



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MALINDI

LAND CASE NO. 177 OF 2017

BARBARA RIPAMONTI.....PLAINTIFF/APPLICANT

VERSUS

NEIL WADE.....1ST DEFENDANT/RESPONDENT

RULING

1. By a Notice of Motion dated and filed herein on 4th October 2017, the Plaintiff/Applicant Barbara Ripamonti prays for Orders:-

1.

2. That this Honourable Court be pleased to order the Defendant/Respondent to be committed (to) civil jail and/or detained in prison for a period of not less than (6) months for disobeying the Court Orders of 17th August 2017.

3. That in the alternative the Honourable Court be pleased to order the Defendant/Respondent to pay Kshs 2,000,000/= as a fine and/or the suit property be attached until the suit is determined for disobeying the Court orders of 17th August 2017.

4. The costs of this application be provided for.

2. The said application is premised on the grounds that:-

i) The said Court Order was duly served upon the Defendant/Respondent's Advocate and the Defendant was therefore aware thereof; and

ii) That in total disobedience of the injunctive orders, the 'Defendant proceeded to constructively evict the Plaintiff by blocking access to the suit premises by locking up and placing gravel, disconnecting water and refunding rent for the months of December 2017 and January 2018.

3. In response to the application the Defendant Neil Wade has sworn a Replying Affidavit filed herein on 16th October 2017 in which he denies contravening the Orders issued by this Court on 17th August 2017. The Defendant states that the Plaintiff has rented a cottage that sits on 1 out of 2 acres of land which she accesses through a beach access and only uses the main gate occasionally in which case she telephones the Defendant's caretaker to open the same.

4. The Defendant further avers that throughout the tenancy, the Plaintiff has never sought to access the suit property by car and that she has never been denied access to the suit property at any time.

5. The Defendant denies disconnecting the Plaintiff's water and accuses the plaintiff of causing the water pump that services the property to break down by running the same at a time when there was no water in the tanks. He further denies closing the entrance to the suit premises and states that he was away on the date the Plaintiff claims that she was blocked from accessing the premises.

6. I have considered the application and the response thereto. I have equally considered the detailed submissions placed before me by the Learned Advocates for the parties.

7. In *Econet Wireless Kenya Ltd –vs- Minister for Information & Communications of Kenya & Another (2005)1 KLR 828*, Ibrahim J (as he then was) observed that:-

“It is essential for the maintenance of the Rule of Law and Order that the authority and dignity of our Courts are upheld at all times. The Court will not condone deliberate disobedience of its Orders and will not shy away from its responsibility to deal firmly with proved contemnors. It is the plain and unqualified obligation of every person against or in respect of whom an order is made by a Court of competent jurisdiction, to obey it unless and until that Order is discharged. The uncompromising nature of this obligation is shown by the fact that it extends even to cases where the person affected by the order believes it to be irregular or void.”

8. Contempt proceedings are however quasi-criminal in nature and since the liberty of a person is at stake, the standard of proof is higher than in civil cases. As was reiterated in *Gatharia K. Mititika –vs- Baharini Farm Ltd (1985)KLR 222:-*

“The Courts take the view that where the liberty of the subject is, or might be involved, the breach for which the alleged contemnor is cited must be precisely defined. A contempt of Court is an offence of a criminal character. A man may be sent to prison. It must (therefore) be satisfactorily proved.....”

9. In the matter before me, the Plaintiff is a tenant at the Defendant’s premises known as LR No. 8577/2 Kilifi. It would appear from the averments herein that the property measures two acres and the Plaintiff has rented one half thereof adjoining the beach. The tenancy agreement entered into on 26th January 2017 was for a period of one year renewable annually.

10. By an email sent to the Plaintiff on 1st June 2017, the Defendant gave notice to the Plaintiff to vacate the suit premises on the basis that he had procured a buyer therefor. Aggrieved that she had spent considerable amounts of money to improve the premises she was being asked to vacate, the Plaintiff moved to Court and filed the present suit together with an application dated 11th August 2017.

11. When the said application came for hearing before me on 17th August 2017, this Court ordered inter alia, that the status quo obtaining as of that date be maintained pending the disposal of the said application. It is now the Plaintiffs case that the Defendant has constructively evicted her from the premises by blocking her access thereto and disconnecting water.

12. I have looked at the material placed before me. It is clear to me that the relationship between the landlord and his tenant has greatly deteriorated and the parties view each other with a lot of distrust and suspicion. This is clearly evident from the affidavits filed by both sides. As it were, I did not find any evidence that the Defendant had deliberately blocked the Plaintiff from accessing the suit premises. Neither is there evidence to show that the Defendant disconnected water to the cottage occupied by the Plaintiff. As it is, I think the explanations given aside from the rancour between the parties points to a number of breakdowns which may have made the plaintiff to believe that she was being locked out of the premises and/or disconnected from accessing water. In my view, there does not appear to have been anything to support the same other than the mutual suspicions.

13. Accordingly, I find that there is no evidence placed before me to warrant the imprisonment, fine or attachment of the Defendant/Respondent’s property for any reason whatsoever. For those reasons, the application dated and filed herein on 4th October 2017 is dismissed with costs.

Dated, signed and delivered at Malindi this 19th day of April, 2018

J.O. OLOLA

JUDGE