



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MALINDI

CIVIL SUIT NO. 76 OF 2008

ANJODI KENYA LIMITED PLAINTIFF

-VERSUS-

SAHA MKUZI TEITEI DEFENDANT

RULING

The Chamber summons application dated 23rd June 2010 is made under Order XXXIX Rule 2A (2) of the Civil Procedure Rules, Section 1A, 1B and 3A of the CPA. It seems that warrant of arrest to issue against the Defendant/Respondent Sana Muhuzi Teitei to be arrested and brought before this court and show cause why he should not be detained in prison for a term not exceeding six (6) months for disobedience of court orders issued on 11th June 2010.

It also seeks that the suit premises be broken open for the Court Bailiff and auctioneers to gain

access and attach all the immovable properties therein belonging to the defendant at his costs. That the O.C.S. Kilifi do avail Security during the said attachment and the Respondent's arrest be effected by the O.C.S.

The application is based on grounds that:

1 This court issued orders on 11th June 2010, requesting the Defendant/Respondent through himself, his agents, servants, legal representatives or anyone claiming interest through him, from trespassing and remaining in the suit property.

The order together with the personal notice were duly served in the defendant, but he has disobeyed and gone ahead to not brief his family onto the suit property AFTER the orders were served unless the orders sought are granted, the affidavit shall suffer loss and damage as the Defendant is likely to sell the suit property with an intention of defeating the applicant's whereabouts. In the affidavit – sworn by Johana Marria J. Petronella in support of this affidavit, it is deponed that instead of complying with the court order which was served on the respondent together with the penal, the respondent became even more defiant and installed his family on the suit premises; and unless the orders sought are granted the respondent is likely to continue with his acts, which amounts to contempt of this court's orders.

Currently the applicant is living on a hotel, yet she has a house she could live in, all because of the respondent's disobedience to the court orders.

In a verifying affidavit sworn by the respondent, he depones that he was not served with the orders requiring him to hand over or vacate the house which the case is still on court. The affidavit is rather argumentative, he states that the ruling dated 2nd October 2008 is not clean because the complainant was supposed to appear in court and explain why they had disagreed in their marriage because they had just married in Thailand and they had agreed to register Anjodi K. Ltd, but eventually some documents disappeared and applicant wrote a will bequeathing the property to respondent's two sons. He further states that affidavit obtained 12 acres of land in Kilifi environment following the law, yet she was just a tourist.

The parties disposed of this matter by way of written submission. The extracted order of the court stems from a ruling delivered on 7th October 2009 and subsequently signed and sealed on 11th June 2010. The order read as follows;

1 That injunction order is hereby issued after the defendant/respondent restraining him from disposing off, leasing and/or in any way interfering with the assets both movable and immovable and the general running of the affairs of the plaintiff/application until the suit is heard and determined.

2 The Defendant/Respondent is restrained form trespassing or remaining on the suit premises until the suit is heard and determined.

The order was served on the respondent on 12th June 2010.

Mr. Otara submitted that on 22nd July 2010, the defendant appeared on court and confirmed service but said he would not obey the court orders because his advocate had advised him not to obey these orders. He however had not filed any evidence to confirm those claims. It was Mr. Otara's contention, that since the respondent has personally confirmed disobeying the court's orders then he might be punished as provided under Order XXXIX Rule 1 and 2 of the Civil Procedure Rule.

The respondent filed written submissions, he had fallen out with his first advocate Mr. Mtara Jewa, and his subsequent advocate Mr. Ouko seems to have taken a rather passive role in this matter.

It is his submissions that the Penal Notice did not mention him by name and the restraining orders were not equivalent to an order for eviction because the court had itself stated that eviction was not appropriate so orders restraining him from trespassing or remaining in the suit property would contradict what the court observed.

He denies being personally served with the order, saying he just learnt that the said order was served on his cousin one Dzunga who had visited his mother and after service; he left with all the documents and did not confirm the respondent.

He explains that he had not moved from the suit premises because the same were not forwarded and his presence and that of his family act as security over the property, saying if they left, then the property would be vandalized. He states that the application is simply intended to intimidate him. He then states that in the event this court finds him guilty of contempt, then he ought not be given the optimum of a non custodial sentence.

I have re-read the ruling dated 7th October 2008 – there is no contradiction in terms of the orders given and what the court observed, injunction orders were to restrain activities by the report which included remarrying in the suit premises or trespassing, eviction means forceful ejection, which the court was persuaded that given the circumstances, a forceful ejection was uncalled for at that stage. The restraining orders were clear – “keep off the suit property until the sit is heard and determined.” He had clearly confirmed non compliance pretending to now give a new meaning or interpretation to the orders. The attempting to justify his disobedience by saying his presence and that of his family offers security to the property.

Surely if he felt the orders were not capable of being effected, nothing would have been easier than

a) Coming to this court for review of the orders or

b) Filing an appeal after the ruling.

He did neither of these and he does not deny that after issuance of those orders he actually brought in his family – as though to dispute the orders. That explanation is not acceptable neither is it satisfactory and he can't now clutch to the absence of his advocates as an excuse, after all at the front when complainants were raised about his disobedience, he still had Mr. Mtara Jewa on record, and respondent attended court and confirmed that he was advised by his advocate not to obey the orders.

The second issue of concern is whether he was personally served with the order. The affidavit of service sworn by Thomas Konde shows that the order dated 11th June 2010 was served on the respondent personally after he was pointed out by the applicant's representative Pohamna Maria, and he received the document but he refused to sign saying he would only do after seeking advice from his advocate. I am satisfied that service was duly effected on the respondent.

The rest of his affidavit and submissions contain arguments which would have best fitted in an appeal or prayers for setting aside or review of orders and not for contempt.

I am satisfied that respondent has willfully disobeyed the court orders.

Delivered and dated this 15th Day of **December 2010** at Malindi.

H. A. OMONDI

JUDGE



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