



REPUBLIC OF KENYA

ENVIRONMENT AND LAND COURT AT NAIROBI

ELC SUIT NO. 605 OF 2015

LIMON INVESTMENTS LIMITED.....1ST PLAINTIFF/APPLICANT

LIMON ENTERPRISES.....2ND PLAINTIFF/APPLICANT

=VERSUS=

NAIROBI CITY COUNTY.....DEFENDANT/RESPONDENT

RULING

1. This is a ruling in respect of a Notice of Motion dated 8th March, 2018 in which the Plaintiffs/Applicants want Nairobi City County/Respondent to be found in contempt of a Court order given on 20th November, 2015. The Applicants had filed a suit against five individuals and Nairobi City County. The suit against the five individuals was withdrawn. The only Defendant which remained is the Respondent.

2. The suit by the Applicants had sought a permanent injunction to restrain the five individuals who were hawkers from displaying their wares outside the Applicant's shops at Eastleigh area in Nairobi.

The Applicants also sought for a mandatory injunction directed at the Respondent to remove the hawkers from outsider their shops. The hawkers were later removed by the Respondent.

3. After the removal of the hawkers, the Applicants employees started displaying their wares outside their shops at the same time selling from inside the shops. The Respondent's officials came and confiscated the Applicant's wares and arrested one of their employees. The Applicants contend that they filed ELC Suit No. 605 of 2015 against the Respondent and that the Court issued orders directing release of the Applicants' wares and ordering that the Applicants be allowed to display their wares outside their shops for sale.

4. The Applicants contend that the arrest of their employee and confiscation of their wares has caused the Applicants financial loss and inconvenience. The Applicants argue that they had to pay Kshs.5000/= bond for the release of their employee who had been arrested.

5. The Respondent who had been served with the notice of motion neither filed grounds of opposition nor replying affidavit. The motion is therefore undefended. The parties were directed to file Written Submissions. The Applicants filed their submissions on 8th February, 2019.

6. I have considered the Applicants' application as well as the submissions filed. This being an application for contempt, the Applicants are expected to demonstrate that there was a valid Court order given; that the order directed the Respondent to do or not do a certain act; that the order was served upon the Respondent or that the Respondent had knowledge of the same and that the Respondent wilfully disobeyed the order.

7. In the instant case, there was a consent order recorded by the Applicants lawyer and the Respondent's lawyer on 20th November, 2015. At number two of the consent the Respondent was directed to grant the Applicant the requisite permits to enable them to effectively conduct their businesses both inside and outside the designated shops including the alley on Eastleigh 12th Street. This order was by consent and there was therefore no need to serve. The Respondent was aware of it as can be demonstrated by an internal memo from the Respondent's official annexed to the Application. The only issue for determination is whether the Respondent wilfully disobeyed the said order.

8. There was no evidence tendered by the Applicants that they were granted permits to operate their businesses outside their premises and in the alley on Eastleigh 12th Street. Without evidence that the Applicants had been given permits to operate outside their shops, there is no way the Court can assume that the order was disobeyed. The Applicants claim that they came to Court and that the Court ordered that they continue operating their businesses from outside their premises. I have perused the Court file and cannot see where the said order was made.

9. The arrest of the Applicants' employee is alleged to have occurred on 27th February, 2018. The arrested employee was to appear in Court

on 28th February, 2018 to face a criminal charge. The details of the criminal charge are not given. Contempt of Court proceedings are quasi criminal in nature. A person may lose his liberty. It is therefore necessary that the offence be proved. In the instant case, I do not find that the Applicants have proved that there was contempt of the Court order. I therefore find that the Applicants application cannot succeed. The same is hereby dismissed with no order as to costs.

It is so ordered.

Dated, Signed and delivered at Nairobi on this 27th day of June, 2019.

E.O.OBAGA

JUDGE

In the presence of Mr. Migere for Mr. Ochola for Applicants.

Court Assistant Hilda