



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MERU

ELC CASE NO. 44 OF 2017

MICHAEL KUNGU KIGIA.....APPLICANT

VERSUS

MERU TEACHERS HOUSE LTD DIRETORS

EDWARD DICK MUGAMBI (Managing Director).....1ST RESPONDENT

ELIUD MBAABU.....2ND RESPONDENT

SEVERINO MUTIRIA.....3RD RESPONDENT

JOSEPH MUTUMA.....4TH RESPONDENT

JOSEPH KIRIMA.....5TH RESPONDENT

ELIZABETH ANDREW.....6TH RESPONDENT

HELLEN KAJUKI.....7TH RESPONDENT

SOLOMON NJERU.....8TH RESPONDENT

FRANCIS MACHARIA.....9TH RESPONDENT

DANIEL M'INYINGE.....10TH RESPONDENT

ROBERT MIRITL.....11TH RESPONDENT

AYUB MWITI KIUGU

(KIUGU ELECTRICAL ENGINEERING).....12TH RESPONDENT

JULIUS MWITI K. RINYURU (BOOKSHOP).....13TH RESPONDENT

RULING

BACKGROUND:

1. A plaint was filed herein on 13.02.17 along with an application (under a Certificate of Urgency). When the application was presented before me, I noted that the documents were not legible and I directed Plaintiff to file fresh legible documents. He filed the next set of the Plaint and an application on 24.02.17.

2. Soon thereafter a Preliminary Objection was filed by the defence on 03.04.17.

3. On 19.04.17, the Court gave direction for the preliminary Objection and the Notices of Motion to be heard by way of Written Submissions.
4. On 11. 07.17, the Court was informed that parties were pursuing Alternative Dispute Resolution Mechanisms (ADR), but on 02.10.17, defence Counsel informed the Court that he was opposed to settlement in the matter as ADR had broken down in this particular case. Plaintiff requested the matter to be taken to Judge Gikonyo of Meru High Court. The Court gave a date for further directions on 30.10.17.
5. On 30.10.17 Plaintiff averred that parties had settled and there was a consent to that effect. He had no such consent.
6. Defence counsel on the other hand averred that this is an ELC matter and it is not settled.
7. The Court gave a date for Ruling as parties had filed submissions pursuant to the court's orders of 19/4/2017.
8. I have agonized to discern the information which the plaintiff is trying to put across in his submissions without much success. The grammatical errors are so glaring, that it is extremely difficult to even summarize the submissions. In the final analysis I have taken the route of reproducing much of the submissions in verbatim for purposes of the record.
9. This Ruling is hence in respect of the Preliminary Objection of 03.04.12 and the application of 24.02.17.

DEFENCE SUBMISSIONS

10. In respect of the preliminary objection dated 3rd April 2017, the defence wholly relies on the grounds in support thereof.
11. The defence has set out the prayers sought in the Notice of Motion dated **13/2/2017** as follows;
 1. **That the Honourable Court do issue an order to commit respondent to prison for a period of six(6) months or for such period as this Honourable Court deems necessary for being in contempt of Court orders for disobeying purporting being owners of TOWN / PLOT B11/152 ROOM G2 SINCE 1980 commencing date as Kenya National Union of Teachers and breaching orders dated 27th /5/1991 in case 80/1991 by Justice S.O OGUKU Judge and consent orders issued by Justice R.KULOBA Judge in High Court Case No. 180 / 1991 a matter that is before this Court on 7/9/2013 and no breaking order.**
 2. **That the respondents in contempt of Court orders issued on 24/10/2000 Justice S.A OMWITSA Judge in High Court of Kenya at Meru in finalized case No.339 of 1993**
 3. **That the respondents in contempt in court orders issued on 24/9/1998in CMC 153/1997 by chief magistrate in Meru that permanently removed the Meru Teachers House Ltd from being land lord and property owner of Meru Municipality Plot No. B11 / 152 Room G2 and from being landlord of applicant herein.**
 4. **The respondents in contempt orders issued on 19/4/2002 by chairman of Tribunal case No. 7/2002 with impunity a matter that is before CMC Meru.**
 5. **The respondents in contempt of court orders issued on 20/7/2007 in CMC 793/1999 by Chief Magistrate Meru.**
 6. **The respondents in contempt of court orders issued on 5/5/1999 in Tribunal case No.10/1999 by chairman of Tribunal a matter before court and dated 5/4/2016 before chief Justice DAVID MARAGA for Directions.**
 7. **The respondent in contempt of court orders issued by chief magistrates Meru on 16th /8/2011 (not to evict tenant) in CMC 153/1997.**
 8. **The respondents in contempt of court orders issued by Justice P.M. NJOROGE on 19/8/2013 that I disobeyed in High court civil appeal 246/2013 a matter that is before this court.**
 9. **The respondents in contempt of court orders issued on 13th 9,2013 by Justice H. I. ONGONDI Judge of High court civil appeal No. 78/2012.**
 10. **The respondents consented on 17/3/2009 in tribunal case no. 14/2005 when applicant filed a contempt application against the chairman of business premises rent tribunal Nairobi that they had that jurisdiction to be entertained since court orders issued on 24/9/1998 in CMC 153 /1997 were inforce and consent orders of 27/5/1992 in High court case No. 180/1991 were force.**
 11. **The Honourable court do issue an order against the respondents to file replying affidavit and defense in this suit.**
12. The defence has further captured the plaintiffs claim set out in the plaint dated **13/2/2017** as follows:
 - a) **The Honourable court do issue an order to commit defendants to prison for a period of six(6) months or for such a period as this Honourable court deems necessary for being in contempt of court orders for disobeying purporting to owner of Meru Town plot B11/152/ROOM G2 as they breached orders issued on 27/5/1991 and consent orders on 27/5/1992 in High Court**

Case No. 180/1991, Court orders issued on 24/9/1998 in CMC 153/1997, Consent orders of 17/3/2009 in Business Premises Rent Tribunal Case No. 14/2005 and other Court orders mentioned in this plaint.

b) The Honourable Court do issue an order to vacate all cases /applications filed / caused to be filed by plaintiff in lower Court Meru and High Court at Meru/Embu/Nairobi since 24/9/1998 orders in CMC 153/1997 as lacked jurisdiction on Meru Town plot B11 /152/ROOM G2 as on 10/7/2014 a Judge disqualified himself from High Court civil appeal No. 246/2013 proofing court orders issued on 8/8/2013 in the same file remaining null and void and therefore this is the record of cases before Chief magistrate in Meru that defenses filed are null and void:

1). CMC 130/2005

2). CMC 123/2013

3). CMC 153/1997

4). CMC 174/2009

5). MISC. Application No. 29/2010

6). MISC. Application No. 20/2011

7). MISC. Application No. 20/2010

8). MISC. Application No. 38/2011

9). MISC. Application No. 57/2015

10). MISC. Application No. 2/2016

11). MISC. Application No. 3/2016 and High Court Civil appeal No. 246/2013, High Court Civil appeal No. 78/2012, High Court Misc. application No. 4/2016, Misc. application No. 13/2011/ misc. application No. 145/2012 (Nairobi), misc. application No. 94/2011, High Court case No. 20/2016, and High Court Civil appeal No. 126/2009(all defenses be vacated due to lack of jurisdiction).

c) Court do issue an order that 13th defendant be removed from Meru Town plot B11 / 152/ ROOM G2 and plaintiff be reinstated in the premises as was on 7/9/2013

d) Costs to the plaintiff plus interest herein.

13. Defence side avers that the orders sought in the application are similar and/ or are the same as those in the plaint.

14. It is submitted that applicant is seeking for orders that the defendants / respondents are in contempt of Court for allegedly disobeying various Court Orders issued by various Courts and Tribunal in various cases and applications, that applicant is also seeking for orders that the Court do vacate cases filed by the plaintiff in the Lower Court and at **Meru and Embu High Court**, and further orders are sought to remove 13th defendant from **Meru Town Plot B11 / 152/ ROOM G2** and for applicant to be reinstated therein.

15. Defence side submits that such orders are incapable of being granted because this Court cannot deal with cases and / or applications which the applicant / plaintiff has filed and are either pending or finalized by other Courts. Equally, this Court cannot order for reinstatement of the applicant / plaintiff when he was evicted from plot **No. B11 / 152** pursuant to an order made by the Court of competent jurisdiction in **Meru HCA No. 246 of 2013(Now Embu HCA No. 1 of 2015)**.

16. Further, defence submits that this Honourable Court has no Jurisdiction to hear and / or entertain the Notice of Motion dated **13/2/2017** and the prayers sought therein because it was not privy to those various Courts and Tribunal cases and applications and the orders issued therein.

17. If the plaintiff / applicant had any issues and / or problem with those orders he is referring to in the plaint and his Notice of Motion dated **13/2/2017(which defendant submits he didn't have)**, he ought to have appropriately moved those Courts and the Tribunal who dealt with those Cases and applications and issued the said orders.

18. It is also submitted for the defence that in paragraph 3 of the plaintiff /applicant's verifying affidavit, he swears on oath that there is no other suit pending before any Court between him and the defendants, whereas he knows that there has been various cases and miscellaneous applications either finalized and / or pending between him and Meru Teachers House Ltd.

19. Defence submits that the application and the plaint herein are incompetent, frivolous, vexatious, and bad in Law, an abusive of the Court process and a waste of precious judicial time and they should be struck out.

20. Defence has relied on the following authorities in support of their aguments;

21. **KISUMU HCC NO. 396 OF 2000 LEONARD ONYONCHA VERSUS POST BANK CREDIT LTD (UNREPORTED)**, where the plaintiff filed a suit knowing that there is a similar suit pending in Court and proceeded to swear a verifying affidavit to the effect that there is no other suit pending in Court, the Court held that it amounts to an abuse of the Court process and the suit was struck out.

22. **NAIROBI HCC NO. 951 OF 2000 SAMUEL KARUGA KOINANGE VERSUS BULLION BANK LTD (UNREPORTED)** where Justice Ringera as he then was held that misleading the Court is an abuse of the Court process and it is something which the Court cannot tolerate.

23. **KISUMU HCC NO. 120 OF 2003 STANDARD CHARTERED BANK LTD (UNREPORTED)** where the Court held that it is not within the rights of the parties, to engage in multiplicity of suit and it amounts to an abuse of the Court process.

24. **“LILIAN S” VERSUS CALTEX (K) LTD. [1986 – 1989] E.A. 305**, the late Justice Nyarangi Judge of Appeal held inter-alia that the issue of jurisdiction ought to be raised at the earliest opportunity and once raised, the Court is obliged to deal with it straight away. He further held that jurisdiction is everything and once the Court finds that it has no jurisdiction; there is no need to continue proceedings pending other evidence.

25. The defence has also made reference to the provisions **Section 6 and 7 of the Civil Procedure Act Cap 21 Laws of Kenya** deals with the rule of subjudice and resjudicata.

26. Defence has urged the court to refer to **paragraph 14(i) to (xxviii)** of the replying affidavit sworn by one **Edward Dick Mugambi on 12/4/2017** and filed in Court on **13/4/2017** in which he has deponed in details and annexed the relevant documents (**where applicable**) showing the status of all the matters which the plaintiff / applicant has referred to in his application and in the plaint. Further, the court has been urged to see **paragraph 50(1) to (xxiv)** of the defence dated **27/3/2017**.

PLAINTIFFS SUBMISSIONS

27. Plaintiff states that he became a tenant of Kenya National Union of Teachers on 30th April 1986 and at no time was he a tenant of respondent except when they forged lease agreement as were removed being landlord and owners of Meru Town Plot B11/152 IB Court Orders of 24.9.1998 and permanently for 8 years and they left the premises only to use back door purported to be landlords as they filed case No 339 of 1993 at High Court of Kenya that was dismissed on 24.10.2000 hence no appeal up to date 2017, that makes their defence Res-judicata .

28. Plaintiff further states that on 1991, respondents carried out illegal distress, and so plaintiff referred the matter before Court as High Court case no 180 of 1991, Court orders were issued on 27.5.1991 by justice S.O Oguk Judge, orders obtained remained in force, unchallenged nor set aside.

29. That on 27.10.1992 Justice R. Kuloba issued consent order in High Court case No. 180 of 1991 that are in force, varied, unchallenged nor purged by respondents that are disobeyed and therefore when were they discharged so that respondents carried illegal distress on the Business or respondent on 7th September.

30. However the respondent issued a notice to terminate tenancy through their advocate M/S Mukira Mbaya Advocate Meru on 8th April 1999 that was referred to tribunal on 5th May, 1999 reference No 10 of 1998 orders that firm of Nyaga Nyamu 7 Co. Advocates admitted respondents were not landlords nor property owner and withdraw the notice that took effect on 5.5.1999 and therefore any notice issued after 5.5.1999 is null and void. On 1999 respondents filed CMC 793/1999 purporting as landlords that was dismissed on 20th 2007 hence no appeal up to date 2017. On 25/7/2005 respondent purported to be landlords issued notice that was dismissed on 17.3.2009 by tribunal where advocate and his clients (respondent) were warned had no jurisdiction nor Power of Attorney on Meru Town Plot BII/152 Room G2 by chairperson of tribunal.

31. In short the respondents were strangers as this Honourable Court has noted, have disobeyed Court orders with impurity having made even Chief Magistrate Gilbert Ochieng dismissed from judicial Service Commission of Kenya as purported to be on record in CMC 153 of 1997 and even now are misleading High Court Judge on irregular and illegal matters before High Court to obtain orders through back door. This is an Honourable Court of Law as shall note respondents are in contempt of Court orders, have no respect to Rule of Law and defence filed is Res judicata.

32. Plaintiff further submits that respondents as indicated in their statement of Edward Dick Mugambi dated 27.3.2017, caused the plaintiff to protect his Hotel Business and Saloon Business/ or defamation of his name from being unlawful executed and filed the same suits/ or referred the unlawful notices to tribunal that all of them were dismissed on 8/8/2012 by tribunal in tribunal case No. 10 of 1999 including notice issued on 24.2.2012 as reference No. 16 of 2016 that through concealment of materials facts and issues on Court Orders were issued hence were vacated by the Justice P.M. Njoroge Judge on 10/17/2014 when understood the issues.

33. Plaintiff wishes to bring to the attention of the court the authorities annexed and especially Succession Cause No. 40 of 2006 paragraphs 8 and 16, “a person who, knowing of an injunction or order of stay, willfully does something or causes others to do something to breach the injunction or interferes with the stay is liable to be committed for contempt of court as such a person has by his conduct obstructed Justice.” Paragraphs 17 and 18 (1) (2) and requested the Honourable Court to order respondents to restore the plaintiff to the premises that occupied before 7/9/2013 and pay Kshs. 1,150,010/= for properties destroyed /or confiscated by respondents with specified time (as a condition) Civil appeal No. 324 of 2005 do rely on Judgment, **Kenya Law in the High Court of Kenya at Nairobi (Milimani Law Courts) Misc. Application No. 93 of 2013 (JR)**.

34. Plaintiff relies on the whole authority and especially paragraphs 14, 15, 16, 17, 18, 19, 20, 22, 23 and 24 as Honourable Court shall see

respondents issued notices and many cases in law Court and High Court that were dismissed by Tribunal with all motive and destroying plaintiff's Business and cause Judges and Magistrates to issue illegal orders.

35. Filing of determination or order in Court Republic of Kenya at Nairobi December 24, 2011 M'Anmgawa J.R Onyancha J.Jack and Jill Supper Market original applicant versus V.M Ngunjiri original respondents Civil Appeal No. 710 of 2009. Plaintiff relies on the whole referred matter in this authorities (that since 24/9/1998 respondents breached court orders issued).

36. ISSUES that this Honourable Court is asked to find the respondent acted unlawfully and if this Honourable Court doesn't act the respondents shall proceed to continue and disobey court orders with impunity as had no jurisdiction or power of attorney to levy distress and mislead this court and by now shall make more judicial officers to suffer if are not committed to jail for contempts as they continue with dismissed matter before Chief Magistrate Meru, and High Courts of Kenya at Meru, Embu and Nairobi.

37. In conclusion, plaintiff has submitted that, this is one of the highest Court on the land and **the said prayed orders were issued by Judges, Magistrates and Tribunal and were not issued in vain** or papers so as to be disobeyed by respondents since 24/9/1998 orders in CMC 153 of 1997 matter proceeding before Court and is essential for the maintenance of rule of law and order that the authority and the dignity of Courts are upheld all the time.

38. The issue is why respondents were filing so many cases since 2005 to 2013 is only to use Court orders so as to root the members money, plaintiff do request this Honourable do allow the application dated 13/2/2017 and the suit commit the respondents to civil jail for contempt as such issues should never happen in Meru or Kenya by strangers purporting to be landlords without any evidence to Court with costs to plaintiff.

DETERMINATION

39. I have found it necessary to first deal with the issue of the preliminary objection on account of the fact that in the event the preliminary objection is successful, there may be no need to make a determination on the application.

40. The issues for determination are, whether this Court has a jurisdiction to hear the matter, and whether the Plaintiff has established a cause of action.

41. What is a Preliminary objection?, in "*Mukisa Biscuit Manufacturing Co. Ltd Vs West End Distributors Ltd (1969) E.A 696* it was held that:-

"A preliminary is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion..."

Jurisdiction

42. It is quite clear that Plaintiff has had very many cases. It is also clear that some of those cases are still pending in Court.

Order 4 rule (1) (f), of the civil procedure rules provides that **"The plaint shall contain.....averment that there is no other suit pending and that there have been no previous proceedings in any court between the plaintiff and the defendant over the same subject matter..."**

43. A litigant is therefore required to disclose the cases he has while filing the Verifying Affidavit. In his Verifying Affidavit, Plaintiff has stated that:

"there is no other suit pending before any Court between me and Defendants".

44. I fail to understand why Plaintiff would make such an averment on oath only to go ahead and give a detailed account of the cases he is having before various Courts.

45. Of great interest is the averment made by the Plaintiff in paragraph 23, 24 and 25 of his affidavit as well as paragraph f of the Plaint dated 13.02.17. In his submissions he has stated that **the said prayed orders were issued by Judges, Magistrates and Tribunal and were not issued in vain.** Plaintiff is therefore admitting the existence of these other suits. In summary Plaintiff admits that he lodged an appeal No. 246/13. He had been evicted from the plot No. B11 152 Room G2 and he wants to be reinstated back. The Judge handling this appeal disqualified himself in the case.

46. According to the defence the appeal Meru HCA 246/13 in now Embu HCA No.1 of 2015, an averment not denied by Plaintiff.

47. I find that the Affidavit Verifying the correctness of the particulars in the plaint is not in tandem with the said particulars. .

48. On the issue of jurisdiction, I find that this this matter has been filed in contravention of the provisions of section 6 and 7 of the Civil Procedure Act and Order 4 of the Civil Procedure Rules. The Preliminary Objection succeeds on this point.

Whether plaintiff has a cause of action before this court

49. For a cause of Action to arise, one must establish the right and then demonstrate that that right has been violated.

50. Plaintiff desires to be reinstated back to the premises in question. However, as submitted by the defence, this Court is not privy to the deliberation before the various courts. Plaintiff is not capable of pin pointing when the cause of action arose as his claim is scattered in the myriad of cases before the tribunals Magistrates Courts and High Court. The defence has listed a record of 37 cases!!, and the Plaintiff has not rebutted this claim.

51. In Plaintiff's Submissions, he poses this question; **The issue is why respondents were filing so many cases since 2005 to 2013?** . I find it rather strange that it is the plaintiff who is asking this question, yet he is the one who has brought forth this suit against a background of so many other cases.

CONCLUSION

52. In **Josephat Kipchirchir Sigilai vs. Gatab Sanik Enterprise Ltd & 4 others civil Appeal no. 98 of 2003**, it was stated that “ **we agree that striking out a suit is a draconian and extreme measure which should only be resorted to in the clearest of cases , where the court after considering all facts and circumstances of the case comes to inescapable conclusion that that the plaintiff is abusing the courts process, and that his claim is frivolous, vexatious or scandalous...**” .

53. I find that the authorities cited by the defence are relevant to the issues at hand. This is because there is not the slightest logical explanation by the plaintiff as to why he has filed this suit instead of pursuing relief in the suits where the orders he is seeking are contained or in the appeal.

54. I am therefore in agreement with the defence submissions that the application and the plaint herein are incompetent, frivolous, vexatious, bad in law and are an abuse of the Court processes as well as a waste of precious judicial time.

55. Both Notice of Motion and the Suit filed in two sets, the one of 13/2/2017 and the one of 24/2/2017 are hereby dismissed with costs to defendants.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT MERU THIS 7TH DAY OF JANUARY, 2018 IN THE PRESENCE OF:-

Court Assistant: Janet/Galgalo

Nyamokeri H/B for Nyaga Nyamu for Defendant present

Plaintiff present

HON. L. N. MBUGUA

ELC JUDGE