



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT NAIROBI
MILIMANI LAW COURTS
ELC. CASE NO. 157 OF 2016

CAROLINE NYAKIRINGA NDUNGU AND
7 OTHERSPLAINTIFFS

VERSUS

BERNARD KARIUKI WATAARI AND
10 OTHERS.....DEFENDANTS

RULING

Coming up before me for determination is the Third Parties’ Notice of Motion dated 27th March 2015 in which they seek for the following orders:

1. Spent
2. Spent.
3. That the orders of the Honorable Court issued herein on 11th February 2015 by Honorable Justice D.A. Onyancha be deemed to have lapsed; or
4. That in the alternative orders of the Honorable Court issued herein on 11th February 2015 by Honorable Justice D.A. Onyancha be discharged or varied or set aside;
5. That this Honorable Court do make any such other or further orders as it may deem just and expedient in the circumstances.
6. That costs of and occasioned by this Application be provided for.

The Application is premised on the grounds appearing on its face together with the Supporting Affidavit of the 1st Third Party, Benard Kariuki Wataari, sworn on 27th March 2015, in which he averred that on 18th March 2015, the Third Parties were served with an order that the Honorable court issued on 11th February 2015 to the effect that all the eleven Third Parties herein, their agents, servants, families and relatives shall within a period of 30 days temporarily vacate the premises to facilitate necessary repairs. He stated that the said orders have lapsed as they were supposed to be served within 5 days and executed

within 5 days which did not happen as the Respondents neglected to do that. He added that the said orders were issued based on inspection reports conducted by the Defendant in the year 2011 and that a lot has transpired since then. He stated further that the Third Parties have since carried out all the necessary interior repairs on the suit premises at their own cost and there is nothing pending that necessitates vacant possession of the houses. He annexed photos depicting the various suit premises occupied by the Third Parties before and after renovation to demonstrate this point. He expressed the view that no further repairs are required to be carried out in order to abate the nuisance if any suffered by the Plaintiffs. He also pointed out that even the Plaintiffs have already renovated their houses with some of them leasing the same to outsiders therefore the Third Parties should not be evicted from their houses as no further interior renovation is required. He also expressed the view that any further renovations necessary can be carried out while they are still in occupation.

The Application is contested. The Defendant/Respondent filed the Replying Affidavit of Peter K. Rotich, its Administrator and Trust Secretary, sworn on 21st July 2015 in which he averred that vide a Ruling delivered on 11th February 2015, Honorable Justice D. A. Onyancha made the following orders:

- 1. "All the eleven Third Parties, their agents, servants, families and relatives shall within a period of 30 days temporarily vacate the relevant premises to facilitate the necessary repairs.***
- 2. All applications arising from this order shall be placed before this court for effective supervision of execution of this Order.***
- 3. This matter shall be mentioned before this court on 20th April 2015 and the Executive Officer shall safeguard this file and produce the same on the stated date.***
- 4. Failure to obey and comply with this order shall be taken as direct contempt of this court and the court will deal with the contempt summarily.***
- 5. These orders shall be extracted within 5 days and served within 5 days by a designated court process server under the direct supervision of the Chief Executive Officer, Civil Division."***

He further averred that the Third Parties were served with this order on 18th March 2015 and that the Third Parties have blatantly disobeyed it by refusing to vacate the suit premises as directed. He added that as a result of this disobedience, the Defendant has been unable to enter into the suit premises and to carry out the repairs needed. He pointed out that the court has ruled that failure to obey those orders would be taken as direct contempt which the court would deal with in a summary way. He also pointed out that the Third Parties are also not paying any rent for the suit premises they continue to enjoy. He asserted that at no time were the Third Parties directed by the court to repair the suit premises and that Honourable Justice Mwera specifically directed the Defendant to carry out the repairs. He urged the court to find that the Third Parties have disobeyed two court orders cite them for contempt and punish them accordingly. He further stated that as a result of the disobedience by the Third Parties, the Defendant continues to suffer great prejudice as it is unable to earn any rental income from the suit premises and the value of the same continues to depreciate due to their poor state of disrepair.

The Third Parties/Applicants admit to having been served with Justice Onyancha's orders on 18th March 2015. To my mind, the Third Parties, as parties in this suit, were supposed to be in court when Justice Onyancha delivered his Ruling on 11th February 2015. Why were they not in attendance? Why did they fail to obey the court's orders when they were served on 18th March 2015? No good explanation has been given by the Third Parties/Applicants as to why they were absent in court when the Ruling was delivered and further why they failed to obey the court orders when they were served. They instead decided to defy the court's orders and proceeded to carry out unauthorized repairs in the suit premises. In the orders issued by Justice D.A. Onyancha on 11th February 2015, he said as follows:

"Failure to obey and comply with this order shall be taken as direct contempt of this court and the court will deal with the contempt summarily."

I will not depart from this order by Justice Onyancha and will enforce it. I take the Third Parties/Applicants defiance of this court's orders as direct contempt of this court which I will deal with summarily. The Third Parties are hereby found to have been in contempt of this court's orders by defying the court's orders issued on 11th February 2015. The upshot of this is that save for prayer no. 5, this Application is hereby dismissed with costs to the Plaintiffs and Defendant. In compliance with prayer no. 5 of this Application which seeks that this Honorable Court do make any such other or further orders as it may deem just and expedient in the circumstances, I hereby find each Third Party to be in contempt of this court's orders issued by Justice Onyancha on 11th February 2015 and proceed to fine each Third Party a sum of Kshs. 100,000/- to be paid within 45 days from the date of the delivery of this Ruling failing which the defaulting party shall, upon expiry of the 45 days stated above, be arrested and confined in Civil Jail for a period of 30 days.

The Plaintiffs are directed to expedite the setting down of this suit for hearing.

It is so ordered.

DELIVERED, DATED AND SIGNED AT NAIROBI THIS 7TH

DAY OF APRIL 2017.

MARY M. GITUMBI

JUDGE