



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT KAJIADO
MISC. NO. 112 OF 2017
GILBERT OTIENO
RUFUS OCHIENG MIDUMBI.....APPLICANTS
VERSUS
BERNARD MUSHIVOJI
JABADA CONSULTING CO. LTD.....RESPONDENTS
IN THE MATTER OF AN APPLICATION ON BEHALF OF THE APPLICANTS
FOR LEAVE TO INSTITUTE COMMITAL PROCEEDINGS AGAINST
THE RESPONDENTS FOR CONTEMPT OF COURT

RULING

The application before court is a Chamber Summons dated 18th July, 2017 brought pursuant to Section 5(1) of the Judicature Act, Order 52 of the Rules of the Supreme Court of England 1965, Section 1A, 1B and 3B of the Civil Procedure Act, Section 2 of the Contempt of Court Act, 2016. The applicant seeks the following prayers:

1. Spent.
2. The applicants herein be granted leave to institute contempt of court proceedings against BERNARD MUSHIVOJI and JABADA CONSULTING CO. LTD , the Respondents herein.
3. Any other order deemed expedient in the circumstances.
4. The cost of this application be provided for.

The application is premised on the grounds that the applicants herein filed a Tribunal Cause No. 69 of 2016 before the Business Premises Rent Tribunal in Nairobi on 16th November, 2016 and on 17th November, 2017 the said Tribunal issued orders restraining the Respondents from evicting them or in any manner interfering with the Applicants' quiet possession of the premises known as Shop No. 8 within Kemms Apartment. The Orders from the Tribunal were served upon the Respondents and they duly acknowledged service of the same but declined to comply with them and instead locked the premises prompting the Applicants to make another application on the 12th January, 2017 seeking to be allowed to

break into the premises under the supervision of the OCS Kitengela Police Station. The Respondents despite being served, declined to obey the Tribunal's orders dated 12th January, 2017 prompting Applicants to break into the said premises. Further that the orders issued by the Tribunal on 17th November, 2016 were confirmed on 21st April, 2017 and the Respondents condemned to pay costs of Kshs. 25,000 which would be recovered from the rent due, which order was extracted and served upon the Respondents. Despite the Tribunal's orders, the Respondents have gone ahead, evicted the Applicants, carted away goods to unknown location and demolished the suit premises contrary to the Tribunal's Orders.

The application is supported by the affidavit of GILBERT OTIENO who is the 1st Applicant herein where he deposes that together with the 2nd Applicant, were complainants in a tribunal case No. 69 of 2016, instituted at the Nairobi Business Premises Rent Tribunal in respect of all that premises know as Shop No. 8 Kemms Apartment Kitengela, (suit premises) in which interim orders were granted ex parte by the Hon Chairman Mr. Mboroki on 17th November, 2016 directing Respondents not to interfere with their quiet possession pending the hearing of the application interpartes. The Respondents were duly served but disregarded the Court Order. He states that the orders made by the Tribunal have never been reviewed, set aside, varied or discharged and despite service, the Respondents never showed up for the scheduled hearings of the case and refused to obey the court orders. He claims the Respondents blocked the entrance to the suit premises and demolished the premises despite the subsisting court orders of 17th November, 2016, 12th January, 2017 and 21st April, 2017. He reiterates that the Tribunal does not have jurisdiction to punish for contempt.

The application is ex parte and on 19th September, 2017 the Applicants counsel made submissions on the said application which I have considered.

Analysis and Determination.

Since this application is ex parte and only seeks leave to institute contempt of Court proceedings against the Respondents who have failed to adhere to court orders dated 17th November, 2016, 12th January, 2017 and 21st April, 2017 which were served upon them. The Court takes Judicial Notice of the fact that the Business Premises Tribunal does not have jurisdiction to punish for contempt. At this stage of seeking for leave, the only issue expected from the Applicants is the provision of convincing materials/information through affidavit evidence that would compel the Court to grant the leave sought to enable Applicant institute contempt of court proceedings against the intended contemnors. The evidence presented within the affidavit should reveal crucial information which in the court's view, if proved, would amount to contempt of court.

In this current application, I note there was a case between the Applicants and Respondents at the Business Premises Tribunal whose Chairman Mr. Mboroki had issued orders on diverse dates to wit 17th November, 2016, 12th January, 2017 and 21st April, 2017 stopping the Respondents from interfering with the Applicants quiet possession of the suit premises and not evicting them but it is the Applicants claim that despite being served with the Court orders and even sticking a copy on the suit premises, the Respondents have defied the said orders and proceeded to evict them and taken their goods to an unknown destination.

From the foregoing, it is my finding that that the Applicants application for leave to institute contempt proceedings against Respondent is merited and I allow it.

The costs of this application to be borne by the Respondents.

Dated signed and delivered in open court at Kajiado this 23rd day of October, 2017.

CHRISTINE OCHIENG

JUDGE