

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL CASE NO. 127 OF 2013

DAQARE TRANSPORTERS LTD.....PLAITNIFFS

VERSUS

KENYA RAILWAYS STAFF RETIREMENT BENEFITS SCHEME.....1ST DEFENDANT

MODERN RADIATOR SERVICES.....2ND DEFENDANT

RULING

The plaintiff was given a temporary occupation licence of premise's previously owned by the 2nd defendant which were subsequently transferred to the 1st defendant. There was a lease agreement executed specifying the area to be occupied and rent payable. The said lease had no expiry date. At some point, the 3rd defendant was allocated some space which encroached the area occupied by the plaintiff.

Aggrieved by that step, the plaintiff filed this suit for injunction to restrain the defendants, their servants, agents or anybody or authority from trespassing on its premises described as TOL 39 situate at Landhie Mawe off, Factory Street Industrial Area Nairobi.

Simultaneously filed with this suit, was an application under certificate of urgency seeking interim orders until the application is heard. On 19th April, 2013 Waweru J gave an order in favour of the plaintiff pending the hearing of this application.

Subsequently, the defendants filed their reply to the application and filed submissions relating thereto. I have considered the material before me. Some observations are necessary at this stage. All the defendants were served with the plaint and the application aforesaid. It is not clear however, whether or not summons to enter appearance were ever extracted because there are no copies in the court file.

That notwithstanding, the first defendant filed a Notice of Appointment of Advocate on 20th May, 2013. The 2nd defendant filed a Memorandum of Appearance on 7th May, 2013 while the 3rd defendant filed a notice of appointment of advocate on 25th April, 2013. There are no statements of defence on record by any of the defendants.

From the pleadings, this is a matter that should have been settled without recourse to the court. I say so because, the issues raised in the plaint and the application for injunction, as related to the reply filed by the defendants, revolved around the subject of the space allocated and the rent payable.

For some reason however, the court has to make a decision. The plaintiff has demonstrated to the satisfaction of the court that it has continued to pay rent for the space allocated. That space can be determined by mathematical precision because the measurements are included in the lease document.

There is prima facie evidence that the 1st and 2nd defendants, either deliberately or by design, have invited the 3rd defendant to occupy part of the space reserved for the plaintiff. That is in breach of the agreement existing between the plaintiff and the 1st and 2nd defendants.

There is an application on record by the 2nd defendant to remove it from these proceedings. It is dated 7th

July, 2014. That application raises a triable issue and has to be determined after service upon the other parties. For now the court is concerned about the injunction application by the plaintiff.

Upon considering all the material presented, I have come to conclusion that the plaintiff has established a prima facie case with a probability of success.

Accordingly, an order shall issue restraining the defendants as pleaded until this suit is heard and finalised. The costs shall be in the cause.

Dated and delivered at Nairobi this 25th day of July, 2016.

A.MBOGHOLI MSAGHA

JUDGE