 2016 taken out by Oscar Amai, the 5<sup>th</sup> appellant herein. In the aforesaid motion the 5<sup>th</sup> appellant/applicant seeks for the following orders:

- 1. THAT this application be certified as urgent and service of the same upon the respondents be disregarded with in the first instance due to reasons of urgency.***
- 2. THAT Lucy Waithera Musa and Stephen Mudogo be cited by court for being in contempt of court orders issued on 30<sup>th</sup> June 2012, 14<sup>th</sup> April 2015 and 1<sup>st</sup> July 2016 and be jailed for a period of six (6) months in prisons.***
- 3. THAT respondent Lucy Waithera Musa to be compelled and refund all money obtained illegally from tenants purported to be for electricity bills and rent increment since June 2012 when the orders were granted by this honourable court.***
- 4. THAT this honourable court to restrain 1<sup>st</sup> and 2<sup>nd</sup> respondent to write any rent arrears in receipt when the rent is paid in full ksh.2,000 according to orders granted on 30<sup>th</sup> June, 2012.***
- 5. THAT costs of this application be provided for.***

2. The applicant filed an affidavit he swore in support of the motion. When served with the application, the respondents filed the replying affidavit of Lucy Waithera Musa, the 1<sup>st</sup> respondent to resist the motion.

3. I have considered the grounds stated on the face of the motion and the facts deponed in the affidavits filed in support and against the motion. I have further considered the oral submissions of the 5<sup>th</sup> appellant/applicant and those of the respondents learned advocate. It is the submission of the applicant that on 27.6.2012 this court issued an order for stay of execution of the judgement delivered by the Rent Restriction Tribunal. It is said that it was part of the order that the tenants who included the 5<sup>th</sup> appellant/applicant should continue paying rent in the sum of ksh.2,000 inclusive of all services. The

temporary orders were confirmed pending appeal on 17.7.2012. The applicant stated that the orders were personally served upon Lucy Waithera Musa the 1<sup>st</sup> respondent herein on 12.5.2015 through the 2<sup>nd</sup> respondent's office in Kangemi and by registered mail. The applicant argued that the 1<sup>st</sup> and Stephen Mudogo (2<sup>nd</sup> respondent) breached the court order which stopped them from charging rent of more ksh.2000 per month inclusive of all services. It alleged that the duo disconnected electricity and installed submeters for each and every room for the tenants. The applicant stated that this was done contrary to the court orders issued. The applicant stated that on 30.10.2016 electricity to his premises was disconnected and he was forced to pay kah.900/= so that electricity could be reconnected to his unit. The appellant/applicant beseeched this court to cite Lucy Waithera Musa and Stephen Mudogo for contempt of court.

4. The respondents have denied breaching the court orders. They denied even increasing the rent payable. It was pointed out by the respondents that Kenya Power and Lighting Co. Ltd have visited the respondent's premises to fix new metres as part of its expansion programme. The respondents also castigated the 5<sup>th</sup> appellant for his failure to prosecute the appeal which has been pending for hearing for the last four and a half years.

5. After a careful consideration of the rival arguments, it is clear to me that the applicant's main prayer is for an order citing the respondents for contempt. It is said that the court had capped the amount payable as monthly rent inclusive of all services at ksh.2,000/=. The applicant has complained that he was forced to pay kshs.900 over and above the Ksh.2000/=. I find argument not supported by the affidavit evidence. The applicant has attached to his supporting affidavit a receipt showing that the applicant paid ksh.900/= to be supplied with a metre which operates by using electricity tokens. The money was paid to a distributor and not the respondent. It cannot therefore be said that the respondents breached the court order. It is clear to me that there was no intention to breach the stay order.

6. The introduction of electricity tokens is an efficient way of settling power bills. This enables everybody to take care of his or her electricity charges. There is no evidence that the respondents increased rent payable by the applicant. Since there is no evidence that there was increase of rent, the prayer for a refund cannot stand. In the end, I find no merit in the motion. It is dismissed with costs to the respondents.

Dated, Signed and Delivered in open court this 24<sup>th</sup> day of March, 2017.

**J. K. SERGON**

**JUDGE**

In the presence of:

..... for the Applicant

..... for the Respondent