



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

E.L.C. MISC. CASE NO. 137 OF 2017

JOHN MUGO GACHUKI.....PLAINTIFF

VERSUS

JEREMIAH WAWERU MWANGI.....1ST RESPONDENT

PETER MWANGI WAWERU.....2ND RESPONDENT

JAMES KABERIA.....3RD RESPONDENT

JULIUS MAINA KAHUTU.....4TH RESPONDENT

DAVID MUCHORI MACHARIA.....5TH RESPONDENT

JOHNSON MUTHONGA MUCHORI.....6TH RESPONDENT

STEPHEN NGURE MWANGI.....7TH RESPONDENT

RULING

The Applicant seeks an order of committal against Jeremiah Waweru Mwangi, Peter Mwangi Waweru, James Kaberia Muchanga, Julius Maina Kahutu, David Muchori Macharia, Johnson Muthonga Muchori and Stephen Ngure Mwangi, being members of the board of directors of New Nyamakima Company Limited to prison for a period of six months or such other duration as the court may deem fit and just for the reason that the said board of directors, has wilfully disobeyed that part of the Business Premises Tribunal's order made on the 17th day of April, 2015 compelling and directing New Nyamakima Company Limited to allow the tenant (the applicant herein) access to the suit premises and to his property locked therein.

The application is based on the grounds that the Respondents wilfully and deliberately disobeyed the orders of the Business Premises Rent Tribunal (BPRT) which were issued on 23/8/2011 and confirmed on 17/4/2015 despite being served with the orders. The Applicant urges the court to exercise its authority of punishing people for contempt of court to protect the dignity and authority of BPRT.

The Applicant avers that the Chairman of the BPRT granted interim orders on 23/8/2011 in **Tribunal Case no. 555 of 2011 – John Mugo Gachuki v. New Nyamakima Company Limited** restraining the landlord, its agents including auctioneers from harassing the tenant evicting him, levying distress of his goods, disposing of, increasing rent, closing the tenant's premises without following the law or in any other manner interfering with the tenant's quiet possession and enjoyment of the premises pending hearing on 8/11/2011. The tribunal gave a ruling confirming the orders issued on 23/8/2011. The OCS, Kamukunji Police Station was to ensure compliance with the order and that peace prevailed. The landlord was ordered to pay the tenant's costs of Kshs. 50,000/= within 30 days.

The Respondents were served with the tribunal orders and they partly complied by paying the Applicant 50,000/= as directed by the tribunal. However, the Respondents have kept the premises locked and prohibited the Applicant whose goods are locked in the premises from accessing the suit premises. The Applicant's attempts to enforce the orders of the tribunal have not been successful. The Applicant reported the incident to Kamukunji Police Station but did not get assistance in enforcing the tribunal's order.

Previously the Applicant acted in person and moved the court to enforce the BPRT orders. He filed **HCCC No. 456 of 2011 – John Mugo Gachuki v. New Nyamakima Company Limited**. Odunga J. in his ruling of 6/11/2012 struck out the Applicant's application which sought an order directing the Defendant to open the business premises. The judge noted that where a party intends to commence contempt of court proceedings, he ought to file an application for leave together with the statement and he ought not to institute separate civil proceedings by way of a plaint.

The Applicant filed another application dated 14/11/2012 seeking leave to commit the Respondent's agents to prison for disobeying the orders issued by the chairman, BPRT in tribunal case no. 555 of 2011 which again was dismissed by Odunga J. on 28/11/2012 as being incompetent. The Judge noted that the Applicant had failed to read his ruling and understand its import. The Judge urged the Applicant to read and understand his ruling before commencing further proceedings that he may contemplate if he were minded to pursue the contempt of court proceedings.

Subsequent to this, the Applicant filed this miscellaneous cause seeking to commence contempt proceedings against the Respondents.

Parties filed written submissions. The Respondents filed a notice of preliminary objection on the grounds that the Applicant had not paid rent and had ceased to be a tenant; the application is an abuse process; the Applicant lacks standing to bring and prosecute the suit as he ceased to be a tenant before the Contempt Act, 2016 came into force and that the court lacks jurisdiction to determine an application for contempt against disobedience of BPRT's order made pursuant to the Landlord and Tenant Act.

The issue for determination is whether this court has jurisdiction to entertain the application before it and whether it can issue the orders sought by the Applicant. The Respondents argued that the issue is *res judicata* having been determined by Odunga J. They urged that the Contempt of Court Act of 2016 is inapplicable in these circumstances. Further that the Landlord Act at Section 12 (1) and (6) provides for the remedy when orders of the tribunal are not adhered to. The Applicant's advocate argued that the ruling delivered by Odunga J. was on an issue of technicality and not the substance of the application hence the issue of *res judicata* does not apply. The advocate emphasised the fact that the Applicant acted in person before Odunga J. and was not conversant with court proceedings hence he should be forgiven by the court. She submitted that the other contempt rules were repealed that is why they had to bring this application under the new Act. She stated that since 2011 the Applicant has been denied access to the suit premises where his tools of trade are held by the Respondents. She concluded that the BPRT does not have powers to punish for contempt.

The court has considered the rival submissions of parties. The Respondents did not submit on where the Applicants tools of trade are to be found or what happened to them. The Applicant's contention is that the Respondents have wilfully and deliberately disobeyed the orders of the BPRT issued on 23/8/2011 and confirmed on 17/4/2015.

Section 14 of the Landlord and Tenant (Shops, Hotels and Catering Establishments) Act sets out the mode of execution of the orders or determination of the BPRT. The Applicant is directed to employ the procedure set out in that Act to execute the order of the Tribunal. In the interest of bringing this matter to a close, this file will be transferred to the Chief Magistrates Court for the Applicant to pursue execution of the Tribunal's order.

Each party will bear its own costs for this cause.

Dated and delivered at Nairobi this 12th day of September 2018.

K. BOR

JUDGE

In the presence of: -

Mr. wanjohi holding brief for Mr. Sinana for the Applicant

Ms. Musembi holding brief for Mr. Ojwang Agini for the Respondents

Mr. V. Owuor- Court Assistant