



Patel v Eldoret Patel Brothers Regsitered Trustees (Environment & Land Case E005 of 2023) [2023] KEELC 19908 (KLR) (21 September 2023) (Ruling)

Neutral citation: [2023] KEELC 19908 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ELDORET
ENVIRONMENT & LAND CASE E005 OF 2023
EO OBAGA, J
SEPTEMBER 21, 2023**

BETWEEN

JAYESH KUMAR PATEL APPELLANT

AND

ELDORET PATEL BROTHERS REGSITERED TRUSTEES RESPONDENT

RULING

Introduction

1. This is a ruling in respect of a notice of motion dated April 14, 2023 in which the appellant/applicant seeks review of the court orders of April 6, 2023 with a view to obtaining the following reliefs:-
 - a. Stay of any form of proclamation, attachment or sale of the applicant's goods.
 - b. Return of good and items taken from the applicant on or March 24, 2023.
 - c. Reinstatement of the appellant into the suit premises on LR No Eldoret Municipality Block 6/83.
 - d. Stay of any further execution against the applicant.
 - e. Costs of the application.

Background;

2. The applicant was a tenant of the defendant/respondent in premises situate on LR No Eldoret Municipality Block 6/83. Sometime on November 23, 2022, the respondent served the applicant with notice to terminate or alter terms of the tenancy as provided for under section 4(2) of the *Landlord and Tenant (shops, Hotels and catering Establishments) Act* cap 301. The applicant did not move to the Business Premises Tribunal to challenge the notice as required. The notice therefore took effect.



3. On March 7, 2023, the issue between the applicant and respondent was placed before the tribunal which gave orders that the landlord/tenant relationship between the applicant and respondent had been terminated; that the applicant is allowed to take over possession of the premises; that the OCS Eldoret Police Station do provide security during the take over and that costs of Kshs 25,000/= be paid to the Respondent.
4. On March 10, 2023, the applicant filed a notice of motion dated March 10, 2023 in which he sought to stay of execution of the tribunal orders pending hearing and determination of the appeal he had filed. On March 13, 2023, the court did not certify the application as urgent. The court ordered that the application be served for interpartes hearing on May 2, 2023.
5. On March 16, 2023 the applicant filed an application in which he sought review of the directions given on March 13, 2023 which were issued on March 14, 2023 and order stay of execution of the tribunal's order of March 7, 2023 which were issued on March 9, 2023. The court granted stay of execution of the tribunal's orders on condition that the applicant deposited a sum of Kshs 200,000/= in court within 7 days failing which the stay orders would lapse.
6. The applicant was evicted from the premises on March 30, 2023 on grounds that he had not deposited Kshs 200,000/= within 7 days as ordered by the court. The eviction prompted the applicant to file an application dated March 30, 2023 in which he sought orders reinstating him into the premises, ordering the respondent to account for the goods take away from his premises and punishing the respondent for contempt of court order.
7. The application of March 30, 2023 was placed before the duty judge in Nakuru who gave orders as to filing of written submissions and responses in respect of that application. The duty judge also ordered that the status quo be maintained.
8. On April 6, 2023, the applicant filed an application in which he sought review of the orders issued on April 5, 2023 pursuant to notice of motion dated March 30, 2023 and sought return of the attached good and reinstatement into the suit premises. The court directed that the application be served for interpartes hearing on May 2, 2023.

Applicant's Contention;

9. The applicant contends that he signed a lease agreement with the respondent on October 4, 2021 but that he has never been given the signed lease. When the court ordered stay of execution, he proceeded and paid Kshs 200,000/= which he was ordered to pay. The payment was made on March 23, 2023 via RTGS. The applicant further contends that despite the payment of security for costs in time, the respondent proceeded to evict him. It is on this basis that the applicant seeks the orders and or reliefs set out in paragraph 1 hereinabove.

Respondent's Contention;

10. The respondent opposed the applicant's application based on a replying affidavit sworn on May 8, 2023 as well as a further affidavit sworn on May 15, 2023. The respondent contends that the applicant's application is an abuse of the process of court and that the applicant has not met the threshold for grant of review as provided under order 45 (1) of the *Civil Procedure Rules*.
11. The respondent states that the applicant was removed from the suit premises after the stay orders lapsed. The respondent states that the applicant deposited the Kshs 200,000/= on April 1, 2023 after execution had been carried out and his eviction completed. On the issue of return of his attached goods, the respondent states that the applicant has been asked to go for his goods which he has refused to do so.



12. The respondent states that the applicant is using the court process to shield him from meeting his obligations and that the documents in support of the alleged payment came from questionable sources and are not certified. When the respondent's lawyer received a letter from the applicant's lawyer stating that they had complied, the lawyer wrote to court seeking confirmation and when there was no confirmation, he proceeded to court where he perused the court file and saw no receipt for payment.
13. On March 29, 2023, he obtained a print out from the E-filing system of the court which did not show any payment of Kshs 200,000/=. A further print out from the E-filing system showed that payment was made on April 1, 2023 and a receipt issued.

Analysis And Determination;

14. When the application the subject of this ruling was placed before me on April 14, 2023, I directed that there should be no further distraint of the applicant's goods. These orders were subsequently extended. The only issue for determination is whether the applicant should be granted the orders which he is seeking.
15. The applicant has moved to court on the basis that execution was carried out when he had already complied with the court order as to deposit of security for costs in the sum of Kshs 200,000/= The order for deposit of security was made on March 16, 2023. The applicant claims that he deposited the money on March 23, 2023 through an RTGS from his bankers Guardian Bank. In the further affidavit which he swore on May 10, 2023, he states that he did an RTGs from his bank at 3. 30p.m on March 23, 2023. He further claims that he went to the Judiciary where he obtained a document showing that the money had been received in the judiciary account at KCB on the same day.
16. It is doubtful that one will do an RTGs in an afternoon and the money reflects in the other bank immediately. In the further affidavit by the applicant, he claims that he deposited the Kshs, 200,000/= at 3. 30p.m on March 23, 2023. The document which he alleges to have obtained from the judiciary was printed at 15.24.2023. This cannot be possible and in any case, this document was not certified as a true copy.
17. If indeed the applicant had deposited the money on March 23, 2023, the earliest it would reflect in the judiciary account would be on March 24, 2023. The respondent made efforts to ascertain from the judiciary whether there was payment. He got printouts which did not reflect the payment of Kshs 200,000/= on March 23, 2023 as alleged. The money according to the receipt which was computer generated showed that the deposit was made on April 1, 2023. This was way out of the 7 days given.
18. It is not possible that the computerized judiciary e-receipting system would delay to issue a receipt for 7 days. The respondent went out of his way to ascertain whether payment had been made and when there was no payment by March 29, 2023, they moved to execute the tribunal orders on March 30, 2023.
19. There is evidence that the applicant was in rent arrears. in a replying affidavit to the application dated March 16, 2023 filed by the applicant, the respondent exhibited a letter from the applicant in which the applicant was pleading with the respondent to withdraw the termination of tenancy notice while promising to clear all outstanding arrears. This letter was written on January 31, 2023.
20. The applicant is claiming that the is not in any rent arrears. He has not bothered to prove that that is the position. He cannot therefore ask this court to stop any further distraint against him when he has not proved that he had cleared his rent arrears.
21. On return of his attached goods, the respondent has demonstrated that he was asked to go for his goods but he refused. This even came out clearly from the respondent's lawyer who stated that the



applicant was free to pick up his goods which had been attached upon payment of the arrears of rent and auctioneer's fees.

22. In the absence of any clearance of rent arrears and in view of the fact that the applicant was evicted after failing to show that he had complied with the court orders of March 14, 2023, there can be no basis for making an order for his reinstatement.

Disposition;

23. From the above analysis, it is clear that the applicant's application is devoid of merit. The same is dismissed with costs to the respondent.

It is so ordered.

DATED, SIGNED AND DELIVERED AT ELDORET ON THIS 21ST DAY OF SEPTEMBER, 2023.

E. O. OBAGA

JUDGE

In the virtual presence of;

Ms. Tallam for Mr. Kariuki for Respondent.

Court Assistant –Laban

E. O. OBAGA

JUDGE

21ST SEPTEMBER, 2023

