



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAIROBI

ELC CASE NO. E237 OF 2021

SWEETLAND HOLDINGS LIMITED.....PLAINTIFF/APPLICANT

VERSUS

DUKAMATT SUPERMARKET LIMITED.....DEFENDANT/RESPONDENT

RULING

1. This is the Notice of Motion dated 2nd July 2021 brought under section 1A, 1B, 3A of the Civil Procedure Act chapter 21 of the Laws of Kenya, Order 40 Rule 1, 2 (1) and 3(3), Order 50 (1) of the Civil Procedure Rules 2010, Article 40 of the Constitution of Kenya and all other enabling provisions of the law.
2. It seeks orders:-
 1. *Spent.*
 2. *Spent.*
 3. *This honourable court be pleased to grant a temporary injunction restraining the 1st Respondent whether by itself, agents and/or servants from trespassing on, wasting, constructing on, demolishing alienating or otherwise interfering or dealing with the Plaintiff's/Applicant's property being Title Number Nairobi/block 72/2936- Lang'ata Mall pending the hearing and determination of this suit.*
 4. *The Officer Commanding Lang'ata Police Station and the Local Administration do enforce compliance of the orders above.*
 5. *The costs of this application be provided for.*
 6. *This Honourable Court be pleased to make such further or other orders as it may deem just and expedient in the circumstances of this case.*
3. The grounds are on the face of the application and are set out in paragraphs 1 to 9.
4. The application is supported by the affidavit of Betty Kiplagat, a co-director of the Plaintiff/Applicant sworn on the 2nd July 2021.
5. The application is opposed. There is a replying affidavit sworn by William Kimaru on 9th August 2021.
6. On the 16th September 2021, the court with the consent of the parties directed that the notice of motion be canvassed by way of written submissions.
7. The Plaintiff's/Applicant's submissions are dated 21st October 2021. It submits that it has established a prima facie case with high chances at the trial as it is the registered proprietor of the suit property.
8. It also submits that the Defendant/Respondent has posed a real threat to demolish the suit premises in a bid to recover the costs it expended in putting up the illegal structures
9. It states that it will suffer irreparable loss that cannot be compensated by award of damages if these orders are not granted. Further that

the balance of convenience tilts in favour of the Plaintiff/Applicant.

10. It prays that the application be allowed.

11. The Respondent on the other hand submits that the Plaintiff/Applicant has not satisfied the conditions for grant of temporary injunctions. It has put forward the cases of **Giella vs Cassman Brown & Co. Ltd [1973] EA 358; Mrao Ltd vs First American Bank of Kenya Ltd & Others [2003] KLR; Nguruman Limited vs Jan Bonde Nielsen & 2 others; Stek Cosmetic Ltd vs Family Bank Kenya Ltd [2020] eKLR; Shiva Carriers Limited vs Imperial Bank Limited & Another [2018] eKLR.**

12. It further submits the Plaintiff/Applicant has not tendered any evidence to support the claim that the Defendant/Respondent has threatened to demolish the suit premises.

13. It further submits that it has handed over the building and the tenants to the Plaintiff/Applicant pursuant to the consent orders in Business Premises Rent Tribunal Case No 798 of 2018 issued on 9th July 2020 and 11th July 2021.

14. It further submits that the Plaintiff/Applicant is not likely to suffer any irreparable harm that cannot be adequately compensated by an award of damages. The Plaintiff/Applicant is the registered owner of the suit property.

15. It submits that the balance of convenience tilts in favour of the Defendant/Respondent as it has invested heavily on the suit premises and seeks to be compensated. It prays that the application be dismissed with costs.

16. I have considered the notice of motion and the affidavit in support. I have also considered the affidavit in response, the rival submissions and the cited authorities. The issues for determination are:-

(i) Whether the Plaintiff's/Applicant's application meets the threshold for grant of temporary injunction.

(ii) Who should bear costs of this application?

17. It is the Plaintiff's/Applicant's case that the orders by the Business Premises Rent Tribunal, terminated the lease between the Plaintiff and the Defendant. The Defendant/Respondent has threatened to demolish the suit premises in a bid to recover its expenses used in erecting some illegal structures on the suit property. It further states that the suit premises will stand wasted if those orders are not granted.

18. The Defendant/Respondent on the other hand contends that no evidence has been tendered to confirm the threat of demolition.

19. I have considered the rival positions and I find that the fear by the Plaintiff/Applicant that the suit premises will be demolished is real. I find that it has established a prima facie case with a probability of success at the trial given that the structures were put up without its consent.

20. I also find that the Plaintiff/Applicant is likely to suffer irreparable harm if the demolition is allowed to go on as the premises will be rendered uninhabitable by tenants.

21. I find that the balance of convenience tilts in favour of the Plaintiff/Applicant. The Defendant/Respondent is yet to settle the rent arrears.

22. In conclusion, I find merit in this application and the same is allowed in terms of prayer 3 and 4 of the Notice of Motion dated 2nd July 2021. The costs of this application do abide the outcome of the main suit.

It is so ordered.

DATED, SIGNED AND DELIVERED NAIROBI THIS 17TH DAY OF FEBRUARY 2022.

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L. KOMINGOI

JUDGE

IN THE PRESENCE OF:-

MR. KABURU FOR THE PLAINTIFF

MS NDERU FOR THE DEFENDANTS

STEVE - COURT ASSISTANT