



**IN THE HIGH COURT OF KENYA AT NAIROBI**

**MILIMANI LAW COURTS**

**ENVIRONMENT AND LAND COURT**

**ELC NO. 130 OF 2014**

**MARTHA WANGARI KARONG'E**

(Suing through her guardian and manager

**Margaret Wangui Mutang'a) .....PLAINTIFF**

**=VERSUS=**

**ANTONY WAMWEA NJOKI.....DEFENDANT**

**RULING**

There are two applications for determination. The first application is filed by the Plaintiff seeking orders, inter-alia, that the Defendant be cited for contempt of Orders granted by the Court on 13/2/2014. The second application is filed by the Defendant seeking an Order that the orders made on 13/2/2014 be set aside. This court on 7/5/2014 made an Order that the said applications be heard together. However, on further consideration, the court deems it fit to reserve the ruling of the Defendant's application until the date of determining the application for injunction pending the hearing of the suit. Consequently, the ruling herein is solely on the Plaintiff's application.

The application is dated 25/2/2014 wherein the Plaintiff prays for orders that:

1. Spent
2. *The Plaintiff be authorized to exclusively collect rent due from the tenants in premises known as L.R. Nos. 20301/8 and 20301/13 pending the hearing and determination of the application and the suit herein.*
3. *The Defendant be cited for contempt of the orders of 13/2/2014 and consequently be committed to prison for such period as the Honorable Court may deem fit and just.*
4. *The officer commanding Juja Police Station to assist in effecting the orders.*
5. *Costs of the application*
6. *Any other Orders that meet the ends of justice.*

The application is founded on grounds outlined in the application and supported by an affidavit sworn by the Plaintiff on 25/2/2014. The Plaintiff deposed that pursuant to an Order of the court (G.B.M Kariuki J. as he then was) she was appointed as the guardian and manager over the estate of the Plaintiff on 27/4/2012 following Martha Wangari Karong'e (*hereinafter Mrs. Karong'e*) advanced age, ailment and mental disorder. That the estate comprises of the suit properties to which Mrs. Karong'e is a trustee and joint beneficiary together with the Defendant. She deposed that both suit properties contain a total of 23 rental units which fetch total rental income of **Kshs. 59,000/-** per month. It is her deposition that as the Plaintiff's manager, she has been collecting the rents from the properties for the use and benefit of Mrs. Karong'e and has been tendering statements of account in court in compliance with **Section 33** of the **Mental Health Act**.

It is the Plaintiff's deposition that sometime in January 2014; the Defendant threatened to evict the Plaintiff, interfere with the tenants therein, and take over the collection of rent. Following the threats, the Plaintiff deposes that she moved the Court on 12/2/2014 and obtained Order restraining the Defendant from collecting rent from the suit premises and evicting or interfering with the quiet occupation of the tenants. The Plaintiff deposes that the said Orders were served upon the Defendant on 14/2/2014 as well as the tenants on the suit property. It was her deposition that when she went to collect rent on 17/2/2014, the Defendant came to threaten her and the tenants not to make any payments to her and subsequently collected rent from all the tenants. Further that the Defendant issued a Notice to Vacate to one of the tenants contrary to the orders of the court not to interfere with the tenants. The Plaintiff states that she made a report at the Police Station but could not get any assistance on the basis that the Court Order issued on 13/2/2014 did not expressly authorize her to collect rent from the tenants.

It is deposed that the Defendant's actions of collecting rent by use of threats, harassment and intimidation against the tenants are in defiance of the court's orders. Further that Mrs. Karong'e has been denied the use of the rental income for her maintenance. The deponent urged the court to restore the status quo which has been displaced by the Defendant's disobedience deposing that the Mrs. Karong'e will suffer irreparable loss if the status quo is not restored.

This application was opposed by the Defendant who swore a Replying Affidavit on 14/4/2013. The Defendant refuted the claim deposing that he has fully complied with the orders of the court and contended that the Plaintiff, out of malice, continues to mislead the court. The Defendant referred to copies of title deeds of the suit properties contending that he is the owner thereof and urged the court to dismiss the application deposing that the same is based on no evidential proof and also that it was made in bad faith.

The application was canvassed by way of written submissions. **D.B. Osoro & Co. Advocates** for Plaintiff, filed submissions dated 18/6/2014. Counsel submitted that the suit properties are part of a larger parcel of land which Mrs. Korong'e inherited from her deceased husband. Further that she on her own volition, sub-divided the parcel and transferred the sub-plots to some of her children, but that her intention was not to divest herself absolutely of the benefit of the properties during her lifetime and after.

Counsel submitted that the Plaintiff had shown that Mrs. Karonge has established a prima facie case with high chances of success by demonstrating that she is the sole trustee over the property, the trust having not been varied, revoked or terminated. Further that by forcefully taking over the suit properties, the Defendant had breached the laid down procedures. Counsel also submitted that the Plaintiff had shown that Mrs. Karong'e was bound to suffer irreparable loss that cannot be compensated by damages. Counsel further submitted that the balance of convenience tilted in the Plaintiff's favour in view of the fact Mrs. Karong'e is an ailing widow who is dependent on the rental income from the suit properties, more than the Defendant.

In respect to contempt proceedings, counsel submitted that the law is very clear that he who willingly and deliberately disobeys a court order ought to purge the said contempt, and further that it matters not that the Orders were obtained irregularly or is not merited. In support of this submission, counsel relied on the authority of **Hadkinson Vs. Hadkinson (1952) 2 All ER 567** where the Court held that **the uncompromising nature of this obligation is shown by the fact that it extends even to cases where**

**the person affected by an order believes it to be irregular or even void.**

**Kimani Kahete & Co. Advocates** for the Defendant filed submissions dated 24/6/2014. Counsel submitted that subjecting the Defendant to contempt proceedings is an attempt to aggravate his already disadvantaged position brought about by orders ordering him to desist from collecting rent from properties he owns. Counsel reiterated that the allegations that orders have not complied with have not been proved.

The standard of proof in matters of contempt of court is well settled. It must be higher than proof on a balance of probabilities, almost but not exactly beyond reasonable doubt. See the case of **Mutitika Vs Baharini Farm Limited [1985] KLR 229**. This is because the charge of contempt of court is akin to a criminal offence. A party may lose his liberty.

The Plaintiff avers that the Defendant with the use of threats, harassment and intimidation against her and the tenants have occasioned her difficulties in collecting rent which is used solely to cater for Mrs. Karong'e. It is also her averment that the Defendant has issued a notice to one of the tenants not to pay any rent to the Plaintiff. Thus, that these actions are contrary to the orders of this court. These allegations have been denied by the Defendant who contends that he has always complied with the Orders.

I have carefully perused the application together with the affidavits in support thereto. The Plaintiff has not annexed any affidavits sworn by any of the tenants to corroborate the allegations of threats meted out against them by the Defendant. Further, the notice addressed to the tenants of the premises not to pay rent is one dated 29/1/2012, before the injunction orders herein were granted. It is my finding that the Plaintiff has failed to meet the standard required of proving contempt. This finding notwithstanding, the orders of this court are yet to be discharged, varied, and or set aside and therefore still in force. Consequently, the Defendant is mandated to adhere to them.

In respect to Prayer No. 2, the Plaintiff has expressed her inability to adequately enforce the Orders of the court issued on 13/2/2014. Whereas the order bars the Defendant from collecting rents from the premises, it does not expressly state that rent shall be collected by the Plaintiff. It is therefore her prayer that an Order be made authorizing that rent be exclusively collected by her. The court record shows that the **interim Orders** granted at the first instance have been extended over time pending the determination of the application. I am also of the considered view that to allow the Plaintiff to exclusive authority to collect rent will result to giving effect the said Orders.

As stated at the onset of the ruling, the Defendant's application shall be determined alongside the application for injunction pending the determination of the suit. In that regard, the said application shall be canvassed by way of written submissions.

Consequently, the Ruling of the court is as follows:

1. **Prayer No. 3 in respect of an order for contempt of the court against the Defendant is dismissed.**
2. **Prayer No. 2 is allowed to the extent that the Plaintiff is hereby authorized to collect rent from all the tenants within the suit premises, pending the hearing and determination of the application.**
3. **Plaintiff is hereby directed to file and serve submissions of the application for injunction pending the hearing of the suit within 14 days from the date of the ruling.**
4. **The Defendant shall file and serve submissions within 14 days from the date of receipt of service.**
5. **Matter to be mentioned on 30<sup>th</sup> October, 2014 to confirm compliance and further orders of the court.**

**6. Costs of this application shall be in the cause.**

It is so ordered.

Dated, Signed and delivered this **3<sup>rd</sup>** day of **October** 2014

**L.N. GACHERU**

**JUDGE**

In the Presence of:-

.....For the Plaintiff

.....For the Defendant

Kamau: Court Clerk

**L.N. GACHERU**

**JUDGE**