



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT

AT MALINDI

ELC MISC APP NO. 14 OF 2014

GEORGE EMMANUEL KWICHA t/a

FINISHING POINT.....PLAINTIFF/APPLICANT

VERSUS

MICHAEL SHIDA KAZUNGU.....DEFENDANT/RESPONDENT

R U L I N G

1. The Application before me is the one dated 23rd September 2014 by the Applicant. In the Application, the Applicant is seeking to cite the Respondent for contempt in the following terms:
 - (a) **That the court be pleased to order the arrest and detention in prison of the Respondent for disobedience of an injunction order granted by the Honourable Justice O. A. Angote issued on 4th July 2014.**
 - (b) **That the said orders to be enforced by the Officer Commanding Malindi Police station.**
 - (c) **That the costs of this application be provided for.**
 - (d) **That the honourable court be pleased to make such further or other orders as it may deem just and expedient in the circumstances of this case.**
2. The Application is premised on the grounds that on 17th June 2014, this court directed the Respondent to re-open the business premises for the Applicant and also restrained the Respondent from harassing the Applicant by closing the business.
3. The Applicant has deposed that he complied with the orders of this court by depositing Kshs.129,000 in court and that the Respondent refused to comply with the orders of the court and it took the intervention of the OCS Malindi to compel the Respondent to open the business premises.
4. It is the Applicant's deposition that the Applicant proceeded to issue him with a termination notice from the premises which notice is tantamount to harassment.
5. In his response, the Respondent denied that he disobeyed the orders of this court; that the Applicant stopped paying the monthly rent and that the Applicant has not filed the Application with clean hands.
6. The Applicant's advocate has submitted that even after the court issued its orders, the Respondent

- continued to consistently interfere with the Applicant's occupation of the premises by issuing notices requiring him to vacate the property.
7. In his submissions, the Respondent's counsel submitted that the suit premises was opened on 9th July 2014; that the Respondent was a perpetual defaulter in paying rent and that was it not for the court, the Applicant would not have recovered the rent arrears of Kshs.129,000.
 8. Counsel submitted that the orders of this court were overtaken by events when the Tribunal Reference Number 70 of 2014 was dismissed on 27th August 2014.
 9. It is not in dispute that the Respondent complied with the order of this court when he allowed the Applicant in the suit premises on 9th July 2014. This was a few days after the court made its orders on 4th July 2014.
 10. The only valid complaint before me is that the Respondent was in breach of the order of this court when it issued to the Applicant the termination notice of 21st July 2014.
 11. In the Ruling of 4th July 2014, this court allowed the Applicant's Application dated 17th June, 2014 on condition that the Applicant deposits in court Kshs.129,000 being the amount the Respondent was claiming as rent arrears pending the hearing of the Reference in Tribunal Case Number 70 of 2014.
 12. One of the orders that the Applicant sought, and which was granted, was that the Respondent should be restrained from "harassing the Applicant by closing his business premises or threatening to evict the Applicant pending the hearing of the complaint filed in the Business Premises Rent Tribunal inter partes."
 13. Although this court restrained the Respondent from harassing the Respondent or threatening him with eviction, the court did not restrain the Respondent from demanding for rent pending the hearing of the matter that was before the Tribunal.
 14. However, the letter by the Respondent's advocate dated 21st July 2014 and addressed to the Respondent is not a demand letter, but a notice evicting the Applicant.
 15. I have read the letter. The penultimate paragraph of the said letter reads as follows:

"That you are a tenant occupying our client's premises situated at Ganda in Malindi within Kilif County. That this letter serves as a NOTICE for vacant possession of the said premises within THREE (3) calendar months from the 21st day of July 2014. Kindly make arrangements to vacate the said premises on or before 21st October 2014".

16. By the time the Respondent instructed his advocate to give the said notice to the Applicant, the Business Premises Rent Tribunal had not heard the matter. Indeed the matter was fixed for hearing by the Tribunal for the first time, on 27th August 2014.
17. The contents of the letter of 21st July 2014 was meant to harass the Applicant and also threatened him with eviction contrary to the orders of this court.
18. The argument by the Respondent's advocate that the Reference by the Applicant was eventually dismissed by the Tribunal does not hold because by 21st July 2014, the matter was still pending.
19. Although the Respondent's advocate submitted that the Respondent was entitled to rent even after the rent arrears of Kshs.129,000 was deposited in court, the letter of 21st July 2014 was not a demand for rent but an eviction notice.
20. In the circumstances and for the reasons I have given, I find and hold that the Respondent was in contempt of the orders of this court when he instructed his advocate to write the letter of 21st July 2014 which was served upon the Applicant. That letter was meant to harass the Applicant and at the same time a threat of eviction. The Respondent should therefore be punished for being in contempt of the orders of this court.
21. For those reasons, I find and hold that the Respondent was in contempt of the orders of this court and make the following orders:

(a) The Respondent to pay to the State a fine of Kshs.100,000 within 7 days from the date hereof and in default to serve a jail term of 30 days from the date of his arrest.

(b) The OCS, Malindi to enforce this order.

(c) The Respondent to pay the costs of the Application.

Dated and delivered in Malindi this **30th** day of **October** 2015.

O. A. Angote

Judge