



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL DIVISION

HIGH COURT CIVIL APPEAL NO. 720 OF 2016

CHINESE CORNER (NGONG) LIMITED.....APPLICANT

VERSUS

PRIMROSE MANAGEMENT LIMITED.....RESPONDENT

RULING

1. The application dated 1st December, 2016 seeks orders that there be a stay of execution of the ruling and order of the Hon. W Kabaria Senior Resident Magistrate issued herein on 18th November, 2016 together with all consequential orders thereof.
2. Secondly, that pending the hearing and final determination of the Appeal the Respondent either by themselves, their servant, agents, nominees, officer or otherwise be restrained by an order of injunction from evicting or interfering in any way with Appellant's quiet and peaceable enjoyment of the suit premises known as Unit "G", Prestige Plaza, Ngong road, L.R. Number 209/410/2/4/5/6.
3. The Application is predicated on the grounds stated therein and is supported by the affidavit sworn by Mrunalini T Jappinen, a director of the Applicant. The Applicant is aggrieved by the ruling of the Lower Court dated 18th November, 2016 and has appealed herein. It is stated that the impugned ruling dismissed the Applicant's application for injunctive orders to restrain the Respondent, his servants, agents, nominees, officer or otherwise from evicting or interfering with the Applicant's peaceful enjoyment of the premises the subject of the suit. It is deposed that the Applicant is threatened with eviction and has been served with fresh tenancy conditions with a notice to vacate if he is not able to comply.
4. It is further stated that the Applicant has complied with the terms of the tenancy including the payment of rent, service charge, VAT and that the Respondent are holding the Applicant's three months rent deposit. That there are also permanent fittings in the premises where the Applicant runs a Chinese Kitchen with perishable stock and requires reasonable notice to find a suitable alternative premises. The Applicant is apprehensive that his right of appeal will be defeated and that he stands to suffer irreparably and cannot be compensated in monetary terms. The Applicant is willing to abide by any conditions set by the court.
5. The application is opposed. It is stated in the replying affidavit that the Applicant's application was dismissed vide the ruling dated 18th November, 2016. That there are no preservative orders yet the Applicant is the only tenant who had refused to move to allow the renovation of the premises and has also refused to pay new rent, service charge or vacate the premises after paying all the outstanding dues.
6. It is acknowledged that the Respondent holds the Appellant's three (3) months deposit of Ksh.551,928/= at Ksh.183,976/= per month. However, it is stated that the same is not being held unreasonably as the Applicant owes the Respondent accumulated service charge and promotional fees amounting to Ksh.896,724.40 as at 31st December, 2016.
7. The Respondent gave the background facts to the suit and denied that the Applicant stands to suffer any irreparable harm. That the Respondent continues to incur financial losses while the Applicant's actions are aimed at depriving the Respondent of the enjoyment of the fruits of its investments by choosing when and how to pay monthly rent and other charges. The Respondent sought security for costs in the sum of Ksh.1,541,222/= on account of stalled renovations at the premises occupied by the Applicant.
8. The application was disposed of by way of written submissions. I have considered the application, the response and the submissions filed.
9. It is clear from the facts of this case that the predominant dispute herein is in respect of a tenancy. The Applicant's claim is that he is a tenant of the Respondent. Indeed the plaint dated 6th April, 2016 which is annexed to the replying affidavit reflects that the Applicant's main prayer is that the Respondent be restrained from denying access to the suit premises, letting it out, dealing, evicting or in any way interfering with the Applicant peaceable occupation of the premises known as Unit "G" Prestige Plaza Ngong Road LR No. 209/410/2/4/5/6.

10. The appeal herein was filed on 30th November, 2016. By then, the Environment & Land Court Act had been enacted by parliament pursuant to Article 162 (2)(b) of the Constitution. The preamble to the said Act provides As follows :

“AN ACT of Parliament to give effect to Article 162(2)(b) of the Constitution; to establish a superior court to hear and determine disputes relating to the environment and the use and occupation of, and title to, land, and to make provision for its jurisdiction, functions and powers, and for connected purposes”

Section 13 of the Environment and Land Court Act provides:

“(1) The Court shall have original and appellate jurisdiction to hear and determine all disputes in accordance with Article 162(2)(b) of the Constitution and with the provisions of this Act or any other written law relating to environment and land.”

(2) In exercise of its jurisdiction under Article 162 (2) (b) of the Constitution, the Court shall have power to hear and determine disputes relating to environment and land, including disputes?

(a) relating to environmental planning and protection, trade, climate issues, land use, planning, title, tenure, boundaries, rates, rents, valuations, mining, minerals and other natural resources;

(b) relating to compulsory acquisition of land;

(c) relating to land administration and management;

(d) relating to public, private and community land and contracts, choses in action or other instruments granting any enforceable interests in land; and

(e) any other dispute relating to environment and land.”

11. As observed by the Court of Appeal in the case of **Dhirajlal J. Shah & another v Vijay Amritlal Shethia [2018] eKLR** while determining a tenancy dispute;

“...it is common ground that the learned Judge who issued the impugned order was presiding over a Land and Environment court. Article 162 (2) (b) of the Constitution 2010, mandates Parliament to establish courts with the status of the High court to hear and determine disputes relating to among others, the environment, use and occupation of and title to land. It is pursuant to this mandate that Parliament enacted the Environment & Land court Act No. 19 of 2011”.

12. The case of **Jubilee Insurance Company of Kenya Limited v Joseph Ndugu Karega T/a Leather Touch foot Care specialists [2014] eKLR** is another example where the Environment & Land Court held that it had jurisdiction to adjudicate over a matter involving an uncontrolled tenancy.

13. The foregoing being the position of the law, I hold that the appeal herein has been filed in the wrong court. Consequently, I strike out the same with costs.

Date, signed and delivered at Nairobi this 2nd day of Oct., 2018

B. THURANIRA JADEN

JUDGE