



**Chumz Limited v Mageeta Investment Limited; Adil Khan t/a Motor Atrep (Interested Party)  
(Environment & Land Case 362 of 2022) [2023] KEELC 16961 (KLR) (20 April 2023) (Ruling)**

Neutral citation: [2023] KEELC 16961 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND CASE 362 OF 2022**

**LN MBUGUA, J  
APRIL 20, 2023**

**BETWEEN**

**CHUMZ LIMITED ..... PLAINTIFF**

**AND**

**MAGEETA INVESTMENT LIMITED ..... DEFENDANT**

**AND**

**ADIL KHAN T/A MOTOR ATREP ..... INTERESTED PARTY**

**RULING**

1. Before me is an application dated November 4, 2022 where the plaintiff is seeking orders that the defendant and the interested party be restrained from interfering with the businesses on the property L R No 330/298 (the suit premises) or evicting the plaintiff from the said premises until the suit is heard and determined. They also pray that the said orders be enforced by OCS Kabete police station.
2. The application is premised on the grounds on the face of the application and the supporting affidavit of one Muchiri Wambugu, the director of the plaintiff. The plaintiff contends that the defendant is the registered owner of the suit premises. That on May 1, 2020, the two parties entered into a lease agreement for the suit premises for a period of 5 years and a variation of the said lease was made on May 29, 2020 providing *inter-alia* that the term of the lease was to be 10 years and 6 months effective from May 1, 2020 – October 21, 2030.
3. The plaintiff contends that the defendant is in breach of the said lease by failing to grant the plaintiff peaceful enjoyment of the suit premises; for instance, leasing the suit premises to the interested party during the subsistence of the lease. The plaintiff contends that they have been subjected to harassments including being arraigned in criminal cases, that the defendant does not pay rates and the utility bills which were outstanding before the commencement of the lease and failing to maintain a working



sewerage system. Further, that the defendant failed to resolve disputes with third parties, thus the suit property was advertised for auction.

4. The plaintiff contends that they have made substantial investments in the suit premises by constructing a hotel and a number of shops. But on several occasions, fights have erupted on the suit property occasioned by the agents of the defendants, causing the tenants to suspend their rental payments.
5. The plaintiff has submitted that this court has jurisdiction to hear the case as the dispute is anchored on a lease; there is no controlled tenancy.
6. They aver that they have established a *prima facie* case as they have highlighted the particulars of breach; That they stand to suffer irreparable loss as they face imminent legal action from their sub tenants, and that the balance of convenience tilts in their favour.
7. The defendant has opposed the application vide the Replying Affidavit of Ajay Magon, the director of the defendant. They have also filed a Notice of Preliminary Objection dated November 22, 2022, on grounds that the relationship between the two protagonists is a controlled tenancy, and that a reference has been filed at the Business Premises Rent Tribunal.
8. The defendant admits that there was a lease agreement which was also varied in terms stated by the plaintiffs. However, they contend that prior to the signing of the lease, the plaintiff was privy to the occupation of the suit premises by other tenants. Thus the lease was not for the whole premises. That the plaintiff went ahead to vandalize and evict those other existing tenants and this is what gave rise to the criminal case.
9. Further, the plaintiff failed to comply with the terms of rent payment for a period of two years, yet the plaintiff was being paid rent by the sub tenants. Thus on October 28, 2022, the defendant served the plaintiff with a termination notice which was to take effect on January 1, 2023. The said notice gave the defendant the right to re-enter the suit premises and regain possession thereof and was issued pursuant to the provisions of Section 4(2) of the [Land Lord and Tenant \(Shops Hotels and Catering Establishments\) Act](#).
10. The outstanding rent according to the defendants amounts to sh. 15, 839, 625 as at January 2023.
11. I have considered all the arguments raised herein. The issues falling for determination are whether this court has jurisdiction to determine the dispute and whether the restraining orders sought by the plaintiffs should be granted.
12. On the question of jurisdiction, the fall back in determining the relationship of the rival parties is the lease agreement. The substantive lease document is dated May 1, 2020 headed Lease in relation to Land reference no 330/298 and states that;

“The lessor has agreed with the lessee to grant to the lessee a lease of the premises.”

13. The above puts to rest any arguments as to the nature of the relationship between the two parties. What the defendant was granting unto the plaintiff was a lease. Thus the claim that the matter is not properly before this court does not hold and the preliminary Objection dated November 22, 2022 is hereby dismissed.
14. On the restraining order, I find that there are accusations and counter accusations between the two parties as to who breached the agreement. However, both parties do admit that there was a lease agreement with a variation version thereof. However, the defendants have apparently issued notice(s)



to the plaintiffs terminating the lease. Ultimately, the validity of the said notices shall be a subject of contest during the trial.

15. The issue on grant of temporary restraining orders, commonly referred to as injunctions was settled in the case of *Giella v Cassman Brown* (1973) EA and reiterated in several case laws including *Nguruman Limited v Jan Bonde Nielsen & 2 others* [2014] eKLR whereby, courts held that the applicants must satisfy that they have a *prima facie* case with a probability of success. Secondly, an interlocutory order will not be granted unless it is demonstrated that the applicants might suffer irreparable injury which would not be adequately compensated by an award of damages. Lastly, if the court is in doubt on the above two requirements, it will decide the application based on the balance of convenience.
16. It is clear that the plaintiffs had been lawfully in the premises pursuant to the lease agreements which had the provisions of subletting the premises. In an attempt to establish the situation on the ground, this court gave directions with consent of the advocates for the parties that the scene be visited by the Executive officer of this court who was to file a report on the issue of occupation of the suit premises.
17. It emerged that all the tenants except the interested party had been paying rent to the plaintiff. The interested party had been paying rent to the defendants since year 2002. Considering that the suit was filed in November 2022, then the *status quo* appertaining at the time of institution of the suit should operate until the case is determined. This means that the agreements which the defendants purportedly entered into with other third parties during the subsistence of this suit are of no effect.
18. The issues of rent, third party interests and the termination notice should be canvassed at the trial.
19. In the final analysis, the following orders are hereby issued;
  1. The application dated November 4, 2022 is hereby allowed with a rider that the plaintiff shall not interfere with the business of the interested party (Adil Khan T/a Motor Atrep).
  2. The Notice of Preliminary objection dated November 22, 2022 is hereby dismissed.
  3. The parties should continue to comply with their obligations as set out in their agreements in the intervening period.
  4. The costs of the application and the Preliminary Objection shall abide the outcome of the suit.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 20<sup>TH</sup> DAY OF APRIL, 2023 THROUGH MICROSOFT TEAMS.**

**LUCY N MBUGUA**

**JUDGE**

**In the presence of:-**

**Ouma for Plaintiff**

**M/S Kihara holding brief for M/s Ngina for the Defendant**

**Court assistant: Joan**

