



REPUBLIC OF KENYA



Rentco Africa Limited formerly Rentco East Africa Limited v Urysia Limited (Civil Case E931 of 2021) [2022] KEHC 242 (KLR) (Commercial and Tax) (24 March 2022) (Ruling)

Neutral citation: [2022] KEHC 242 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
CIVIL CASE E931 OF 2021
WA OKWANY, J
MARCH 24, 2022**

BETWEEN

**RENTCO AFRICA LIMITED FORMERLY RENTCO EAST AFRICA
LIMITED PLAINTIFF**

AND

URYSIA LIMITED DEFENDANT

RULING

1. The defendant/applicant herein seeks the following orders through the application dated 10th December 2021: -
 1. Spent.
 2. Spent.
 3. That this honourable court be pleased to set aside the injunction orders issued on 29th November 2021
 4. That costs of this application be provided for.
2. The application was supported by the affidavit of the defendant's Managing Director Mr. Claude Mwendu and is based on the grounds that: -
 - a. By an agreement dated 6th April 2015 ("the Master Rental Agreement") the plaintiff entered into an agreement with the defendant whereby the defendant agreed to lease from the plaintiff a fleet of motor vehicles comprising of 100 units of station wagons Peugeot models 508, 150 units saloon Peugeot model number 308 and 50 units of Micro bus Ambulance Model (Motor Vehicles)



- b. The plaintiff has instituted this suit together with a Notice of motion application dated 25th November 2021 against the defendant alleging breach of the Master Rental agreement by the defendant in which the plaintiff sought an injunction order inter alia restraining the defendant from operating account number 1168430534 held at Kenya Commercial bank Ltd, Prestige Plaza Branch Ngong road (“the account) ’
 - c. The Honourable court granted an ex parte injunction order on 29th November 2021 which orders were subsequently extended on 6th December 2021 restraining the defendant from inter alia operating the Account and instructing the National treasury from remitting rental lease payments to any other account save for the account.
 - d. The plaintiff obtained the said orders due to non-disclosure of material facts and misrepresentation of material facts being;
 - 1. The Master Rental Agreement expired on 3rd February 2020 after which the parties were under an obligation to negotiate new terms for renewal and proposed terms of the new lease renewal.
 - 2. The defendant engaged with the plaintiff on the new terms for renewal and proposed terms for the lease renewal.
 - 3. Based on the terms proposed, the defendant paid two quarterly rental payments in the sum of Kshs 106,665,055/- based on the proposed terms for renewal and another on account payment of Kshs 30,000,000 which sums were accepted implying acceptance of these new terms of renewal.
 - 4. The plaintiff is not a party to the agreement between the National treasury and the defendant nor does it have any rights thereunder as to make operation of the said Agreement the subject of this suit
 - 5. The amount claimed is not only disputed and has also not accrued as it is for a full new term of the renewal.
 - e. The account which has in effect been frozen by this Honourable court holds and receives funds which ought to be paid out in respect of separate and unrelated transactions and as such, it is highly prejudicial for the operation of the defendants business if the said orders remain in force as it is likely to incur legal liability to third parties who are not party to this suit who will be affected by the said order.
 - f. The plaintiff has not established that the defendant is liable to the plaintiff in respect of the funds held in the account.
 - g. In the circumstances, the orders issued by this Honourable court on 29th November 2021 are highly unjust to the defendant as they were issued without hearing the defendant and they do not serve the ends of justice it was intended to serve when it was issued.
 - h. The ends of justice demand that the prayers sought in the application be granted as sought.
3. The plaintiff/respondent opposed the application through the replying affidavit of its Group Chief Executive Officer Mr. Robert Kana Nyasimi who states that the plaintiff presented all the necessary documents and information before the court to aid in the determination of the application. He states that the defendant continue to be in possession of the subject motor vehicles and pay quarterly lease rentals despite claims that there was no agreement between the parties.



4. Parties canvassed the application by way of written submissions which I have considered. The main issue for determination is whether the injunctive orders issued on 29th November 2021 should be set aside.
5. The applicant argued that the plaintiff obtained the impugned orders without disclosing that the Master Rental Agreement had expired on 3rd February 2020 and was therefore inapplicable. The applicant also faulted the plaintiff for failing to disclose that the defendant voluntarily paid Kshs 136,665,055 out of good faith.
6. On its part, the respondent argued that the motor vehicles were directly leased through rental addendums which only effected the terms of the Master operating lease Agreement. The respondent submitted that the terms of the contract was an issue that could only be determined at the trial.
7. The impugned order of 29th November 2021 was as follows: -
 1. That the application be served on the respondent and be mentioned on 6th December 2021.
 2. That prayer No 2 of the application is allowed in order to preserve the subject matter of the application.
8. I note that the respondent's prayer to restrain the applicants from removing, withdrawing, making debit transactions, utilizing or encumbering funds held in Kenya Commercial Bank Account number 1168430534 was allowed pending the hearing of the substantive application interparties. I further note that the plaintiff's suit is premised on breach of the Master Rental Agreement and that the impugned orders had the effect of preserving the subject matter of the suit before the hearing of the application inter- partes. This court exercised its discretion to grant the temporary orders after satisfying itself that a prima facie case had been made out to warrant the granting of the said orders.
9. My finding is that, in the circumstances of this case, it will be self-defeating and premature to set aside the interim orders as has been suggested by the applicant as the court is yet to consider the merits of the plaintiff's application.
10. I further find that the issues raised by the applicant regarding material non-disclosure go to the merits of the case and cannot be determined at this interlocutory stage. My take is that the best approach in this matter should be to fast track the inter partes hearing of the application for injunction.
11. In sum, I find that the application dated 10th December 2021 is not merited and I therefore dismiss it with orders that costs shall abide the outcome of the injunction application.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 24TH DAY OF MARCH 2022.

W. A. OKWANY

JUDGE

In the presence of: -

Mr. Limo for plaintiff.

Mr. Nyaburi for defendant.

Court Assistant: Abdi

