



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

MILIMANI COMMERCIAL & ADMIRALTY DIVISION

CIVIL CASE NO. 183 OF 2014

STEPHEN MAINA KIMANGA :::::::::::::::::::: 1ST PLAINTIFF

PATRICK GITHINJI MWANGI :::::::::::::::::::: 2ND PLAINTIFF

FREDRICK NJORO MWANGI :::::::::::::::::::: 3RD PLAINTIFF

HEZRON ONESMUS MAINA :::::::::::::::::::: 4TH PLAINTIFF

FIG TREE HOTEL LIMITED :::::::::::::::::::: 5TH PLAINTIFF

VERSUS

LUCY WATHIRA MWANGI :::::::::::::::::::: 1ST DEFENDANT

JULIUS KARIUKI MWANGI :::::::::::::::::::: 2ND DEFENDANT

JOHN IRUNGU GITHINJI :::::::::::::::::::: 3RD DEFENDANT

RULING

1. The **Notice of Motion** application before the court is dated and filed in court on **27th May 2015** by the Plaintiffs. The application is filed pursuant to Section 1A, 1B and 3A of the Civil Procedure Act and order 51 of the Civil Procedure Rules. The application seeks to secure the following orders:-
 1. *Spent*
 2. *That upon hearing inter-partes, a breaking in order be issued to the Plaintiffs/Applicants against the Defendants/Respondents allowing them to break in and gain access into the 5th Plaintiff's Company's premises in Ngara Area of Nairobi in compliance and to give effect to the orders of this Honourable Court issued on 23.09.2014 and 29.04.2015 respectively.*
 3. *That the said breaking in order be supervised and overseen by the Nairobi Area Country Policy Commander to ensure compliance and maintenance of peace together with the Deputy Registrar of this Honourable Court.*
 4. *That upon (2) and (3) above, the Deputy Registrar do file a report on the exercise with this court to give full effect to the orders of this court issued on 23.09.2014.*
2. The application is based on the following grounds:-
 - i. *That this Honourable Court issued orders on the 23.09.2014 requiring the Defendants to vacate and hand over the running of the 5th Plaintiff Company.*

- ii. *That the same orders restrained the Defendants/Respondents from interfering with the smooth running of the 5th Plaintiff company and gave the Defendants/Applicants 10 days to hand over to the Plaintiffs/Applicants the running of the 5th Plaintiff company.*
- iii. *That the Defendants/Respondents were served with the said orders but persistently ignored and/or neglected and/or refused to obey the said orders and continued to run the affairs of the 5th Plaintiff company.*
- iv. *That subsequently, the Plaintiffs/Applicants filed an application for contempt of court on 10.10.2014, which application was heard and determined and a ruling delivered on the 29.04.2015 with orders compelling the Defendants/Respondents to comply with the orders issued on the 23.09.2014.*
- v. *That the various attempts by the Plaintiffs/Applicants to enforce the orders of 23.09./29014 and 29.04.20215 have been resisted forcefully by the Defendants/Respondents.*
- vi. *That the Applicants have had no access to the 5th Plaintiff since the orders were made on 23.09.2014.*
- vii. *That it is in the interest of justice that the orders sought be granted.*
- viii. *That this honourable court has inherent jurisdiction to ensure efficacy of compliance of its own orders.*

- 3. The application was supported by the affidavit of **Patrick Githinji Mwangi**, dated **27th May 2015** with annexures. The supporting affidavit expounds on the aforesaid grounds.
- 4. The application is opposed by a replying affidavit of the 1st Defendant. The gist of the opposition is that there is no need for the breaking orders prayed for in the application since the Defendants/Respondents have always been ready to hand over the premises to the Applicants in compliance with the orders of this court.
- 5. The counsel for the parties orally submitted before the court on 10th June 2015 with the Respondents still insisting that they are willing to comply and hand over the suit premises except that the Applicants have been barred from the premises by third parties who are shareholders of the 5th Plaintiff Company.
- 6. I have considered the application and opposition to it. I am aware of the orders of this court as stated in the application. Those orders have not been complied with, and the Defendants do not appear to want to comply. Orders of a court are self executing and do not require external forces to be executed. However, where it is apparent that a party is unreasonably and unlawfully attempting to obstruct a lawful process or the cause of justice, a court of law will not hesitate to stamp its seal of authority using the lawful agencies of the state. I am satisfied that the current application for the use of external forces to oversee the execution of this court's order is merited. The Defendant's submission that they are ready to comply with the order of this court is a mere submission which is not supported by any positive conduct on their part.
- 7. This court has the duty to give effect to its orders, and if a party is hell bent to disobey the court orders, the court in exercise of its inhere jurisdiction will ensure compliance. In the case of **EASTER RADIO SERVICE – VS – TINY TOTS CIVIL APPEAL NO. 43 OF 1966** the Court of Appeal stated thus:-

“if a litigant in the cause of the proceedings for the determination of such further matters wilfully disregards an order of the court, the court must have an inherent jurisdiction to make an appropriate order. . .”

- 8. I agree with the above position. The upshot of that agreement is that the current application is allowed in the following terms:-

- a. *A breaking in order be and is hereby issued to the Plaintiffs/Applicants against the Defendants/Respondents allowing them to break into and gain access into the 5th Plaintiff Company's premises in Ngara Area of Nairobi in compliance with, and to give effect to the orders of this court issued on 23rd September 2014 and on 29th April 2015 respectively.*
- b. *The said breaking in order shall be supervised and overseen by the Nairobi Area County Police Commander to ensure compliance and maintenance of peace.*
- c. *Upon the said break in activity referred to in Orders (a) and (b) above the said Nairobi Area County Police Commander shall file a Report on the exercise with this court pertaining to the said exercise.*
- d. *This order shall be served upon the said Nairobi Area County Police Commander personally for his notice.*
- e. *The cost of this application, and those to be occasioned by the said break in above, shall be borne by the Defendants/respondents.*

Orders accordingly.

READ, DELIVERED AND DATED AT NAIROBI

THIS 11TH DAY OF JUNE 2015

E. K. O. OGOLA

JUDGE

PRESENT:

M/s Mwachiro holding brief for Njoroge for the Plaintiffs

Mr. Waweru for the Defendants

Teresia – Court Clerk