



**REPUBLIC OF KENYA**

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

**CIVIL SUIT NUMBER 249 OF 2014**

**ROLAND DENZ. ....PLAINTIFF**

**VERSUS**

**KEWAL KRISHNA KHOSLA. .... 1<sup>ST</sup> DEFENDANT**

**KIRAN KHOSLA. .... 2<sup>ND</sup> DEFENDANT**

**SALMA KHOSLA. .... 3<sup>RD</sup> DEFENDANT**

**R U L I N G**

This matter was placed before me for the first time on 2<sup>nd</sup> September, 2014. It was an application by Notice of Motion dated 14<sup>th</sup> August, 2014 and was filed by the Plaintiff who sought the return to him of his domestic goods and appliances which had been seized by the Defendants, allegedly on failure by the Plaintiff to pay rents for the suit premises he occupied which belongs to the Defendants. Plaintiff also sought orders to allow or authorize him re-enter the suit premises to ascertain any other goods remaining therein for the purpose of carrying them away in view of the fact that he and his wife had been forcefully ousted therefrom by the Defendants.

The Plaintiff was represented by Mr. Onyancha while the Defendants were represented by Mr. Oyugi.

Before starting to hear the application, I gave the parties counsel opportunity to explain to the court the facts of the case with a view of finding a possible way of sooner resolving the dispute partially or wholly and that way avoid lengthy battles which would lead to a waste of time and increase of costs to the parties. This engagement by the court was with the parties advocates who had freedom to consult with their clients who were inside the court on issues arising as the court engaged them.

The result was that the advocates agreed to record some consent in court in the presence of their clients. They agreed that notwithstanding the fact that the suit and interlocutory application arising from the suits will proceed, the parties would visit the Pangani Auction Centre where the Defendants had stored the Plaintiff's seized goods for eventual auction and identify and release the goods to the Plaintiffs. The intended release of the goods was on the basis that such would reduce possible damages arising in case from the action of seizing them in the first place if found to be wrongful. The parties also agreed that after the visit to the Pangani Auction Centre, the parties will mention the suit in court on 9<sup>th</sup> September, 2014 to record consents reached at the Centre, if any.

Barely two days later on 4<sup>th</sup> September, 2014 the 2<sup>nd</sup> Defendant placed before me a fresh application dated 3<sup>rd</sup> September, 2014 filed by Defendants in person. The application sought that the application itself be heard ex parte and be certified urgent. It also mainly sought that an earlier application dated 22<sup>nd</sup> August, 2014, be heard during the vacation.

When the above application was placed before me as vacation judge, I observed that the Counsel on record for the Defendants, who was then a Mr. Oyugi, had not been replaced by any relevant notice nor had he himself withdrawn. I also expressly observed that consent orders entered two days earlier cannot be easily contradicted which is what the 2<sup>nd</sup> Defendant was practically doing by appearing to ignore the orders. The court further noting that the original matter was already fixed to come for inter partes mention on 9<sup>th</sup> September, 2014, this later application should for convenience also come the same date. The court noticed no urgency in the later application dated 3<sup>rd</sup> September, 2014, first because it was bringing no newer issues, secondly, because it was being filed by a party in person without explaining why the advocate on record was not involved. Finally, it sought no leave of court to be attended to during the vacation.

Come the 9<sup>th</sup> September, 2014, the matter was placed before Ougo J who made her order as do exist on the record.

On 18<sup>th</sup> September, 2014, the matter was once more placed before me. One Kiran Khosla, the 2<sup>nd</sup> Defendant appeared in person. She declared that she had terminated the services of Nyachoti & Company Advocates, who had come on the record by a Notice of Appointment of Advocate dated 9<sup>th</sup> September, 2014. On this same date, the record shows that Nyachoti & Company Advocates also had filed a Notice of change of Advocates replacing Oyugi and Company Advocates who were apparently still on record until then. Mr. Nyachoti who was in court stated that he still appeared for the 1<sup>st</sup> and 3<sup>rd</sup> Defendant as he had not been served with any Notice of Termination or change of advocates.

Kiran Khosla then applied that the Judge recuses himself because she had lost faith in his court and felt she will not eventually get justice from it. The court decided that she records her reasons for seeking recusal in view of the fact that such an application is usually taken seriously. She then asserted on oath that she had met with the Plaintiff and his wife on 9<sup>th</sup> September, 2014 who claimed that before this court, the Defendants will lose the case 100%, as they, the Plaintiffs, are sure to get every relief they sought in the case. The said Kiran Khosla also stated that on 27<sup>th</sup> August, 2014, the first day in court, the Plaintiff with another lady, had told her that she Kiran Khosla, will go down in this case 100%. She added that this court had also in a different occasion, commented in one of its rulings that she had a tendency to disobey court orders which she felt was not justified and she accordingly felt that the court tended to favour the other side.

The court also allowed the Plaintiff and his wife earlier referred to by the 2<sup>nd</sup> Defendant, to respond to the above assertions made by the 2<sup>nd</sup> Defendant. The 1<sup>st</sup> Plaintiff Roland Denz admitted that he met with the 2<sup>nd</sup> Defendant at the Pangani Auction Centre on 9<sup>th</sup> September, 2014. He however, categorically denied saying that the Defendants will lose the cause 100% or that he as Plaintiff, would win the suit 100%. He claimed on oath, that what he told Kiran Khosla was that she should tone down her arrogance and come down into reality.

The Plaintiff's wife, Symprose Omondi Denz also recorded her statement. She testified on oath that when she and her husband met Kiran Khosla at the Pangani Auction Centre, not only did she abuse her and her husband, but she also abused her lawyers and those of the Plaintiffs. That she had told Kiran Khosla not to abuse other people but instead obey court orders.

Before closing the statements, Mr. Nyachoti, hitherto the advocate for the 2<sup>nd</sup> Defendant, sought leave to record his side of the story. He said he came on record, replacing Mr. Oyugi Advocate on 9<sup>th</sup> September, 2014 and had the privilege to appear in this matter before Ougo, J. He added that since he

came on the record, the 2<sup>nd</sup> Defendant, Kiran Khosla, has sent him abusive and threatening small messages through their mobile phones. He said that he received the last message that morning of 18<sup>th</sup> September, 2014 and that it threatened him of being reported at the Law Society's Disciplinary Committee because he had not released the Defendant's file to them. He further said, Kiran had intimidated and abused him by telling him that his pregnant wife would not easily or normally deliver their baby and that his family will stand cursed while he himself will go down swiftly. Mr. Nyachoti who felt depressed and seriously intimidated, sought the protection of the court.

I have recorded the full sequency of events so that whatever decision I make about recusal sought herein will be better understood. I have carefully considered the said request for recusal, taking into account the reasons recorded by the applicant Kiran Khosla.

Her allegation that the Plaintiff and his wife told her that she will lose the case 100% before me, was directly and expressly denied by the Plaintiff and his wife who also spoke under oath. On my part, I made the comment that she showed a tendency of not obeying court orders, arose from the fact that she was challenging consent orders only a day after the same were recorded before me by her advocate in her presence.

Clearly, she is a person who loses faith in people too fast and too often. That is easily demonstrated by the fact that she has hired and fired two different advocates in such a short period of her case. In the circumstances, and with such temperament it is possible to think that she has lost confidence in me and my court. She appears to rate herself much higher than some of us the common ordinary citizens.

On the other hand, the court sought to know from the Applicant, Kiran Khosla whether she indeed sent the short messages which Mr. Nyachoti complained of as being intimidative and abusive. She admitted that she indeed sent the messages. She, however, argued that the messages which stated that Mr. Nyachoti's wife will not deliver her baby in a regular or normal way, and that his family will stand cursed, or that she will report Mr. Nyachoti to the Disciplinary Committee, were not intimidative, abusive or threatening. Such a stunning response from her, did it for me as the Presiding Judge

In conclusion, I will not contradict her in her perception and conclusions. I requested her on record to undertake not to send Mr. Nyachoti any kind of short message through their phones. She accepted and signed an undertaking. That to this court was good enough.

As to the request for my recusal from this suit, I have already stated above that there are really no good reasons to do so. However, since in her mind she appears to believe that she will not obtain justice before me, although mistakenly in my view, and has gone a long way to broadcast it, I have decided to let her have her way. I hereby recuse myself with great relief.

This matter should, next round, be placed before another Judge in Civil Division. Orders accordingly.

Dated and delivered at Nairobi this 8<sup>th</sup> day of October, 2014.

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**D A ONYANCHA**

**JUDGE**