

IN THE HIGH COURT OF TANZANIA
(LAND DIVISION)

AT DAR ES SALAAM

MISC. LAND CASE APPL. NO.417 OF 2017

RADUAN SHERCALIAPPLICANT

VERSUS

LILIAN JOSEPH OGUTU1ST RESPONDENT

CRDN BANK PLC2ND RESPONDENT

KCB BANK LIMITED.....3RD RESPONDENT

R U L I N G

P.M.Kente, J:

On the 2nd March, 2017 my learned sister Wambura,J who was the trial Judge in respect of Misc. Lad Application No. 1088 of 2016 in which parties were Radvan Shercali (the present applicant) and Lilian Joseph Ogutu (the present 1st respondent) made an order for among others maintenance of **status quo** in the following terms:-

"Court; Hearing to be on 27/3/2017 as earlier scheduled.

As there is no objection to the maintenance of the status quo the same is ordered to be maintained until the application has been heard and determined accordingly".

The first respondent is accused of disobeying the above-quoted order by the learned Judge. Pursuant to the alleged disobedience, the applicant one Radvan Shercali has moved this court under the provisions of section 68(e) and section 95 of the Civil Procedure Code [Cap. 33 R.E. 2002] for the orders thus:-

- (a) That, this Honourable court be pleased to order the 1st respondent to be arrested and committed as a criminal prisoner for deliberate obstructing, interfering, preventing and non-satisfaction of the Ruling and Order dated 2nd day of March, 2017 by Hon. S.A.N Wambura, J maintaining the status quo of the suit property restraining the 1st Respondent by herself or acting through her agents, workmen, assignee or any other person working on that behalf from further collecting rent, leasing the suit property pending the determination of the Application interpartase in connection with the suit property held under Certificate of Title No. 79487, Block 21 Kariakoo ILALA Municipality, Dar es salaam.
- (b) Any other or further reliefs as this court may deem fit to meet justice of this case/Application.
- (c) Costs of this Application be paid in due course.

The Application is supported by an affidavit deposed to by the applicant. So far as this dispute is concerned, the main plank of the applicant's complaint is to be gleaned from paragraphs 3,5,6,7,8, 9, 10 and 11 of his affidavit where he is averring thus:-

3. That, on the aforesaid date the order was made to the effect that, the status quo of the suit property be maintained until the Application has been heard and finally determined accordingly.
5. That I have been reliably informed that, the 1st Respondent in concept thereof is transacting with the sitting tenants in the suit premises including collection of rents without my prior consultation or participation as was before despite the fact that the suit property is the matrimonial property and the status quo has been maintained.
6. That, it is clear that, the 1st Respondent has refused to satisfy the said order and as such has committed willful acts to impair the functioning the this honourable court.
7. That the 1st Respondent has continued to collect rent and transact with the sitting tenants adverse to the ownership interests of the Applicant.
8. That, initially I used to be in joint undertaking with some of the tenants including JIAHUA IMPORT & EXPORT LIMITED renting the 1st and 2nd floor of the suit property, but as now has deviated the transactions to the 1st Respondent despite to the facts that the suit was jointly leased by the Applicant and the 1st Respondent.
9. That, I personally know that I have overriding beneficial interests in the suit property rented with shops therein held under Certificate of

Title No. 79487, Block 21 Kariakoo, ILALA Municipality, Dar es salaam.

10. That, I personally know that attempts to contravene the said interim order, the 1st Respondent had continued to act to the contrary of the said order at the expense of the Applicant rendering the honourable court order useless/a nugatory.

11. That unless the contempt of court order is issued, the 1st respondent will continue to act in contempt and insult the dignity of this honourable court and continue causing economic loss to the Applicant as some tenants are threatening to vacate from the suit premises which has financial impacts before determination of the matter in this court.

To counter the application, the first respondent maintained in her counter affidavit that she had not committed any act or omission which could be termed or translated into an act of disobeying the above quoted order of this court. She invited this court to put the applicant on a strict proof of his claims. Otherwise she implored this court to dismiss the same for being baseless.

Mr. Balomi learned advocate prosecuted the applicant's case on his behalf while Mr. Matiya represented the respondent. Upon leave of this court each side filed written submissions in support of its case.

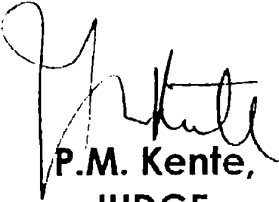
There is only one substantive issue which I have identified from the pleadings and the written legal arguments. It is whether immediately before the filing of this application the first respondent was in a contemptuous breach of the order for maintenance of the **status quo**. Going by the applicant's affidavit, it is to be noted that his main complaint is that, the first respondent went on collecting rent from the sitting tenants even after an order for maintenance of the status quo was made. Needless to say in essence, the first respondent has not denied the fact that she went on collecting rent from the sitting tenants after the said order was made. She said that, she maintained the status quo by continuing to be the sole legal owner of the property in dispute.

Mr. Balomi fronted several arguments on behalf of his client, but for the purposes of this decision, I will have the following observation to make, albeit very briefly. In the first place, I wish to point it out that, in all cases of alleged contempt of court, the standard of proof is beyond reasonable doubt as such cases, are more or less criminal in nature. I wish also to say in the second place that, given the highly ambiguous prayer for maintenance of the status quo which was

made by Mr. Balomi when he appeared before Hon. Wambura, J on 2nd March, 2017 and the subsequent stop order preventing the first respondent from further collecting rent from the sitting tenants, I can hardly find her guilty of disobeying the orders of this court. The said disobeyed orders must be existent in the first place before they can be transgressed. Otherwise, one cannot pick from the order of the court which was relatively general and say that it was specifically intended to prevent the first respondent from collecting rent.

It is on the basis of the foregoing reasons that I entirely agree with Mr. Matiya learned counsel for the respondent who submitted that, his client had not committed any offence of contempt of court. Consequently, I find this application to have no merit and, I accordingly dismiss it with costs.

Dated at Dar es Salaam this **16th** day of **August, 2018.**


P.M. Kente,
JUDGE.