



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

MISC. ELC SUIT NO. 102 OF 2014

PHILEMON MURUNGI.....APPLICANT

VERSUS

NENO COURIER SERVICES.....1ST RESPONDENT

NENO SACCO SOCIETY.....2ND RESPONDENT

RULING

The proceedings herein were originated by way of a Chamber Summons application dated 14th April, 2014. The applicant brought the proceedings by way of a miscellaneous application to obtain a temporary measure of protection pending the hearing of the proceedings that he had instituted against the defendants at the Business Premises Rent Tribunal. When the applicant moved the court, the Business Premises Rent Tribunal was not sitting as the term of its chairperson had expired and had not been renewed. The applicant's application was heard by Gacheru J. who allowed the same in a ruling that was delivered on 18th June, 2014. The court granted the applicant an injunction for a period of one year unless extended restraining the respondents from unlawfully intimidating, evicting, and disconnecting electricity or interfering with the applicant's quiet occupation of the rental premises at the respondent's property known as LR No. 209/525 Nairobi, Accra Road/River Road junction (hereinafter referred to as "the suit property"). Since the applicant had not brought a substantive suit, the injunction that was granted to the applicant which was temporary in nature could only last until the hearing and determination of BPRT Case No. 734 of 2013 which the applicant had filed against the respondents at the Business Premises Rent Tribunal (hereinafter referred to as "the tribunal").

What is now before me is the applicant's application by way of Notice of Motion dated 18th June, 2014 (sic) seeking extension of the said orders which were granted to the applicant on 18th June, 2014 and leave of the court to institute contempt of court proceedings against the respondents for disobeying the said orders.

The applicant's case:

The applicant's application has been brought under Order 40 rules 3 and 6 and, Order 51 of the Civil Procedure Rules, section 12(4) of the Landlord and Tenant (Shops, Hotels and Catering Establishments) Act, Chapter 301 Laws of Kenya, section 1A, 1, 3, 3A of the Civil Procedure Act and Article 159(2d) of the Constitution of Kenya. The application has been brought on the grounds set out on the face thereof and on the supporting affidavit sworn by the applicant on 17th June, 2015. The applicant has contended that the orders of 18th June, 2014 were to expire unless extended and that if the said orders are not extended, the respondents would forcefully evict him from the suit property. The applicant has contended

that the orders of 18th June, 2014 were served upon the respondents. The applicant has contended that while the suit he had instituted at the tribunal was still pending, the respondents on 12th May, 2015 forcefully removed his assistant from the suit property and locked his business premises. The applicant has contended that it took the intervention of the OCS Central Police Station to have the premises opened. When the shop was opened, he found goods worth Kshs. 642,000/- missing. The applicant has contended that once again on 15th June, 2015, the respondents removed a partition wall between the applicant's business premises and the respondents' office and removed, stole and/or destroyed the applicant's goods valued at Kshs. 412,000/-. The applicant has contended that he had lodged complaints against the respondents at the tribunal under case reference numbers 734 of 2013 and 270 of 2014 that are pending. The applicant has contended that when he last checked on the position of the said cases, he was told at the tribunal's registry that his case files had disappeared. The applicant has contended that he has continued to discharge his obligations as a tenant by paying rent due to the respondents at the tribunal. The applicant has contended that the respondents have been contemptuous of the orders issued by this court from the beginning of these proceedings and urged the court to make appropriate orders against the respondents so as to protect its dignity.

The Respondent's case:

The application was opposed by the 2nd respondent through a replying affidavit sworn by Peter Manga Ndwiiga on 19th October, 2015. The 2nd respondent has contended that when the plaintiff came to this court and obtained a temporary injunction, the tribunal was not sitting because it had no chairperson. The 2nd respondent has contended that subsequently, the chairperson of the tribunal was appointed and the tribunal started sitting. The 2nd respondent has contended that the applicant filed a fresh application for injunction at the tribunal in BPRT Case No. 270 of 2014 and succeeded in obtaining ex parte injunction order on 5th September, 2014. The 2nd respondent has contended that the plaintiff's application at the tribunal was heard inter partes and dismissed. The 2nd respondent has contended that the applicant brought another application on 2nd February, 2015 seeking a review of the dismissal of his said earlier application. The 2nd respondent contended that the review application was also dismissed on 4th June, 2015. The 2nd respondent has contended that the tribunal made a finding that there was no privity of contract between the 2nd respondent and the applicant. The 2nd respondent has contended that after the dismissal of the applicant's review application, the applicant obtained ex parte orders against the 1st respondent which has never been served with the pleadings herein. The 2nd respondent has contended that the orders issued herein on 18th June, 2014 lapsed on 18th June, 2015 and as such there is no order to extend. The 2nd respondent has contended that it has never made any attempt to evict the applicant from the suit property because there is no landlord tenant relationship between them. The 2nd respondent has contended that the tribunal is seized of the jurisdiction to determine the issues raised herein by the applicant. The 2nd respondent has referred to the applicant as a litigation tourist who moves from one court to the other whenever he loses a case. The 2nd respondent has contended that the applicant has to choose where he wants to litigate as one dispute cannot be litigated at the tribunal and before this court. The 2nd respondent has contended that the applicant should set down his reference which is pending before the tribunal for hearing and final determination instead of engaging in side shows.

The applicant's application was heard by way of written submission. The applicant filed his submission on 18th May, 2016 while the 2nd respondent filed its submissions on 23rd October, 2015.

Determination:

I have considered the application together with the affidavits filed in support thereof. I have also considered the 2nd respondent's affidavit in opposition to the application. Finally, I have considered the parties' respective submissions. The application before me has two limbs. The first limb is seeking the extension of the temporary injunction granted herein by the court on 18th June, 2014. The power conferred upon the court under Order 40 rule 6 of the Civil Procedure Rules is discretionary. The rule

provides that extension will only be granted where sufficient reason is given. As I have stated above, the applicant came to this court because the tribunal was not sitting. The proceedings herein were not commenced by a plaint but by way of a chamber summons application in a miscellaneous suit. The applicant sought an injunction pending the hearing of a reference that he had filed at the tribunal in BPRT Case No. 734 of 2013. In the present application, the applicant has not told the court how far he has gone with BPRT Case No. 734 of 2013. In his affidavit in support of the application, the applicant has claimed that the court files for BPRT Case No. 734 of 2013 and, BPRT Case No. 270 of 2014 which he filed subsequently have disappeared from the tribunal's registry. The applicant has not told the court the stage at which BPRT Case No. 734 of 2013 had reached as at the date of the alleged disappearance of the court file. The applicant has also not told the court of the steps that he has taken to reconstitute the court file for that case. I am of the view that the filing by the applicant of BPRT Case No. 270 of 2014 is a manifestation of lack of interest in BPRT Case No. 734 of 2013. The applicant having been granted injunction pending the hearing and determination of BPRT Case No. 734 of 2013 had a duty to tell the court why there was a delay in the conclusion of that case to justify the extension of the injunction. I am not satisfied that sufficient reason has been given to justify the extension of the orders granted herein on 18th June, 2014. In any event, I have noted in paragraph 8 of the applicant's supplementary affidavit sworn on 29th October, 2016 that the tribunal had granted an injunction to the applicant against the 1st respondent. I wonder why the applicant is seeking the extension of the injunction order that was issued by this court and which has lapsed if he can obtain similar relief from the tribunal.

On the second limb of the application, again, I find no merit in the order sought. The contempt which is alleged to have been committed by the respondents arose from alleged breach of an order of injunction which was made by this court on 18th June 2014. The applicant's application was brought before the enactment of the Contempt of Court Act, 2016. The law that was applicable then was the law that was in force in England. Under the Contempt of Court Act of England of 1981 and Part 81 of the Civil Procedure (Amendment No. 2) Rules, 2012 which were regulating contempt of court proceedings in the Supreme Court of England which were applicable in Kenya prior to the enactment of the Contempt of Court Act, 2016, leave is not necessary to institute committal proceedings for breach of a judgment or order. In the circumstances it was not necessary for the applicant to seek leave of this court before instituting committal proceedings against the respondents.

In the final analysis, I find no merit in the application dated 17th June, 2014(sic) which was filed in court on 18th June, 2015. The application is dismissed with costs to the 2nd respondent.

Delivered and Signed at Nairobi this 22nd day of September, 2017

S. OKONG'O

JUDGE

Ruling read in open court in the presence of:

Mr. Nchio for the Applicant

No appearance for the 1st Respondent

No appearance for the 2nd Respondent

Kajuju Court Assistant