

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA NAIROBI
HCCA E1151 OF 2023

CHRISTOPHER MAARA
APPELLANT

VERSUS

FRANK WAMBUGU.....
RESPONDENT

(An appeal against the judgment arising out of Chief Magistrate's Court in Nairobi Civil Suit 3651 of 2018 at Milimani Commercial Law Courts before Hon A N Ogonda dated 29th October 2023)

JUDGEMENT

1. This is an appeal from the decision of Honourable Ogonda in which she awarded the Respondent general damages. The brief facts of this appeal which is not contested is that the Respondent who was the Appellants tenant allegedly failed to pay rent and as a results his house was locked. The Respondent filed a case in BPRT and obtained orders for reinstatement but despite these orders, the Appellant proceeded to use area Chief in evicting the Respondent. The respondent returned to the BPRT and obtained another order for reinstatement but still the Appellant refused to comply prompting the BPRT to issue a warrant of arrest against him.

Upon realizing that the Appellant was adamant, the Respondent reported the matter to Kenya National Commission of Human rights. The Respondent obtained an order to allow him access his tool of trade, personal clothing and basic utensils in August 2017 but the house was leased to another person thus depriving the BPRT the jurisdiction to hear the matter. I have read the submissions, proceedings and wish to flag a few things in order to determine this appeal.

2. The Appellant has raised in its submissions the issue that the advocate who commissioned the Respondent documents did not have a practicing certificate. This issue was not raised at the BPRT which initially heard the matter and is now ousted of jurisdiction. This being an Appeal, the Court is mandated to reevaluate the evidence in the Lower Court and not to reopen a case. The issue of practicing certificate had been raised in submissions and the Court cannot for certain determine if true or not because the advocate who is alleged to have commissioned the Respondent documents is not available for cross examination. It is clear that evidence cannot be tendered in submissions.

Rent arrears:

3. The Appellants advocate submitted that the Respondent was in arrears of around six months. In his own evidence the Appellant admitted that he did not file a counter claim on the said arrears and therefore this is not a matter for this Court to decide. The Appeal is basically on what was pleaded in the plaint.

General damages

4. The lower Court was correct in awarding general damages because the Appellant Disregarded Court orders not once or twice but thrice and to defeat Justice at the BPRT which had issued a warrant of arrest, the Appellant after evicting the Respondent leased out the premises to another person. At the time of delivery of the lower Court Judgement, the Appellant was still holding onto the Respondents Items prompting the Court to direct release within 30 days. The action of the Appellant is a clear breach of the Law and an abuse of the Court process and must be punished.

Prove of Items lost/ held by the Appellant;

5. The Appellant must be responsible for his illegal actions. When he decided to use unprocedural means to evict the Respondent and retain his goods in his absence, how can the Court tell exactly what was lost or what was kept? By depriving the Court, a clear evidence on these goods

through his illegal actions, the Appellant must shoulder the blame of being at the mercy of the Respondent. In this case the lower Court directed that he prepares an invoice which in my opinion was very fair.

6. In Conclusion, I find that the Trial Court was correct in its finding and the general damages awarded is commensurate to the level of impunity that the Appellant demonstrated. The upshot of the above is that the Finding of the lower Court is upheld. The Respondent shall have costs of this appeal

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 6TH DAY OF OCTOBER 2025.

**HON. L. P. KASSAN
JUDGE**

In the presence of:

Wamboi holding brief Njuguna for Appellant

Boraza for Respondent

Carol - Court Assistant