



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
MILIMANI LAW COURTS**

Civil Case 396 of 2003

PHOEBE WANGUI GAKUI.....PLAINTIFF

VERSUS

TOWN CLERK OF NAIROBI CITY COUNCIL.....1ST DEFENDANT

NAIROBI CITY COUNCIL.....2ND DEFENDANT

RULING

By way of this Chamber Summons application brought under Order XXXIX Rule 2A 5, Order L Rule 2 of the Civil Procedure Rules and Section 3A of the Civil Procedure Act the plaintiff seeks orders that the First Defendant and the Officers of the Second Defendant Mr. Adan Racho the Director of Social Services and Housing Department and Mr. Cosmos Nzioka, the Officer in Charge of Joseph Kangethe Estate Nairobi, be committed to civil jail for a term not exceeding six months for disobeying the order of temporary injunction given by this Honourable Court on 22nd July 2003 and that an order of sequestration be issued against the second Defendant is such a sum of money as this Honourable Court may deem fit.

The application is based on the grounds:-

- (a) That this Honourable Court granted a temporary injunction on 22nd July 2003 restraining the Defendants by themselves, their servants, agents, employees and/or any other person howsoever claiming under them from interfering, harassing threatening, evicting, repossessing, alienating, transferring and/or otherwise dealing with plot no. 142(181/81) on L.R. NO. 209/12539/210 off Suna Road Nairobi pending the resolution of the point in issue.
- (b) That the said order of injunction was duly served upon both the Defendant and the above named officers.
- (c) That in disobedience of the said order of injunction the Defendants together with their above named officers on 1st September 2006 caused to affix to the gate of the plaintiff's said premises a Notice of Intention to evict the plaintiff for the alleged non-payment of arrears of rent.
- (d) That it is within the Defendants own knowledge and that of the above named two officers that no rent is payable to the second defendant by the plaintiff in respect of the said premises.

(e) That it is within the defendants own knowledge and that of the above named two officers that the said premises are the property of the plaintiff duly registered as the owner thereof.

(f) That by demanding rent which is not due or payable and by giving Notice of Eviction as aforesaid, the Defendants and the said officers are harassing and threatening the Applicant and interfering with her peaceful possession of the said premises which said acts amount to a blatant disobedience of the order of injunction aforesaid and are a contempt of this court punishable by order of sequestration and/or imprisonment of the tortfeasers above named.

(g) That in the interest of justice and in order to maintain the honour, authority and respect of this Honourable Court and compliance with the law, the 1st Defendant and the above named officers should be punished for disobeying the order aforesaid by being committed to civil jail as prayed herein and that such funds of the 1st Defendant be attached and be deposited in this court until the disposal of the suit hereof or until further orders.

The respondents there served but they did not file any papers to oppose the application nor did they attend court when this application came up for hearing.

Mr. Wamae for the applicants submitted that the respondents were served with this application but Adan Racho had been replaced as the Director of Social Services and Housing by one Kariuki.

The injunction orders issued on 22nd July 2006 which the respondents are alleged to have disobeyed was couched in the following terms:

“3” That a temporary injunction be and is hereby issued restraining the defendants by themselves, their servants, agents, employees and/or any other persons howsoever claiming under them from interfering, harassing, threatening, evicting, repossessing, alienating, transferring and or otherwise dealing with Plot No. 142 (187/81) on L.R. NO. 209/12359/210 Off Suna Road Nairobi pending the resolution of the point in issue.”

“4” That the matter be put before the Duty Judge for directions on 24th September 2003.

First, the order as extracted lacks clarity and more so when it states that the temporary injunction do remain in force pending the resolution of the point in issue. The point in issue ought to have been made clear.

Secondly, there is no evidence that the respondents have actually disobeyed the Order of Injunction issued herein. If I understand it properly, what the acts of the defendants amount to is an intention which if carried out will amount to disobedience, otherwise no action has taken place. This application is brought in anticipation of the future act.

For the above reasons I decline to issue the orders sought in the Chamber Summons dated 22nd September 2006.

Dated and delivered at Nairobi this 25th day of October 2006.

J.L.A. OSIEMO

JUDGE