



**Maworks Investment Company Limited v Meru Central Coffee Cooperative Union (Environment and Land Appeal E087 of 2021) [2023] KEELC 17460 (KLR) (11 May 2023) (Judgment)**

Neutral citation: [2023] KEELC 17460 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT AND LAND APPEAL E087 OF 2021**

**LN MBUGUA, J  
MAY 11, 2023**

**BETWEEN**

**MAWORKS INVESTMENT COMPANY LIMITED ..... APPELLANT**

**AND**

**MERU CENTRAL COFFEE COOPERATIVE UNION ..... RESPONDENT**

*(being an appeal from the Ruling of the Magistrates Court at Nairobi, by Hon Mr. Dennis Mungai Kivuti delivered on 22nd October 2021 but erroneously dated 29th October 2021 in Milimani CMC ELC Case No. E237 of 2021)*

**JUDGMENT**

1. The Respondent herein is the registered owner of the suit premises identified as L.R.209/2437 situated within Nairobi Central Business District where the appellant was a tenant. The respondent filed a suit MC-ELC 237 of 2021 vide a plaint dated 8.7.2021 seeking an order of vacant possession, general damages as well as costs of the suit.
2. The respondent then filed an application dated 8.7.2021 seeking the following orders;
  - i. That pending the hearing and determination of this application, the Respondent be ordered to handover to the Applicant the vacant possession of the suit premises;
  - ii. That pending the hearing and determination of the suit, the Respondent be restrained from Subletting the suit premises.
  - ii. That pending the hearing and determination of this suit, the Respondent be ordered to handover to the Applicant the Vacant possession of the suit premises.
  - ii. That the Officer Commanding Central Police Station do supervise compliance with the orders of this Honourable Court;



- ii. That the costs of this application be provided for.”
3. The aforementioned application was allowed vide the ruling dated 29.10.2021.
4. Aggrieved by the aforesaid decision, the appellant filed his Memorandum of Appeal dated 11.11.2021 raising five (5) grounds of appeal enumerated as follows;
  - 1) 1) The Learned Magistrate erred in law by granting a mandatory injunction at an interlocutory stage of the proceedings before it, effectively disposing of the entire suit without the benefit of hearing the evidence of the parties.
  2. The Learned Magistrate erred in fact by making a finding that the lease between the parties had since expired in the absence of evidence of such expiry. This finding was made at an interlocutory stage of the proceedings notwithstanding the fact that the Appellant disputed the lapse of the said lease and the Respondent did not furnish any documentary evidence on the term of the lease.
  3. The Learned Magistrate erred in fact by failing to consider the Appellant’s Replying affidavit, Written Submissions and List of Authorities filed in the matter.
  4. The Learned Magistrate erred in law by allowing the Notice of Motion Application dated 8<sup>th</sup> July 2021 in the absence of merit for such application.
  5. The learned Magistrate erred in law by failing to give reasons for his ruling.
5. The appellant therefore seeks the following orders in this Appeal;
  - i. This Appeal be allowed.
  - ii. The Ruling delivered on October 22, 2021 but erroneously dated as 29<sup>th</sup> October 2021 by the Magistrates Court in Milimani Magistrates Court ELC Case E237 of 2021 and orders emanating from the said Ruling be set aside.
  - iii. The dispute in the Magistrates Court in Milimani Magistrates Court ELC Case E237 of 2021 be referred for hearing at the Magistrates Court before another Magistrate other than Hon. Mr. Dennis Mungai Kivuti.
  - iv. The cost of this Appeal be borne by the Respondent.
  - v. Any such further orders that may advance the course of justice.”
6. This suit was heard by way of written submissions.
7. The submissions of the appellant are dated 16.11.2022, where they contend that they filed a statement of defence as well as a replying affidavit before the trial court where they emphasized that they had a 10 year lease with the respondent herein. In that regard, it was erroneous for the trial court to grant a mandatory injunction at the interlocutory stage where the net effect was to destroy the subject matter of the hearing.
8. It was further submitted that the appellant had already filed a reference at the Business Tribunal, the same being BPRT Case No. E198 of 2021, where the tribunal had even issued restraining orders against the respondent herein.
9. In support of its case, the appellant relied on the cases of; *Alex Wainaina t/a John Commercial Agencies v Janson Mwangi Wanjibia* [2015] eKLR, *CFC Financial Services v. Juja Road Fancy Store Limited and Kenya Breweries Limited & Another v. Washington O. Okeyo* [2002] eKLR.



10. The submissions of the respondent are dated 10.2.2023. They contend that they had advanced a valid claim before the trial court to the effect that the lease between the two protagonists had expired, and the respondent had embarked on entering into another lease agreement with another entity identified as Romnet Limited in anticipation that the appellant would vacate the suit premises. It was argued that the respondent had only made an offer for the 10 years lease which offer was withdrawn. In the circumstances, there were special circumstances warranting the issuance of the orders.
11. In support of their case, the respondents proffered the following authorities; *St Patricks Hill School Ltd vs Bank of Africa Kenya Ltd* [2018] eKLR, *Kenya Electricity Transmission Company Limited v Kibotu Limited* [2019] eKLR, *M. Oriental Bank Limited & another v Samuel Nyingi Matimu & another* [2021] eKLR, *Securicor Courier (K) Ltd vs. Benson David Onyango & Another* (2008) eKLR, *Caliph Properties Limited vs Barbel Sharma & Another* [2015] eKLR , *Francis Munyoki Kilonzo & Another vs Vincent Mutua Mutiso* (2013) eKLR, *Moya Drift Farm Ltd. V. Theuri* (1973) EA 114, *Pius Kipchirchir Kogo v. Frank Kimeli Tenai* (2018) eKLR, *Lawrence Mukiri v. Attorney General & 4 Others* [2013] eKLR and *Nation Media Group & 2 Others vs John Harun Mwau* (2014) eKLR.
12. I have considered the entire record and the rival submissions. I believe that the pivotal question for determination is whether the orders for vacant possession issued by the trial court should be vacated.
13. A perusal of the claim advanced by the respondent/ plaintiff in their Notice of Motion application dated 8.7.2021 reveals that the said party was terming the then defendant as a “previous tenant” as the lease between the two parties had expired. The rejoinder made by the then defendant is articulately captured in paragraph 4, 6 and 7 of the replying affidavit dated 10.8.2021. In essence, the appellant was advancing a claim that there was a lease between the two parties.
14. It follows that whether there was a subsisting lease between the two parties was a question that had become a subject of contest calling for proof through evidence. The impugned ruling did not delve into the contents of the rival arguments at all.
15. In the case of *Cyanamid Co. vs Ethicon Ltd* (1975) 1 ALL ER 504; (1975) A.C 396 HL cited in *Tritex Industries Limited & 3 others vs National Housing Corporaiton & another* (2014) eKLR, it was held that;
 

“It is no part of the court’s function at this stage of the litigation to try to resolve conflicts of evidence on affidavit as to facts on which the claims of either party may ultimately depend, nor to decide difficult questions of law which call for detailed argument and mature considerations. These are matters to be dealt with at the trial”.
16. The decision of the trial court was tantamount to granting one of the major reliefs sought in the main suit. In the case of *Daniel Atibu Jasimba v Ainea Sandanyi Magana* [2013] eKLR, the court had this to say in respect of a prayer relating to a major relief;
 

“Since the Plaintiff’s suit is for eviction of the defendant from the said residence, such an injunction will amount to granting a major relief in the suit without the benefit of a hearing.”
17. The right to be heard embodied in the latin maxim “Audi Alteram Partem” is sacrosanct. In the Court of Appeal case of *Catherine Muthoni Kiriungi & another v Chairman, Land Adjudication &*



Settlement Officer, Tigania East Central Division & 3 others [2017] eKLR, the court had this to say on the issue;

“From this analysis, it becomes clear that the appellants’ right to be heard before they could be divested of ownership of the said property was denied to them. This was against the rules of natural justice which is one of the cardinal fundamental rights that are inherent in every human being”.

18. Similarly, I find that the appellant who was in possession of the suit premises as a tenant was denied the right to be heard when the orders granting vacant possession of the suit premises were issued in favour of the respondent herein before the hearing of the substantive suit.
19. Another point for consideration is the existence of not only a reference before the business tribunal, but that the said tribunal had already issued restraining orders against the landlord (current respondent). This issue was captured at paragraph 5 of the replying affidavit of the appellant dated 10.8.2021. The order from the tribunal which is to be found at page 77 of the Record of Appeal was issued on 16.6.2021, about a month before the filing of the application dated 8.7.2021. The import of the trial court’s decision vis a vis the tribunal orders is well captured in the ruling of this court delivered on 16.2.2022 particularly paragraph 15-17. Thus I need not rehash the findings of this court on that issue.
20. In the final analysis, I find that this appeal is merited in all the grounds set out in the memorandum of appeal. I proceed to issue orders as follows;
  1. The appeal is hereby allowed.
  2. The ruling of the trial Magistrate dated 29.10.2021 and any orders arising from the said ruling are hereby set aside.
  3. The case MC-ELC NO. 237 OF 2021 at Milimani Commercial Court is to be heard by any other Magistrate other than Mr. Dennis Mungai Kivuti.
  4. The Respondent shall bear the costs of this appeal.
21. A copy of this Judgment as well as the ruling delivered on 16.2.2022 shall be placed in the original Trial court’s file, then the same is to be severed from the appeal file for onward transmission to the Chief Magistrate’s court at Milimani Commercial Court for hearing and determination.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 11<sup>TH</sup> DAY OF MAY, 2023 THROUGH MICROSOFT TEAMS.**

**LUCY N. MBUGUA**

**JUDGE**

**In the presence of:-**

Simiyu for Appellant

M/s Munda for Respondent

**Court assistant: Eddel**

