



REPUBLIC OF KENYA

ENVIRONMENT AND LAND COURT AT MILIMANI

MISC APPLICATION NO. 18 OF 2018

FRANCIS G. MURIUKI.....1ST APPLICANT

ZACHARIAH N. ONKOBA.....2ND APPLICANT

ZACHARIAH M. MOMANYI.....3RD APPLICANT

NYAGAKA ANYONA OUKO.....4TH APPLICANT

=VERSUS=

CHARLES GEORGE GICHIMU.....1ST RESPONDENT

ELDORET EXPRESS LIMITED.....2ND RESPONDENT

RULING

BACKGROUND

1. The Applicants were operating an eatery located on part of LR No. 209/8412 (suit property) along Wakulima Road in Nairobi which was then owned by the second Respondent, Eldoret Express Limited. The suit property was sold to a third party known as Forward Travellers Limited on 15th December, 2016. In or around 16th December, 2016, the Applicants moved to the Business Premises Rent Tribunal (Tribunal) where they filed a reference in which they named the 1st Respondent as the Respondent. The Applicants then obtained orders restraining the Respondent from interfering with the possession of the Applicants' eatery joint. The orders were obtained on 16th December, 2016.

2. The orders which were obtained on 16th December, 2016 seem not to have been obeyed. The Applicants moved to the Tribunal on 26th April, 2017 where the Applicants were allowed to remove the iron sheets which were blocking their access to the premises and hand them to the landlord. In the meantime, the 1st Respondent who was the only Respondent in the Tribunal matter filed a Replying Affidavit to the Applicants' application in which he stated that he had been wrongly sued as a landlord and that the suit property had already been sold to a third party and that therefore the Tribunal had no jurisdiction to entertain the dispute.

3. The Tribunal later on 19th December, 2017 made a finding that it had no jurisdiction to entertain the dispute in view of change of ownership of the suit property and given the fact that the Applicants were not in physical occupation of the suit property. The Applicants were advised that they seek their remedy in a civil Court

APPLICANT'S APPLICATION

4. On 12th February, 2018, the Applicants filed a Chamber Summons dated 9th February, 2018 in which they seek to have the 1st Respondent committed to civil jail for a period of six months for having disobeyed the Court's orders given on 16th December, 2016 and those of 26th April, 2017.

5. The Applicants contend that they were tenants of the 1st Respondent operating an eatery on part of the suit property. On or about 10th December, 2016 the 1st Respondent blocked access to their premises. They moved to Court on 16th December, 2016 and obtained orders. Despite the orders being served, the Respondent disobeyed the same. The disobedience of the orders was reported to the OCS, Kamukunji Police Station who advised that the dispute was of a civil nature and that he could not help.

6. The Respondent went ahead to put a perimeter fence which enclosed their premises and were totally unable to access the same.

FIRST RESPONDENT'S RESPONSE

7. The 1st Respondent opposed the Applicants' application through a Replying Affidavit sworn on 18th May, 2018. The 1st Respondent contends that the Applicants application is an abuse of the Court process; that he never blocked the Applicants from their premises; that he was wrongly sued; that the suit property belonged to the 2nd Respondent who was never joined in the proceedings before the Tribunal and that the Applicants application has not met the threshold for grant of the orders sought.

8. The 1st Respondent further contends that as the suit property had been sold to Forward Travellers Limited on 15th December, 2016 he was not in a position to comply with the orders as he was not the landlord and that as the Tribunal later found out, it had no jurisdiction to entertain the matter.

SECOND RESPONDENT'S RESPONSE

9. The 2nd Respondent opposed the Applicants' application based on grounds of opposition filed in Court on 2nd July, 2018. The 2nd Respondent contends that its joinder in these proceedings is malicious as it was not party to the proceedings before the Tribunal. The 2nd Respondent further contends that no orders were served upon it and therefore it cannot be held to be in contempt of any order.

ANALYSIS

10. I have carefully considered the Applicants' application as well as the opposition to the same by the Respondents. I have also considered the oral submissions made by the parties during the hearing. The only issue for determination is whether the Applicants have proved that the 1st Respondent is in contempt of the Court orders.

11. There is no contention that the suit property was sold to a third party on 15th December, 2016. The first orders which were given by the Tribunal were given on 16th December, 2016. As at this date, the 2nd Respondent was not the owner of the suit property. Even if this was the case, there is no evidence that either the 1st or the 2nd Respondents were served with any orders. The other orders which the 1st Respondent is said to have disobeyed were those issued on 26th April, 2017. As at this time, it had been made clear that the suit property had changed hands and the purchaser was attending the proceedings as an interested party. There is therefore no way those orders would have been directed at either the 1st or 2nd Respondent. There was no tenant/landlord relationship between the Applicants and the Respondents. The Court later found that it had no jurisdiction to entertain the matter as its jurisdiction stems from parties who have a tenant/landlord relationship. As there was none, between the Applicants and the Respondents as at the time the orders were given, the Respondents cannot be held liable for disobedience of orders which could not legally bind them.

CONCLUSION

12. The Applicants were aware of this position. Despite knowledge of this and more particularly having known that the Tribunal had stated that it had no jurisdiction, they moved to Court to file this application which has no basis. I therefore proceed to dismiss the Applicants' application with costs to the Respondents.

It is so ordered.

Dated, Signed and delivered at Nairobi on this 25th day of April, 2019.

E.O.OBAGA

JUDGE

In the presence of Makau for 1st Respondent, Mr. Nyakeriga for Applicants and Mr. Nyakundi for Mr. Macharia for 2nd Respondent.

Court Assistant – Hilda

E.O.OBAGA

JUDGE

25.4.2019