



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT NAIROBI**

**ELC MISC. CASE NO. 87 OF 2019**

**JOHN KAMAU T/A MARAGI ELECTRONICS.....1<sup>ST</sup> APPLICANT**

**E. R. GITATA T/A**

**SUPER HOME ELECTRONICS.....2<sup>ND</sup> APPLICANT**

**GEORGE NJOGU WAKIBI T/A**

**SEVEN INN.....3<sup>RD</sup> APPLICANT**

**JULIUS MURIUNGI T/A**

**KIORU PROVISIONAL STORE.....4<sup>TH</sup> APPLICANT**

**FRANCIS MWANGI NJUKI T/A**

**MUKORE TRADING COMPANY.....5<sup>TH</sup> APPLICANT**

**VERSUS**

**OFFICER IN CHARGE OF STATION KAMUKUNJI POLICE STATION**

**AFFEY MOHAMED ABDI.....1<sup>ST</sup> RESPONDENT**

**CATHERINE NDUTA KABUE.....2<sup>ND</sup> RESPONDENT**

**CHEGE KANYI.....3<sup>RD</sup> RESPONDENT**

**PETER MWANGI WARUI.....4<sup>TH</sup> RESPONDENT**

**ISAAC MWANGI MUGO.....5<sup>TH</sup> RESPONDENT**

**MWANGI MBUTO.....6<sup>TH</sup> RESPONDENT**

**GIKOE ENTERPRISES.....7<sup>TH</sup> RESPONDENT**

**OAKLAND DEVELOPERS LTD.....8<sup>TH</sup> RESPONDENT**

**RULING**

The Applicants seek to have the Respondents held to be in contempt of the orders made in **Nairobi Business Premises Tribunal (BPRT) Case Numbers 172 and 177 of 2019**, for having been served and made aware of the orders which the Applicants claim the Respondents disobeyed. Further, the Applicants seek to have Catherine Nduta Kabue and Julius Macharia Maina being directors of the 8<sup>th</sup> Defendant, together with the Officer in charge of Kamukunji Police Station committed to civil jail for six months.

The Applicants claim that they were controlled tenants within the meaning of the Landlord and Tenant (Shops, Hotels and Catering Establishments) Act of L.R. No. 209/2548, situated on the junction between Munyu Road and Luthuli Avenue in Nairobi. They claim to have been running their businesses on the suit premises from the 1960s and paying rent to the landlord and maintained that their tenancies have never been terminated by the landlord. At the time they filed this cause, they were paying rent to the agent of the 3<sup>rd</sup> to 6<sup>th</sup> Respondents known as Gikoe Enterprises. Previously, they paid rent to Njumbi Enterprises.

When the 2<sup>nd</sup> to 6<sup>th</sup> Respondents served notices of intention to increase rent on the 1<sup>st</sup> Applicant, he filed a reference before the BPRT. The Applicants contended that while their references were pending before the BPRT, the Respondents started arranging to evict them. The Applicants obtained an injunction restraining the Respondents from evicting them from the suit premises pending hearing of the application on 11/4/2019. The Officer Commanding the Kamukunji Police Station (OCS) was to ensure the order was complied with and that peace prevailed. The Applicants averred that the Respondents were served with the orders the BPRT made on 21/2/2019 and that despite being aware of the orders they continued to disobey them.

The Applicants further claimed that on being served with the orders made on 21/2/2019, the 3<sup>rd</sup> to 6<sup>th</sup> Respondents got the 2<sup>nd</sup> Respondents to file **Milimani CMCC No. 1178 of 2019 – Catherine Nduta Kabue v John Kamau t/a Maragi Electronics and 5 others** in which she obtained orders compelling the Respondents to vacate the suit premises to enable renovation and the Respondents were to be let into the premises after the premises had been renovated. The order clarified that it was not an eviction order. The 2<sup>nd</sup> Respondents did not serve the application on the Applicants who are named as the Defendants in that suit. The 2<sup>nd</sup> Respondent further obtained orders on 29/3/2019 directing the Defendants to vacate the premises in 14 days or be evicted for purposes of allowing the Plaintiff to renovate and improve the premises. The Applicants contended that the 2<sup>nd</sup> Respondent failed to disclose to the Chief Magistrate Court that the BPRT had earlier issued orders restraining their eviction from the suit premises.

The 2<sup>nd</sup> Respondent obtained another order on 2/4/2019 for the eviction of the Applicants from the suit premises and started evicting the Applicants. The Applicants claimed that the 2<sup>nd</sup> to 6<sup>th</sup> Respondents removed the doors from the suit premises on 15/4/2019 exposing the Applicants' stock in trade to thieves and making it impossible for the Applicants to carry on their trade. The Applicants obtained an order from the Chief Magistrate's Court on 18/4/2019 staying the court's earlier orders issued to the 2<sup>nd</sup> Respondent. On being served with these orders, the Respondents changed their advocates and withdrew the suit before the Chief Magistrate's court on 24/4/2019. The Applicants' attempt to get police assistance to enforce the order were unsuccessful. The Applicants contended that the 2<sup>nd</sup> to 6<sup>th</sup> Respondents had disobeyed the orders issued on 21/2/2019 which act the Applicants contended undermined the rule of law and the authority of the court.

Erick R. Kitata swore the verifying affidavit in support of the application for contempt of court orders. He attached various receipts issued by Gikoe Enterprises to the Applicants for the payment of rent and other receipts issued by Njumbi Enterprises Limited. He also attached a copy of the reference in **BPRT case number 750 of 2017** complaining about the landlord's refusal to accept rent. He produced a copy of the landlord notice to terminate the tenancy issued on 17/12/2017 and 19/12/2017. He attached a copy of the tenants reference to the tribunal dated 16/2/2017. He attached a copy of **BPRT case No. 763 of 2017** filed

by the 1<sup>st</sup> Applicant against Gikoe Enterprises.

The order issued by the Chairman of the BPRT on 5/10/2017 in **BPRT Case Numbers 744 and 750 of 2017** restrained Gikoe Enterprises from evicting the 2<sup>nd</sup> and 5<sup>th</sup> Applicants. He produced a copy of a notice issued by Oakland Developers Limited on 10/2/2019 directing the tenants to vacate the suit premises. The Applicants have not shown the nexus between the 2<sup>nd</sup> Respondent and Gikoe Enterprises who were sued as the Respondents in Tribunal Case Numbers 744 and 750 of 2017.

The order issued on 21/2/2019 in BPRT No. 172 and 177 of 2019 restrained Oakland Developers Limited and Njumbi Enterprises Limited from evicting the 2<sup>nd</sup> to 5<sup>th</sup> Applicants from the suit premises. The Applicants attached copies of the pleadings filed in **Milimani CMCC no. 1178 of 2018**. There is no evidence of service of this order on the 2<sup>nd</sup> Respondent or on Gikoe Enterprises.

Julius Macharia Maina, a director of the 8<sup>th</sup> Respondent swore the replying affidavit opposing the contempt of court application. He denied violating the BPRT orders issued on 21/2/2019 and stated that they were not parties to that suit. He averred that the 8<sup>th</sup> Respondent started managing the tenants on the 2<sup>nd</sup> floor of the premises from November 2018 and that it does not manage the ground floor where the Applicants' businesses were situated. He deponed that the tenants were asked to vacate the suit premises to pave way for the renovation of the premises. He averred that the 8<sup>th</sup> Respondent did not participate in evicting the Applicants from their business premises and added that the 8<sup>th</sup> Respondent was never served with the orders from the BPRT.

The Applicants filed submissions which the court has considered together with the authorities they relied on. The Applicants submitted they had established on a standard higher than a balance of probability that the Respondents committed contempt by disobeying the BPRT orders prohibiting the 2<sup>nd</sup> to 9<sup>th</sup> Respondents from evicting the Applicants from the business premises and directing the 1<sup>st</sup> Respondent to enforce the order against the 2<sup>nd</sup> to 9<sup>th</sup> Respondents. The Applicants submitted that the order was directed at the 3<sup>rd</sup> to 6<sup>th</sup> Respondents while the 2<sup>nd</sup> and 8<sup>th</sup> to 10<sup>th</sup> Respondents were their agents who despite being made aware of the order participated in the eviction of the Applicants.

When Dr. Kamau Kuria highlighted the submissions he clarified that the Applicants seek orders against the 2<sup>nd</sup> Respondent and that the Applicants were not seeking the committal of the 3<sup>rd</sup> to 6<sup>th</sup> Respondents to civil jail.

The 1<sup>st</sup> Respondent did not file a response to the application. Looking at the facts of this case, the court agrees with the Applicants that the 2<sup>nd</sup> Respondent has engaged in actions that demonstrate that she has abused the court process. This is shown by the filing of Milimani CMCCC No. 1178 of 2018 which was withdrawn after the Applicants obtained orders staying the earlier orders issued in the suit.

The Applicants contend that the Respondents disobeyed the BPRT orders and were in contempt of yet they failed to prove that the Respondents were served with the orders issued by the BPRT. There is no evidence to show that the Respondents were served with the court orders and that they went ahead to disobey them after being made aware of the orders.

The court declines to issue the orders sought by the Applicants in the application dated 27/5/2019. There will be no order as to costs.

Dated and delivered at Nairobi this 13<sup>th</sup> day of December 2019.

**K. BOR**

**JUDGE**

**In the presence of: -**

Mr. Karanja Munyori for the Applicants

Mr. A. Kamau for the 1<sup>st</sup> Respondent

Mr. K. Gichuhi holding brief for Mr. Ogutu for the 8<sup>th</sup> Respondent

Mr. V. Owuor- Court Assistant