



**Simu t/a Jacton Stores v Musyimi & 2 others (Tribunal Case
E1280 of 2023) [2024] KEBPRT 527 (KLR) (19 April 2024) (Ruling)**

Neutral citation: [2024] KEBPRT 527 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E1280 OF 2023
J OSODO, CHAIR & GAKUHI CHEGE, MEMBER
APRIL 19, 2024**

BETWEEN

ANTHONY SIMU T/A JACTON STORES TENANT

AND

MARY MUNYIVA MUSYIMI 1ST LANDLORD

JOSEPH MUKOLO 2ND LANDLORD

NDUVA MUKOLO 3RD LANDLORD

RULING

A. Dispute Background

1. The tenant/applicant moved this tribunal vide a Notice of Motion under a certificate of urgency dated 29th January, 2024 wherein he sought the following orders; -
 - i. That the application be certified urgent
 - ii. That the tribunal orders that the 1st Landlord/respondent Mary Munyiva Musyimi be committed to civil jail for contempt of the orders of this tribunal made on 5th January, 2024 and 16th January, 2024.
 - iii. That leave be granted to the tenant to claim for damages from the 1st Landlord/respondent for all the goods distrained since the said stock is already bad and now has gone to waste.
 - iv. That the costs of the application be paid by the 1st Landlord/respondent.
2. The application is supported by an affidavit of even date in which the tenant deposes as follows; -



- i. That this tribunal issued the tenant with orders on 5th January, 2024 and 16th January, 2024 directing the 1st landlord/respondent to release the distrained goods and the said orders were duly served upon her on 5th and 17th January, 2024 respectively.
 - ii. That the landlord has blatantly refused and or ignored to comply with both orders.
 - iii. That on 8th, 11th, 16th, 19th and 25th January, 2024, the tenant visited the auctioneer's office in Machakos County but they refused to release the said goods to the tenant and instead demanded to be paid KES. 150,000 as storage charges before releasing the goods.
 - iv. That the distrained goods have now gone bad due to the long period of storage and the tenant is now seeking that the tribunal allows him to seek damages from the 1st landlord/respondent.
3. The application is opposed vide a replying affidavit dated 18th March, 2024 in which the 1st landlord/respondent deposes as follows; -
- i. That the application is frivolous, not anchored in any law and is an abuse of the court process.
 - ii. That the respondent was instructed by her advocates that the tribunal had issued orders directing that the respondent returns the applicant's goods.
 - iii. That the said goods had been held by Eastern Auctioneers who were informed of the said orders by the respondent's advocates.
 - iv. That the applicant herein could not agree with the said auctioneers as regards the storage charges and it is therefore not true that the respondent has failed to return the said goods.
 - v. That the applicant has never informed the respondent's advocate nor the respondent herself about his frustration in getting the said goods back.
 - vi. That it is evident from the affidavit sworn by the applicant that he was dealing directly with the auctioneers.
 - vii. That from the moment the respondent instructed her advocate to handle the case, the respondent has never been contacted directly by the applicant, neither has the respondent been served directly with the orders issued by the court. That the respondent cannot therefore be held to be in contempt of this court.
 - viii. That the court ought to have given a clarification on the storage charges claimed by the auctioneers.
 - ix. That the auctioneers only refused to release the said goods because of storage charges and not because the respondent had instructed them not to comply with the court orders.
 - x. That the application ought to be dismissed with costs.

B. Issues for determination

4. The following are the issues for determination; -
- a. Whether the tenant is entitled to the orders sought in the application dated 29th January, 2024.
 - b. Who shall bear the costs of the application?
- Issue (a) Whether the tenant is entitled to the orders sought in the application dated 29th January, 2024.



5. The tenant has come to this tribunal seeking orders that the 1st landlord/respondent be committed to civil jail for contempt of the tribunal's orders issued on 5th January, 2024 and 16th January, 2024. The tenant is also seeking to claim for damages for the goods distrained since they have all gone to waste.
6. The orders issued by the tribunal on 5th January, 2023 were that the 1st respondent or his agents release the items distressed to the tenant forthwith pending the hearing of the application inter-partes on 16th January, 2024.
7. At the court hearing on 16th January, 2024, the tenant who was present in person stated that the said goods had not been released to him as ordered by the tribunal. Consequently, the tribunal ordered that the 1st respondent/landlord complies with the previous orders made in favor of the tenant and in default, the respondent shall not be granted audience by the tribunal. The tribunal also ordered that rent payable to the landlord be suspended until the landlord complies with the orders.
8. Failure to comply with the above orders led to the filing of the current application. At the court hearing of 11th March, 2024, the tenant stated that the 1st respondent/landlord had not complied with any of the orders issued.
9. The 1st respondent/landlord in her replying affidavit dated 18th March, 2024 deposes that she has never been served directly with the orders issued by this court and cannot therefore be in contempt of the said orders. On the other hand she has sworn in the same affidavit that she instructed her advocate to handle the case and has never been contacted directly.
10. The 1st respondent/landlord also deposes that the tenant's issues with the auctioneers does not involve her as she is not the one who instructed the auctioneers not to comply with the court orders in question.
11. The relationship between the landlord and the auctioneer herein is that of a principal and agent respectively. In the case of *David Njuguna Ngotho v Family Bank & another* [2018] eKLR, the superior court observed as follows;

“...Bowstead and Reynolds on Agency Seventeen Edition, Sweets Maxwell Page 1-001, defines such a relationship to be:-

...a relationship which exists between two persons, one whom expressly or impliedly consents that the other should act on his behalf so as to affect his relations with third parties, and the other of whom similarly consents so to act or so acts.”
12. The superior court went on to quote Article 84 of the treatise, Bowstead on Agency, 13th Edition as follows:

“An act of an agent within the scope of his actual or apparent authority does not cease to bind his principal merely because the agent was acting fraudulently and in furtherance of his own interests”.
13. The agent herein is Eastern Kenya Auctioneers who according to the notification of sale of movable property dated 18th December, 2023 indicated that the creditors name is one Mary Munyiva who is the principal and the 1st respondent/landlord herein.
14. It is evident from the Notification of sale of movable property above, that the 1st respondent/landlord issued instructions to the Auctioneers to levy distress against the tenant/applicant.



15. The 1st respondent/landlord in her replying affidavit dated 18th March, 2024 has admitted in paragraph 5 as follows; -

“ 5. That my advocates on record directed the said auctioneers about the orders issued by the court.”

16. In the case of *Samuel M. N. Mweru & Others v National Land Commission & 2 others* [2020] eKLR Justice, J. M. Mativo stated as follows; -

“ 32. I now address the question whether the applicants have established any basis for the orders sought to be granted. If courts are to perform their duties and functions effectively and remain true to the spirit which they are sacredly entrusted with, the dignity and authority of the courts has to be respected and protected at all costs. Otherwise, the very cornerstone of our constitutional scheme will give way and with it will disappear the Rule of Law and a civilized life in the society. It is for this purpose that courts are entrusted with the extraordinary power of punishing those who indulge in acts whether inside or outside courts which tend to undermine their authority and bring them in disrepute and disrespect by scandalizing them and obstructing them from discharging their duties. When the court exercises this power, it does so to uphold the majesty of the law and of the administration of justice. The foundation of judiciary is the trust and confidence of the people in its ability to deliver fearless and impartial justice. When the foundation itself is shaken by acts which tend to create disaffection and disrespect for the authority of the court by creating distrust in its working the edifice of the judicial system gets eroded.

33. It is essential for the maintenance of the Rule of Law and order that the authority and the dignity of courts is upheld at all times. The court will not condone deliberate disobedience of its orders and will not shy away from its responsibility to deal firmly with proved contemnors. It is the plain and unqualified obligation of every person against, or in respect of whom, an order is made by a court of competent jurisdiction, to obey it unless and until that order is discharged. 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 void.[32]

34. It is the duty of the court not to condone deliberate disobedience of its orders nor waiver from its responsibility to deal decisively and firmly with contemnors.[33] The court does not, and ought not be seen to make orders in vain; otherwise the court would be exposed to ridicule, and no agency of the constitutional order would then be left in place to serve as a guarantee for legality, and for the rights of all people.[34]

35. A court order is binding on the party against whom it is addressed and until set aside remain valid and is to be complied with. Article 159(1) of *the Constitution* provides that judicial authority is derived from the people and vests in, and shall be exercised by, the courts and tribunals established by or under *the Constitution*. Under Article 10(1) of *the Constitution* the national values and principles of governance in the Article bind all State organs, State officers,



public officers and all persons whenever any of them (a) applies or interprets the Constitution; (b) enacts, applies or interprets any law; or (c) makes or implements public policy decisions. Under clause (2) (a) of the same Article the national values and principles of governance include the Rule of Law.

36. It is a crime unlawfully and intentionally to disobey a court order.[35] This type of contempt of court is part of a broader offence, which can take many forms, but the essence of which lies in violating the dignity, repute or authority of the court.[36] The offence has in general terms received a constitutional ‘stamp of approval,’[37] since the Rule of Law – a founding value of the Constitution – ‘requires that the dignity and authority of the courts, as well as their capacity to carry out their functions, should always be maintained.’[38]”
17. Flowing from the above analysis, it is our view that the 1st respondent/landlord who instructed the said auctioneers as her agents is liable in contempt of the court orders issued on 5th January, 2024 and 16th January, 2024. We find that the tenant is entitled to the orders sought in the application dated 29th January, 2024.

Issue (b) Who shall bear the costs of the application?

18. Under Section 12(1)(k) of Cap. 301, Laws of Kenya, costs of any suit before this tribunal are in its discretion but always follow the event unless for good reasons otherwise ordered. We shall order costs of the application to the tenant/applicant

C. Orders

19. In conclusion, the following orders commend to us-
- a. The application dated 29th January, 2024 is hereby allowed as prayed.
 - b. A warrant of arrest is hereby issued against the 1st respondent/landlord who shall be brought before this tribunal on 7th May, 2024 by the O.C.S within whose jurisdiction the suit premises are situate to show cause why she cannot be committed to prison for contempt of court.
 - c. Costs of KES. 10,000 awarded to the tenant/applicant against the 1st Respondent.

It is so ordered.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY THIS 19th DAY of APRIL 2024.

HON. JOYCE AKINYI OSODO

(PANEL CHAIRPERSON)

BUSINESS PREMISES RENT TRIBUNAL

HON GAKUHI CHEGE

(PANEL MEMBER)

In the presence of:

Tenant present in person.

N/A for the respondents

