



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
CIVIL CASE NUMBER 477 OF 2010

CAROLINE NYAKIRANGA NDUNG’U.....1ST PLAINTIFF/RESPONDENT
NUZPHAT A MWINZANGU.....2ND PLAINTIFF/RESPONDENT
BERNISH MWENDWA.....3RD PLAINTIFF/RESPONDENT
MARGARET A OCHIENG.....4TH PLAINTIFF/RESPONDENT
CHARLES MACHOKA.....5TH PLAINTIFF/RESPONDENT
DAVID GOKO NDERITU.....6TH PLAINTIFF/RESPONDENT
HELLEN CHEPCHUMBA.....7TH PLAINTIFF/RESPONDENT
ZEDDY NASERIAN.....8TH PLAINTIFF/RESPONDENT

VERSUS

REGISTEAD TRUSTEES OF TELEPOSTA
PENSION SCHEME.....DEFENDANT/RESPONDENT

AND

BERNARD KARIUKI.....1ST 3RD PARTY
REBECCA LETANGULE.....2ND 3RD PARTY
REMGIOUS OKEYO.....3RD 3RD PARTY
FAITH NJOROGE.....4TH 3RD PARTY
JACQUILINE KEZIA.....5TH 3RD PARTY
BEATRICE KALENDA.....6TH 3RD PARTY

CATHERINE KIRARA.....7TH 3RD PARTY

KENNEDY BWOSI.....8TH 3RD PARTY

JENNIFER OKOTH.....9TH 3RD PARTY

LAWRENCE MUGAMBI.....10TH 3RD PARTY

PAUL M GITAU.....11TH 3RD PARTY

R U L I N G

The application before the court is the Notice of Motion dated the 16th June, 2011 and filed by the Defendant, the Registered Trustees of Teleposta Pension Scheme. The application sought to commit the 3rd parties to jail for contempt of court arising from the latter's deliberate refusal and failure to obey this court's order of 20th January, 2011, ordering them to temporarily vacate the relevant suit premises to facilitate major and very necessary basic repairs of the premises before retaking possession.

The record on clear and careful perusal shows that the application was filed under a certificate of urgency which enabled the court to handle the same the next day on 17th June, 2011, for directions. That projected the application forward to a hearing by me although not without serious delays in between and after it. The application went through the hands of two other judges.

There is no doubt, therefore, that the application and main suit have undergone tumultuous times and occasions, one of which might be this ruling.

As the court perused the file record to be enabled to write this ruling, it observed with hints in the file, that this application for contempt against the Third Parties for knowingly disobeying court orders may have been brought in a hurry and without observing the relevant fundamental procedures. Specifically there is no indication anywhere in the record that the leave to file such proceedings was sought nor in any other way obtained before filing the application proceedings.

In the case of **R Vs County Council of Nakuru, Ex Parte Edward Alera, [2011] eKLR** the court gave a summary of the procedure to be followed when instituting the prosecuting a contempt of court proceedings. It stated inter alia: -

“ it has not, however, interfered with the requirement that leave (was called permission) be obtained before the application is made; that the application for permission must be accompanied by a statement setting out the name, and the description of the applicant, the name, description and address of the contemnor and the grounds upon which its committal is sought; the application for permission must also be accompanied by an affidavit verifying the facts relied on the requirement that the applicant must give notice of the application for permission not later than the proceeding day the Crown Office (equivalent of Attorney-General's Chambers-State law office in the case of Kenya) has been retained...”

It is also the law in Kenya that after such permission has been granted the main application must then be filed within a period of 14 days or the said leave shall lapse. The leave and the affidavit used to support the application for leave, must as well be served upon the contemnor personally together with the main application for contempt unless the court dispenses with any of the, which is rare.

From the record before the court there is, as already stated, no indication that the leave was applied for as above or obtained. The Applicant is not heard to say that he/it indeed applied for the said leave. In the circumstances, and with great sympathy and regret, in probably every such case, the court will find the application premature and fatally incompetent. I find this application premature and hereby strike it out. The record in this case shows a conduct which shows clear disdain to the court's orders. The Third Parties

have probably frustrated the County Council's Health and Safety Rules and Bye-Laws for a long time. They should not be allowed to ignore court orders and that way demonstrate impunity to the rule of law.

To the above end and arising from the said conduct of the Third Parties, this court makes the following orders if the mischief intended to be cleared by the intended repairs still persists: -

ORDERS

- 1. All the eleven Third Parties, their agents, servants, families and relatives shall within a period of 30 days temporarily vacate the relevant premises to facilitate the necessary repairs.**
- 2. All applications arising from this order shall be placed before this court for effective supervision of execution of this order.**
- 3. This matter shall be mentioned before this court on 20th April, 2015 and the Executive officer shall safeguard this file and produce the same on the stated date.**
- 4. Failure to obey and comply with this order shall be taken as direct contempt of this court and the court will deal with the contempt summarily.**
- 5. These orders shall be extracted within 5 days and be served within 5 days by a designated court process-server under the direct supervision of the Chief Executive Officer, Civil Division.**

Dated and delivered at Nairobi this 11th day of February, 2015.

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D A ONYANCHA

JUDGE