



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MERU

ELC CASE NO. 44 OF 2017

MICHAEL KUNGU KIGIA.....APPLICANT

VERSUS

MERU TEACHERS HOUSE LTD DIRETORS

EDWARD DICK MUGAMBI (Managing Director).....1ST RESPONDENT

ELIUD MBAABU.....2ND RESPONDENT

SEVERINO MUTIRIA.....3RD RESPONDENT

JOSEPH MUTUMA.....4TH RESPONDENT

JOSEPH KIRIMA.....5TH RESPONDENT

ELIZABETH ANDREW.....6TH RESPONDENT

HELLEN KAJUKI.....7TH RESPONDENT

SOLOMON NJERU.....8TH RESPONDENT

FRANCIS MACHARIA.....9TH RESPONDENT

DANIEL M'INYINGE.....10TH RESPONDENT

ROBERT MIRITL.....11TH RESPONDENT

AYUB MWITI KIUGU (KIUGU

ELECTRICAL ENGINEERING).....12TH RESPONDENT

JULIUS MWITI K. RINYURU (BOOKSHOP).....13TH RESPONDENT

J U D G M E N T

BACKGROUND:

1. A plaint was filed herein on 13.02.17 along with an application (under a Certificate of Urgency) when the application was presented before me, I noted that the documents were not legible and I directed Plaintiff to file fresh legible documents. He filed the next set of the Plaint and an application of 24.02.17.
2. Soon thereafter a Preliminary Objection was filed by defence on 03.04.17.
3. On 19.04.17, the Court gave direction for the preliminary Objection and the Notices of Motion to be heard by way of Written Submission.

4. On 11.07.17, the Court was informed that parties were pursuing ADR but on 02.10.17, defence Counsel informed the Court that he was opposed to settlement in the matter as ADR had broken down. Plaintiff requested the matter to be taken to Judge Gikonyo. The Court gave a date for further directions on 30.10.17.

5. On 30.1.17 Plaintiff averred that parties had settled and there was a consent. He had no such consent.

6. Defence counsel on the other hand averred that this is an ELC matter and it is not settled.

The Court give a date for Ruling.

The Ruling is hence in respect of the Preliminary Objection of 03.04.12 and the application of 13.02.17 (and 24.02.17).

Parties have filed Submission.

DEFENCE SUBMISSIONS

Your Ladyship, when this matter came up for the hearing of the plaintiff / applicant's Notice of Motion dated **13th February 2017**, the Court ordered that the said Notice of Motion dated **13/2/2017** and the P.O dated **3/4/2017** be dealt with simultaneously. The Honourable Court further ordered that both the Notice of Motion dated **13/2/2017** and the P.O dated **3/4/2017** be disposed of by way of written submissions.

In our submissions, we intend to first address the Preliminary Objection (P.O) dated **3/4/2017** and thereafter submit on the Notice of Motion dated **13/2/2017**

A. PRELIMINARY OBJECTION DATED 3RD APRIL 2017

Your Ladyship, in our submissions on the P.O, we entirely rely on the grounds listed in the P.O and proceed to submit as hereunder:

Your Ladyship, in the Notice of Motion dated **13/2/2017**, the plaintiff / applicant seeks and /or prays for the following orders:

- 1. That this application be certified as utmost argent and given the earliest date for hearing Exparte in the first instance.**
- 2. That the Honourable Court do issue an order to commit respondent to prison for a period of six(6) months or for such period as this Honourable Court deems necessary for being in contempt of Court orders for disobeying purporting being owners of TOWN / PLOT B11/152 ROOM G2 SINCE 1980 commencing date as Kenya National Union of Teachers and breaching orders dated 27th /5/1991 in case 80/1991 by Justice S.O OGUKU Judge and consent orders issued by Justice R.KULOBA Judge in High Court Case No. 180 / 1991 a matter that is before this Court on 7/9/2013 and no breaking order.**
- 3. That the respondents in contempt of Court orders issued on 24/10/2000 Justice S.A OMWITSA Judge in High Court of Kenya at Meru in finalized case No.339 of 1993**
- 4. That the respondents in contempt in court orders issued on 24/9/1998in CMC 153/1997 by chief magistrate in Meru that permanently removed the Meru Teachers House Ltd from being land lord and property owner of Meru Municipality Plot No. B11 / 152 Room G2 and from being landlord of applicant herein.**
- 5. The respondents in contempt orders issued on 19/4/2002 by chairman of Tribunal case No. 7/2002 with impunity a matter that is before CMC Meru.**
- 6. The respondents in contempt of court orders issued on 20/7/2007 in CMC 793/1999 by Chief Magistrate Meru.**
- 7. The respondents in contempt of court orders issued on 5/5/1999 in Tribunal case No.10/1999 by chairman of Tribunal a matter before court and dated 5/4/2016 before chief Justice DAVID MARAGA for Directions.**
- 8. The respondent in contempt of court orders issued by chief magistrates Meru on 16th /8/2011 (not to evict tenant) in CMC 153/1997.**
- 9. The respondents in contempt of court orders issued by Justice P.M. NJOROGE on 19/8/2013 that I disobeyed in High court civil appeal 246/2013 a matter that is before this court.**
- 10. The respondents in contempt of court orders issued on 13th 9,2013 by Justice H. I. ONGONDI Judge of High court civil appeal No. 78/2012.**
- 11. The respondents consented on 17/3/2009 in tribunal case no. 14/2005 when applicant filed a contempt application against the chairman of business premises rent tribunal Nairobi that they had that jurisdiction to be entertained since court orders issued on 24/9/1998 in CMC 153 /1997 were inforce and consent orders of 27/5/1992 in High court case No. 180/1991 were force.**

12. The Honourable court do issue an order against the respondents to file replying affidavit and defense in this suit.

Similarly, in the plaint dated **13/2/2017** and filed in Court on the same date, the plaintiff / applicant herein prays for the following:

a) The Honourable court do issue an order to commit defendants to prison for a period of six(6) months or for such a period as this Honourable court deems necessary for being in contempt of court orders for disobeying purporting to owner of Meru Town plot B11/152/ROOM G2 as they breached orders issued on 27/5/1991 and consent orders on 27/5/1992 in High Court Case No. 180/1991, Court orders issued on 24/9/1998 in CMC 153/1997, Consent orders of 17/3/2009 in Business Premises Rent Tribunal Case No. 14/2005 and other Court orders mentioned in this plaint.

b) The Honourable Court do issue an order to vacate all cases /applications filed / caused to be filed by plaintiff in lower Court Meru and High Court at Meru/Embu/Nairobi since 24/9/1998 orders in CMC 153/1997 as lacked jurisdiction on Meru Town plot B11 /152/ROOM G2 as on 10/7/2014 a Judge disqualified himself from High Court civil appeal No. 246/2013 proofing court orders issued on 8/8/2013 in the same file remaining null and void and therefore this is the record of cases before Chief magistrate in Meru that defenses filed are null and void:

1). CMC 130/2005

2). CMC 123/2013

3). CMC 153/1997

4). CMC 174/2009

5). MISC. Application No. 29/2010

6). MISC. Application No. 20/2011

7). MISC. Application No. 20/2010

8). MISC. Application No. 38/2011

9). MISC. Application No. 57/2015

10). MISC. Application No. 2/2016

11). MISC. Application No. 3/2016 and High Court Civil appeal No. 246/2013, High Court Civil appeal No. 78/2012, High Court Misc. application No. 4/2016, Misc. application No. 13/2011/ misc. application No. 145/2012 (Nairobi), misc. application No. 94/2011, High Court case No. 20/2016, and High Court Civil appeal No. 126/2009(all defenses be vacated due to lack of jurisdiction).

c) Court do issue an order that 13th defendant be removed from Meru Town plot B11 / 152/ ROOM G2 and plaintiff be reinstated in the premises as was on 7/9/2013

d) Costs to the plaintiff plus interest herein.

e) Other further or alternative relief.

Your Ladyship, it is clear from the **Notice of Motion dated 13/2/2017** and the plaint filed in Court on the same date that the orders which the plaintiff / applicant is praying for in the said Notice of Motion and in the plaint are similar and / or are the same and it is from that note that we proceed to make our submissions herein below.

Your Ladyship, the plaintiff / applicant is seeking for orders that the defendants / respondents are in contempt of Court for allegedly disobey various Court Orders issued by various Courts and Tribunal in various cases and applications.

He is also seeking for orders that the Court do vacate cases caused to be filed by the plaintiff in the Lower Court and at **Meru and Embu High Court**.

He further seeks for the **13th** defendant to be removed from **Meru Town Plot B11 / 152/ ROOM G2** and he be reinstated therein.

We submit that such orders are incapable of being granted because this Court cannot vacate cases and / or applications which the applicant / plaintiff has filed and are either pending or finalized by other Courts. Equally, this Court cannot order for reinstatement of the applicant / plaintiff when he was evicted from plot **No. B11 / 152** pursuant an order made by the Court of competent jurisdiction in **Meru HCA No. 246 of 2013(Now Embu HCA No. 1 of 2015)**.

We further, submit that this Honourable Court has no Jurisdiction to hear and / or entertain the Notice of Motion dated **13/2/2017** and the prayers sought therein because it was not privy to those various Courts and Tribunal cases and applications and the orders issued therein.

If the plaintiff / applicant had any issues and / or problem with those orders he is referring to in the plaint and his Notice of Motion dated **13/2/2017(which we submit he didn't have)**, he ought to have appropriately moved those Courts and the Tribunal who dealt with those Cases and applications and issued the said orders.

The plaintiff / applicant cannot wake up one day and rush to this Court and file an incompetent, frivolous and vexatious suit and a Notice of Motion dated **13/2/2017**.

We submit that the Notice of Motion and the plaint filed in Court are incompetent, frivolous, vexatious, and bad in Law, an abusive of the Court process and a waste of precious judicial time and they should be struck out.

Your Ladyship, in **paragraph 3 of the plaintiff /applicant's verifying affidavit, he swears on oath that there is no other suit pending before any Court between him and the defendants,**

We submit that by swearing on oath that there is no other suit pending before the Court between him and the defendants whereas he knows that there has been various cases and miscellaneous applications either finalized and / or pending between him and **Meru Teachers House Ltd** wherein the **1st to 11th** defendants are directors and taking into account that what the plaintiff / applicant is raising and / or referring to in his **Notice of Motion dated 13/2/2017** and the suit herein are those cases and Miscellaneous Applications we submit that it amount to a serious abuse of Court process and his **Notice of Motion dated 13/2/2017** and the **plaint dated the same date should be struck out.**

In KISUMU HCC NO. 396 OF 2000 LEONARD ONYONCHA VERSUS POST BANK CREDIT LTD (UNREPORTED) the plaintiff filed a suit knowing that there is a similar suit pending in Court and proceeded to swear a verifying affidavit to the effect that there is no other suit pending in Court. The Court held that it amounts to an abuse of the Court process and the suit was struck out.

Your ladyship, by swearing on oath that there is no suit pending in Court between the plaintiff and the defendants, we submit that the plaintiff / applicant is misleading this Court.

In NAIROBI HCC NO. 951 OF 2000 SAMUEL KARUGA KOINANGE VERSUS BULLION BANK LTD (UNREPORTED) the Justice Ringera as he then was held that misleading the Court is an abuse of the Court process and it is something which the Court cannot tolerate.

In KISUMU HCC NO. 120 OF 2003 STANDARD CHARTERED BANK LTD (UNREPORTED) the Court held that it is not within the rights of the parties, to engage in multiplicity of suit and it amount to an abuse of the Court process.

This is exactly what the plaintiff / applicant has done in this case because as the matter stands now he has so far forty (**40**) cases and miscellaneous applications between him and Meru Teachers House.

Your Ladyship, it is worthy to note that the plaintiff / applicant has filed the suit herein against the **1st to 11th** defendants who are directors of **Meru Teachers House Ltd**. That being so, we submit that the plaintiff / applicant cannot file a suit against the directors of **Meru Teachers House Ltd**. It amount to an abuse of the Court Process.

If the plaintiff / applicant is of the view that the directors of **Meru Teachers House Ltd** have disobeyed the Court orders (**which we submit they have not**) he could only move the respective Courts which issued the specific orders.

Your Ladyship, we further submit that this Court has no Jurisdiction to entertain this suit and the Notice of Motion dated **13/2/2017** because what the plaintiff / applicant is seeking is for this Honourable Court to entertain and / or to deal with various Court and Tribunal Orders issued by various Courts and Tribunal which this Court has never dealt with or seized of the facts thereto.

The process and / or the manner the plaintiff has come and / moved to this Court is unlawful, illegal, unacceptable and against the law.

Your Ladyship, **Section 6 of the Civil Procedure Act Cap 21 Laws of Kenya** deals with the rule of subjudice.

The **Section 6 of the Civil Procedure Act Cap 21 Laws of Kenya** prohibit the Court from dealing with matters proceeding and / or pending in other Courts.

Similarly **Section 7 of the Civil Procedures Act Cap 21 laws of Kenya** prohibit the Court from trying a suit or issue while the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties or between parties under whom they or any of their claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court. The applicant is asking this Court to revisit Cases and applications which have already been heard and determined and costs assessed.

Your Ladyship, we refer the Honourable Court to **paragraph 14(i) to (xxviii)** of the replying affidavit sworn by one **Edward Dick Mugambi** on **12/4/2017** and filed in Court on **13/4/2017** in which he has deponed in details and annexed the relevant documents (**where applicable**) showing the status of all the matters which the plaintiff / applicant has referred to in his Notice of Motion dated **13/2/2017** and in plaint.

We also refer the Honourable Court to **paragraph 50(1) to (xxiv)** of the defence dated **27/3/2017** and filed in Court on the same date.

Your Ladyship, as the Court can note from the pleadings filed in Court and various cases and orders referred by the plaintiff / applicant, and taking into account what is contained in **paragraph 14(i) to (xxviii)** of the replying affidavit sworn by **Edward Dick Mugambi** and **paragraph 50(i) to (xxiv)** of the **1st to 13th** defendants' defence, they relate to the plaintiff / applicant herein and **Meru Teachers House Ltd.**

The **1st to 11th** defendants / respondents are directors of **Meru Teachers House Ltd.**

The plaintiff / plaintiff used to be a tenant of **Meru Teachers House Ltd.** The plaintiff / applicant is no longer a tenant of **Meru Teachers House Ltd** having been evicted pursuant to the Court order in **Meru HCA No. 246 of 2013(Now Embu HCA No. 1 of 2015).**

The plaintiff / applicant has now filed this suit against the directors of the **Meru Teachers House Ltd** alleging contempt of Court on issues which have already been determined by the Tribunal in **Tribunal case No. 16 of 2012** and in a interlocutory application in **Meru HCA No. 246 of 2013(Now Embu HCA No. 1 of 2015** and other cases and / or Miscellaneous Applications which have already been concluded.

It follows therefore that the plaintiff / applicant herein cannot file a fresh suit against directors of **Meru Teachers House Ltd** on matters already determined by the Courts and the Tribunal of competent jurisdiction unless by way of review, appeal and / or setting aside those orders and not by filing fresh suit .

Your Ladyship, a party coming to Court for redress must have a legal claim capable of being heard and determined by Court.

We submit that the applicant's Notice of Motion dated **13/2/2017** and the suit herein have no basis, they have no legs to stand on as what the applicant / plaintiff is seeking is incapable of being granted by the Court.

Your Ladyship, this is a Court of original and appellate jurisdiction. It can hear appeals or judicial review orders properly filed challenging the decision of the lower Courts or Tribunals but cannot deal with orders issued by other Courts or Tribunal in the manner which the plaintiff / applicant has come to this Court. A party must move the Court in accordance to the law and the laid down procedure which the plaintiff / applicant has failed to do.

For the above reasons, we submit that both the Notice of Motion dated **13/2/2017** and the suit herein are incompetent, are bad in law, frivolous , vexatious and an abuse of the Court process and should be struck out with the costs to the respondents.

The plaintiff / applicant has come to this Court in a manner and process not known in Law. It amount to a serious abuse of the Court process.

As regard the replying affidavit and the submission filed by the plaintiff / applicant in response to the P.O, we submit that they are just rhetorics which have no backing of the law. They do not charge the legal position of the cases he has referred to as they are either finalized or pending in respective Courts.

The applicant / plaintiff's has not demonstrated by referring to the relevant sections law how this Court can hear his suit and / or Notice of Motion particularly on orders issued by another Court or Tribunal by filling a fresh suit in relation to a finalized or matters pending in other Courts.

The applicant / plaintiff's replying affidavit and submissions to the P.O are farfetched and addresses non issues which cannot be dealt with by the Honourable Court.

The plaintiff / applicants' replying affidavit and submissions clearly shows that, he is a bitter litigant out to settle non-issue scores with the respondent and their Advocates for having been evicted him from **Meru Teachers House Ltd Premises** and for having lost so many cases and Misc. Applications in High Court, Lower Court and in the Tribunal which have no relevancy at all in his incompetent Notice of Motion and the suit herein.

We pray to the Court to disregard them and proceed to struck out the plaintiff's suit and the Notice of Motion dated **13/2/2017.**

Similarly, we submit that the list of authorities and the authorities annexed by the plaintiff / applicant has no relevance at all and they do not assist the plaintiff in whichever manner.

In fact, the plaintiff filed this suit for purpose of finding somewhere to **dump all manner of documents** which have no relevancy at all and we urge the Court to stop him by striking out both the plaint and the Notice of Motion dated **13/2/2017.**

In a nutshell, there is nothing to be heard in respect of the Notice of Motion dated **13/2/2017** and the suit herein.

The plaintiff / applicant has no cause of action against the defendants / respondent capable of being heard and determined by the Honourable Court.

In "LILIAN S" VERSUS CALTEX (K) LTD. [1986 – 1989] E.A. 305, at page the late Justice Nyarangi Judge of Appeal held inter alia that the issue of jurisdiction ought to be raised at the earliest opportunity and once raised, the Court is obliged to deal with it straight away. He further held that jurisdiction is everything and once the Court find that it has no jurisdiction; there is no need to continue proceedings pending other evidence.

We urge your Ladyship to find that in view of grounds listed in the P.O. and our Submission hereinabove, this Court has no jurisdiction to entertain the Notice of Motion dated 13/2/2017 and the suit herein and it do proceed to struck them forthwith.

B. NOTICE OF MOTION DATED 13/2/2017

Your Ladyship, as regard to the Notice of Motion dated **13/2/2017**, we have already submitted hereinabove that it is incompetent, bad in Law, frivolous, vexatious and an abuse of the Court process.

The defendants / respondents have also filed a detailed replying affidavit sworn by one **Edward Dick Mugambi** on **12th April 2017** and filed in Court on **13/4/2017** and the **annexures** thereto.

We entirely rely on the said replying affidavit together with the **annexures** thereto.

To avoid duplication on what is contained in the said replying affidavit, we refer to the Honourable Court to **paragraphs 4 to 24** of the said replying affidavit.

In particular, in **paragraph 14(1) to (xxviii) of the said replying affidavit, we have given in details to the position of the cases and orders which the plaintiff has referred to and the orders which he want the respondent to be committed to civil for purportedly disobeying. It clearly shows the plaintiff's /applicant suit and Notice of Motion dated 13/2/2017 lacks merit**

We submit that the respondent has never disobeyed any Court order or orders as alleged by the plaintiff / applicant.

If anything, it is the plaintiff / applicant who has lost so many Tribunal Cases and Miscellaneous Applications against **Meru Teachers House Ltd** and he has been filling one application after another to forestall execution against him.

The applicant / plaintiff has no respect for the Law and orders issued by the Courts and Tribunal as he keeps disparaging the Judicial offices issue orders and judgments which are unfavorable to him

The submissions and the authorities the plaintiff / applicant has filled in support of his Notice of Motion dated **13/12/2017** have no relevancy at all. They do not change the position as regards the cases he has referred to and the orders which were given by various Courts and Tribunal in various cases.

We urge the Court to strike out the applicant/plaintiff Notice of Motion dated **13/2/2017** with costs to the respondents / defendant.

We so humbly pray.

PLAINTIFFS SUBMISSIONS

7. Your Honour, plaintiff became tenant of Kenya National Union of Teachers on 30th April 1986 and at no time was tenant of respondent except when they forged lease agreement as were removed being landlord and owners of Meru Town Plot B11/152 IB Court Orders of 24.9.1998 and permanently for 8 years left the premises only to use back door purported to be landlords as they filed case No 339 of 1993 at High Court of Kenya that was dismissed on 24.10.2000 hence no appeal up to date 2017 that makes their defence Res-judicata . On 1991 respondents carried illegal distress, that plaintiff referred this matter before Court as High Court case no 180 of 1991, Court orders were issued on 27.5.1991 by justice S.O Oguk Judge, orders obtained in force, unchallenged nor set aside a matter before this Court of law, on 27.10.1992 Justice R. Kuloba Judge issued consent order in High Court case No. 180 of 1991 that are in force, varied, unchallenged nor purged by respondents that are disobeyed and therefore when were they discharged so that respondents carried illegal distress on the Business or respondent on 7th September. However the respondent issued a notice to terminate tenancy through their advocate M/S Mukira Mbaya Advocate Meru on 8th April 1999 that was referred to tribunal on 5th May, 1999 reference No 10 of 1998 orders that firm of Nyaga Nyamu 7 Co. Advocates admitted respondents were not landlords nor property owner and withdraw the notice that took effect on 5.5.1999 and therefore any notice issued after 5.5.1999 is null and void. On 1999 respondents filed CMC 793/1999 purporting as landlords that was dismissed on 20th 2007 hence no appeal up to date 2017. On 25/7/2005 respondent purported to be landlords issued notice that was dismissed on 17.3.2009 by tribunal where advocate and his clients (respondent) were warned had no jurisdiction nor Power of Attorney on Meru Town Plot BII/152 Room G2 by chairperson of tribunal. In short the respondents were strangers as this Honourable Court has noted, have disobeyed Court orders with impurity having made even Chief Magistrate Gilbert Ochieng dismissed from judicial Service Commission of Kenya as purported to be on record in CMC 153 of 1997 and even now are misleading High Court Judge on irregular and illegal matters before High Court to obtain orders through back door. This is an Honourable Court of Law as shall note respondents are in contempt of Court orders, have no respect to Rule of Law and defence filed in Res judicata.

FILED CASES

Your Honour, respondents as indicated in their statement of Edward Dick Mugambi dated 27.3.2017, caused the plaintiff to protect his Hotel Business and Saloon Business/ or defamation of his name from being unlawful executed and filed the same suits/ or referred the unlawful notices to tribunal that all of them were dismissed on 8/8/2012 by tribunal in tribunal case No. 10 of 1999 including notice issued on 24.2.2012 as reference No. 16 of 2016 that through concealment of materials facts and issues on Court Orders were issued hence were vacated by the Justice P.M. Njoroge Judge on 10/17/2014 when understood the issues.

LAW

Your Honour plaintiff wish to bring to you attention to authorities annexed and especially Succession Cause No. 40 of 2006 paragraphs 8 and 16, “ a person who, knowing of an injunction or order of stay, willfully does something or causes others to do something to breach the injunction or interferes with the stay is liable to be committed for contempt of court as such a person has by his conduct obstructed Justice.” Paragraphs 17 and 18 (1) (2) and requested the Honourable Court to order respondents to restore the ,plaintiff to the premises that occupied before 7/9/2013 and pay Kshs. 1,150,010/= for properties destroyed /or confiscated by respondents with specified time (as a condition) Civil appeal No. 324 of 2005 do rely on Judgment.

Kenya Law in the High Court of Kenya at Nairobi (Milimani Law Courts) Misc. Application No. 93 if 2013 (JR).

I shall rely on the whole authority and especially paragraphs 14, 15, 16, 17, 18, 19, 20, 22, 23 and 24 as Honourable Court shall see respondents issued notices and many cases in law Court and High Court that were dismissed by Tribunal with all motive and destroying plaintiff’s Business and cause Judges and Magistrates to issue illegal orders.

Filing of determination or order in Court Republic of Kenya at Nairobi December 24, 2011 M’Anmgawa J.R Onyancha J.

Jack and Jill Supper Market original applicant versus V.M Ngunjiri original respondents Civil Appeal No. 710 of 2009 I shall rely on the whole referred matter in this authorities (that since 24/9/1998 respondents breached court orders issued).

ISSUES that this Honourable Court is asked to find the respondent acted unlawfully and if this Honourable Court doesn’t act the respondents shall proceed to continue and disobey court orders with impunity as had no jurisdiction or power of attorney to levy distress and mislead this court and by now shall make more judicial officers to suffer if are not committed to jail for contempts as they continue with dismissed matter before Chief Magistrate Meru, and High Courts of Kenya at Meru, Embu and Nairobi.

CONCLUSION

Your Honour, this is one of the highest Court on the land and the said prayed orders were issued by Judges, Magistrates and Tribunal and were not issued in vain or papers so as to be disobeyed by respondents since 24/9/1998 orders in CMC 153 of 1997 matter proceeding before Court and is essential for the maintenance of rule of law and order that the authority and the dignity of Courts are upheld all the time. The issue is why respondents were filing so many cases since 2005 to 2013 is only to use Court orders so as to root the members money, plaintiff do request this Honourable do allow the application dated 13/2/2017 and the suit commit the respondents to civil jail for contempt as such issues should never happen in Meru or Kenya by strangers purporting to be landlords without any evidence to Court with costs to plaintiff.

I humbly pray.

DETERMINATION

The stating point is the Preliminary objection in “*Mukisa Biscuit Manufacturing Co. Ltd Vs West End Distributors Ltd (1969) E.A 696* it was held that:-

“A preliminary is in the nature of what used to be a deurrer. It raises a pure point of law which is argued on the assumption that all facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion...”

8. The issue to determine herein is:-

- 1) Whether this Court has jurisdiction to hear the matter.
- 2) Whether Plaintiff has established a cause of Action.

JURISDICTION

9. It is quite clear that Plaintiff has had very many cases. It is also clear that some of those cases are still pending in Court. Under Order.....one is required to disclose the cases he has while filing the Verifying Affidavit. In his Verifying Affidavit, Plaintiff has stated that:

“there is no other suit pending before any Court between me and Defendant”.

I fail to understand why Plaintiff would make such an averment on oath only to go ahead and give a detailed account of the cases he is having before various Courts. My great interest is the averment made by the Plaintiff in paragraph 23, 24 and 25 of his affidavit as well as paragraph f of the Plaintiff dated 13.02.17. In summary Plaintiff admits that he lodged an appeal No. 246/13. He had been evicted from the plot No. B11 152 Room G2 and he wants to be reinstated back. The Judge disqualified himself in the case. That is however not a ground to file this suit.

10. As rightly submitted by the defence this Court has no Jurisdiction cannot deal with the issue before the other Courts unless in the appeal process which appeal the Plaintiff has filed.

11. According to the defence the appeal Meru HCA 246/13 in now Embu HCA No1 of 2015 a fat not denied by Plaintiff. Plaintiff should

therefore pursue the appeal processes.

WHETHER PLAINTIFF HAS A CAUSE OF ACTION BEFORE THIS COURT

12. For a cause of Action to arise, one must establish the right and then demonstrate that that right has been violated.

13. Plaintiff desires to be reinstated back to the premises in question. However, as submitted by the defence, this Court is not privy to the deliberation before the various courts. Plaintiff is not capable of pin pointing when the cause of action arose as his claim is scattered in the myriad of cases before the tribunals Magistrates Courts and High Court. The defence has listed the cases as 37 in number.

14. I am inclined to believe that Plaintiff is a vexatious litigant. I also find that the Notice of Motion and the Plaint are scandalous and incompetent and also amount to an abuse of this Court.

15. Both Notice of Motion and the Suit herein are dismissed with costs to defendants.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT MERU THIS 13TH DAY OF DECEMBER, 2017

IN THE PRESENCE OF:-

Court Assistant: Janet

HON. L. N. MBUGUA

ELC JUDGE