



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI COMMERCIAL COURTS
MISC. CIVIL CASE NO 195 OF 2015

EX-SEC PRINTERS LIMITED.....PLAINTIFF

VERSUS

CHATUR PROPERTIES LIMITED.....DEFENDANT

RULING

1. The Notice of Motion dated 14th April, 2015 was filed herein on 30th April, 2015 for orders that:-
 1. **The Respondent, Chartur Properties Limited, be cited for contempt of court in respect of the orders given by Hon. L.W. Kabaria on 8th August, 2014 in Nairobi CMCC No. 2793 of 2014: EX-SEC PRINTERS LTD VS. CHATUR PROPERTIES LTD.**
 2. **That Madatali Saburah Chartur, Hussein Madatali Chatur and Zaba Madatali Chatur, the Directors of the Respondent, be committed to civil jail for such period of time that the Court deems fit.**
 3. **In the alternative, the Respondent herein and/or its Directors be condemned to pay a fine of Ksh.500,000/-.**
 4. **The costs of this application be in the cause.**
2. The brief background to the application is that on the 8th August 2014 the Resident Magistrate, **Hon. Kabaria**, issued orders restraining the Respondent from alienating and/or disposing of the Plaintiff's attached property pending the hearing and determination of the suit. It was further ordered that a mandatory injunction issues compelling the Respondent to put the Plaintiff back into quiet possession of Shops Nos. 7/8, Basement Simba Centre situated on LR No. 209/138/2 on River Road, Nairobi, pending the hearing and determination of the suit.
3. It is the Applicant's case that although the said order was extracted and served on the 17th October, 2014 upon the Respondent's Advocates, the Respondent has not only failed and/or neglected to comply therewith, but has also let out Shop No. 7 to a third party. Accordingly, the Applicant, **Ex-Sec Printers Limited**, moved the Court pursuant to **Sections 1A, 1B, 3A and 63 (c) of the Civil Procedure Act as read with Order 40 rule 3(1), Civil Procedure Rules and Section 5 of the Judicature Act, Chapter 8 of the Laws of Kenya**, for the Respondent to be cited for contempt of Court. The application is supported by the affidavit of **Joseph Mburu Peter**, sworn on 14th April, 2015 to which he annexed the following documents:
 - a. **The application for injunction that was filed before Hon. Kabaria dated 19th May, 2014.**

- b. **The order of injunction that was extracted and served on the Respondent's Advocate and the forwarding letter.**
- c. **Replying affidavit sworn by the Respondent's director, Mr. Madatali Chartur, in which he admitted knowledge of the order aforesaid.**
- d. **Photographs of the two shops.**
- e. **A copy of the Companies Registry search showing the directors of the Respondent Company as at 7th November 2014.**

4. The court record confirms that the instant application was served on the Respondent and that a hearing notice for 21st September, 2015 was similarly served. There having been no appearance for or by the Respondent on the 21st September, 2015, the Court proceeded to hear the Application *ex parte*.
5. From the foregoing, it is indubitable that Hon. Kabaria did issue an injunction on 19th May 2014 putting back the applicant into occupation of the Respondent's Shops No. 7 and 8 situated on River Road Nairobi. It has further been demonstrated by the Applicant that that order has not been complied with to date. Accordingly, the court must now determine whether sufficient cause has been shown for the Respondent to be cited for contempt of court as is sought herein.
6. In the recent case of **Shimmers Plaza Limited Vs National Bank of Kenya (2015) eKLR**, that was relied on by the Applicant, the Court of Appeal had occasion to review the applicable law relating to contempt proceedings from the stand point of **Section 5 of the Judicature Act**, which provides that:

“(1)The High Court and the Court of Appeal shall have the same power to punish for contempt of Court as is for the time being possessed by the High Court of Justice in England, and that power shall extend to upholding the authority and dignity of subordinate Court...”

7. Thus, in determining the merits or otherwise of the instant application recourse must be had to the current English Law on contempt namely, the **Contempt of Court Act of 1981** and the **Civil Procedure (Amendment No. 2) Rules of 2012**. Under the Rules aforesaid a person would be liable for contempt of Court for the following forms of violation:-

- a. **Breach of a judgment, order or undertaking to do or abstain from doing an act.**
- b. **Interference with the due administration of justice.**
- c. **Contempt in the face of the Court; and**
- d. **Making a false statement or disclosure statement.**

8. It is noteworthy that in an application for contempt predicated on breach of a judgment, order or undertaking to do or abstain from doing any act, as is the case herein, it is mandatory for a penal notice to be served simultaneously with the order, and such service must be effected before the expiry of the period to perform the act in question.
9. The Applicant herein has demonstrated that pursuant to an application that was filed under Sections 1A, 1B, 3A of the Civil Procedure Act as read with Order 51 Rule 1 of the Civil Procedure Rules, the Resident Magistrate, **Hon. L.W. Kabaria**, issued an order in the **Chief Magistrates Civil Case No. 2793 of 2014** compelling the Respondent to put the Applicant back in possession of Shops 7 and 8 at Simba Centre situated on LR No. 209/138/2 River Road, Nairobi. It has further been shown that that order was extracted and communicated to the Defendant vide the letter dated 17 October, 2014 (**marked Annex JM-2 to the Supporting Affidavit**). Moreover, in a replying affidavit that was filed before the Court of the Resident Magistrate (**marked JM-3**), **Madatali Chartur**, one of the directors of the Defendant/Respondent deposed that he was made aware of the Court order in October 2014, thereby confirming service of the order, which order had the requisite penal notice appended thereto. That order was subsisting as at 30th April 2015 when this application was filed, in so far as it had not been varied or discharged. Consequently, the Respondent was, at all material times, under obligation to comply therewith.
10. This point was emphasized by the Court of Appeal in the case of **Shimmers Plaza Limited Vs**

National Bank of Kenya (supra) thus;

“... obedience of Court orders is not optional, rather, it is mandatory and a person does not choose whether to obey a Court order or not... The dignity and authority of the Court must be protected, and that is why those who flagrantly disobey them must be punished, lest they lead us all to a state of anarchy...”

The court cited with approval the case of Hadkinson vs. Hadkinson (1952) All ER 567 in which **Romer, L.J.** had this to say to underscore this obligation:

“It is the plain and unqualified obligation of every person against, or in respect of, whom an order is made by a court of competent jurisdiction to obey it unless and until that order is discharged. The uncompromising nature of this obligation is shown by the fact that it extends even to cases where the person affected by an order believes it to be irregular or even void...”

11. Since the Respondent opted not to contest the application, it is plain that there is no justification at all for the failure on its part to comply with the court order. Accordingly, I find **Mr. Madatali Chatur**, who was made aware of the court order on behalf of the Respondent, in contempt thereof. In the result, the Applicant’s Notice of Motion dated 14th April, 2015 is hereby allowed as prayed in Prayers 1 and 4 thereof. It is accordingly directed that summons requiring attendance issues to the said **Madatali Chatur** for further orders by the court in respect of prayers 2 and 3.

Orders accordingly.

DATED, SIGNED and DELIVERED at NAIROBI this 9th Day of October 2015

OLGA SEWE

JUDGE