



**Uyoga v Registered Trustees Kenya Railways Staff Retirement Benefit Scheme (Environment and Land Appeal E09 of 2023) [2023] KEELC 22141 (KLR) (7 December 2023) (Ruling)**

Neutral citation: [2023] KEELC 22141 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT AND LAND APPEAL E09 OF 2023**

**J OMANGE, J  
DECEMBER 7, 2023**

**BETWEEN**

**ZEDEKIAH UYOGA ..... APPELLANT**

**AND**

**REGISTERED TRUSTEES KENYA RAILWAYS STAFF RETIREMENT BENEFIT  
SCHEME ..... RESPONDENT**

**RULING**

1. In the Notice of Motion application dated 20<sup>th</sup> November 2023 the Appellant/ Applicant seeks the following orders:
  - a. Spent.
  - b. Spent.
  - c. That the honourable court be pleased to grant temporary injunction restraining the Respondent, its officers, employees, servants and/agents from denying access into or interfering with the Appellant/Applicant's quiet possession, enjoyment occupation and use of the rental premises otherwise known as house no 33 Matumbato estate Nairobi pending hearing and determination of the appeal.
  - d. That the court be pleased to grant an order of injunction against the Defendant /Respondent restraining it, its officers, employees, servants and/ agents from selling, transferring, or charging and/dealing in any manner with the suit property until further orders of the court.
  - e. That the court be pleased to grant an order to reinstate the Appellant/Applicant into the rental premises otherwise known as house no 33 Matumbato estate pending hearing of the suit.
  - f. The honourable court be pleased to order the officer in charge of station capital hill police station Nairobi to enforce the orders sought above.



- g. Costs of the application
2. The Applicant's case is that he filed an application in the lower court MCCC No E2062 of 2023 seeking similar orders as in the instant application. A ruling was delivered on the 25<sup>th</sup> October 2023 by Hon S.A Opande dismissing the application on the ground that he did not establish a prima facie case.
  3. The Applicant contends that the ruling failed to take into consideration that he has an active lease over house No 33 Matumbato estate which lapses in the year 2030. This he argues is by virtue of the automatic renewal of 10 years. He avers that the Respondent herein without any eviction order nor lodging any distress for rent, as per the *Distress for rent Act* has locked him out of the house making it hard for him to use it for its intended purpose. He further deponed that the Respondent has negotiated with a third party for lease of the suit premises and if the orders sought are not granted he will suffer irreparable loss that cannot be compensated by monetary damages.
  4. The Respondent has opposed the application vide a replying affidavit sworn by one Isaac Silas the CEO of the Respondent. He deponed that that Applicant had come to court with unclean hands as he failed to disclose all relevant facts pertaining to the case. He averred that the Respondent entered into a lease agreement with the Applicant in March 2010 for a period of 6 years which period was subject to renewal. That in 2016 the Respondent issued a termination notice to the Applicant on grounds of effluxion of time but the Applicant never gave vacant possession and continued being in occupation.
  5. He further deponed that the Applicant has been to court twice before seeking for the same orders in regards to the suit premises herein. In MCCC Misc E1800 of 2022 the matter was dismissed on the basis of a preliminary objection while in MCCC No E2062 of 2023 the court found the application lacked merit and issued a ruling subject of this appeal. He deponed that the Applicant had failed to demonstrate how irreparable loss that cannot be compensated by way of monetary damages will be occasioned to him if the orders sought are not granted.
  6. Both parties have not filed submissions as such the court will be guided by the application and the replying affidavit. The issue for determination is whether the Applicant has met the threshold for issuance of temporary injunctive orders.
  7. The law on grant of interlocutory injunctions is set out under Order 40 Rule 1 (a) and (b) of the *Civil Procedure Rules* as follows:

“Where in any suit it is proved by affidavit or otherwise –

- a. That any property in dispute in a suit is in danger of being wasted, damaged, or alienated by any party to the suit, or wrongfully sold in execution of a decree; or
- b. That the defendant threatens or intends to remove or dispose of his property in circumstances affording reasonable probability that the Plaintiff will or may be obstructed or delayed in execution of any decree that may be passed against the defendant in the suit;

the court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal, or disposition of the property as the court thinks fit until the disposal of the suit or until further orders.”



8. The principles for grant of injunction are well settled by the locus classicus *Giella Vs Cassman Brown & Company Limited* [1973] E.A. 358., where the court stated thus:

“First, an Applicant must show a prima facie case with a probability of success. Secondly, an interlocutory injunction will not normally be granted unless the Applicant might otherwise suffer irreparable injury, which would not adequately be compensated by an award of damages. Thirdly, if the court is in doubt, it will decide an application on the balance of convenience.”

9. This court is thus required to determine whether the Applicant has satisfied the three conditions for grant of injunction. In *Nguruman Limited Vs Jan Bonde Nielsen & 2* the Court of Appeal had this to say on prima facie case; “The party on whom the burden of proving a prima facie case lies must show a clear and unmistakable right to be protected which is directly threatened by an act sought to be restrained, the invasion of the right has to be material and substantive and there must be an urgent necessity to prevent the irreparable damage that may result from the invasion.”

10. The Applicant herein is seeking to appeal the ruling of the learned magistrate in MCCC No E2062 of 2023 and seeks for injunctive orders based on the fact that he entered into a lease agreement with the Respondent over house no 33 Matumbato estate Nairobi for a period of 10 years with effect from March of the year 2010 with a renewable option for a further one term. He states that the lease provided for automatic renewal after 10 years and contends that his lease has not expired and the Respondent has caused his removal from the premises without following the right procedure in law for eviction. The Respondent on the other hand states that they entered into a lease agreement with the Applicant for house no 33 Matumbato estate Nairobi for a period of 6 years with effect from 1<sup>st</sup> March 2010 with a renewal option for a further one term.

11. It is clearly not in contention that there was a lease agreement that was signed for the suit premises herein as between the Applicant and the Respondent. The dispute is on the term of the lease. Both parties have annexed lease agreements that have been drawn by the same advocate and executed by both parties indicating different times as to when the lease expires.

12. The Respondent has produced a 2<sup>nd</sup> lease agreement and further avers that it issued a termination notice on he issued a termination notice due to the fact that the appellant had not cleared its rent arrears which was a ground for issuance of a termination notice as per the lease agreement which is a common clause in the agreements relied on by the parties. However, I note that it was issued in the year 2016 and yet the Applicant remained in possession with no interference. This raises questions which can only be resolved after hearing the matter.

13. In view of these contradictions, the court is called upon to determine the application on a balance of convenience. There are two agreements which can only be resolved after hearing the parties. In weighing the balance of convenience, I note that there is real danger that third parties can be brought into the suit property who might develop the property and thereafter suffer loss if the appeal were to be allowed. On the other hand, is the Respondent who is also entitled to benefit from the use of its property without undue delay. As such the hearing of the appeal should be expedited.

14. In balancing these two positions the court makes the following orders;

- a. The status quo existing as at 7<sup>th</sup> December, 2023 is to be maintained. Neither of the parties is to carry out any construction on the suit property pending the hearing and determination of the appeal. The status quo order shall be subject to clause (b) and (c) below.



- b. The Applicant is to deposit Kshs 500,000 as security within 30 days.
- c. The Applicant is to file a record of appeal within 120 days.
- d. Costs to abide the outcome of the appeal.

**DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS THIS 7<sup>TH</sup> DAY OF DECEMBER 2023.**

**Judy Omenge**

**JUDGE**

**In the presence of: -**

Mr. Dudi holding brief for Mr. Moturi for Applicant

Mr. Wanda holding brief or Mr. Juma for Respondent

Steve - Court Assistant

