



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**CIVIL SUIT NO. 163 OF 2015**

**KOBIL PETROLEUM LIMITED.....PLAINTIFF**

**VERSUS**

**RUTH WANJIRU WAWERU WAKAPA.....DEFENDANT**

**RULING**

1. The Plaintiff had filed the motion dated 28<sup>th</sup> April, 2015 seeking temporary injunction restraining the Defendant whether by herself, her agents, servants and/or assigns from harassing, evicting the Plaintiff, encroaching into, transferring, alienating, terminating and/or breaching the lease dated 12<sup>th</sup> May, 2000 over title No. Ngong/Ngong/8155 or in any way dealing with or interfering with the quiet possession and enjoyment by the Plaintiff over all that premises known as title No. Ngong/Ngong/8155 (*'the property'*). The Plaintiff also sought costs for the application.

2. The application is premised on the grounds set out on the application and the supporting affidavit of Eugene Ngwiri. It was contended that the parties entered into a lease agreement on 12<sup>th</sup> May, 2000 whereby the Defendant leased the property to the Plaintiff for a term of 15 years from 1<sup>st</sup> May, 2000. That it was an express and/or implied term of the lease that the lease will lapse on expiry of 15 years after which a further term of five (5) years would commence. That in breach of the said term and condition, the Defendant served the Plaintiff with a letter dated 14<sup>th</sup> April, 2015 purporting to terminate the lease. It was contended that the Plaintiff has neither defaulted in paying rent nor breached any term of the lease.

3. In response thereto the Defendant filed a Replying and Supplementary Affidavit dated 7<sup>th</sup> May, 2015 and 19<sup>th</sup> May, 2015 respectively. She contended that the renewal of the lease for a further five (5) years after the expiry of 15 years was not automatic rather it was pegged on both parties agreeing to extend the lease. She contended that she expressed her desire not to extend the lease for a further five (5) years to the Defendant in the year 2014. That the Defendant tried to convince her to extend the same but she declined. She contended that the Defendant has not kept its word of developing the premises and has for the last 15 years been using her petrol pumps, tanks and equipment without paying for them.

4. It was submitted on behalf of the Plaintiff that; the term of the contract constituted fifteen (15) years and an additional five (5) years. That the five (5) years was available at the option of the Plaintiff as expressly stated in the lease considering that the rent for that period had been pre-negotiated; that having operated the business of a petrol service station for a period of fifteen (15) years, it has built a lot of good will in the area and vacating while the lease is still running will inconvenience and occasion the Plaintiff loss of good will which cannot be quantified and that the balance of convenience tilts in favour of the Plaintiff considering that it had expressed its interest to utilize the one (1) term option of five (5) years immediately after the expiry of the fifteen (15) years.

5. On the other hand, the Defendant held the opinion that the lease gave either party an option of renewing the lease for a term of five (5) years but that the same was not automatic. That the Defendant registered the lease only for a term of 15 years and not 20 years. It was submitted that the lease is categorical that the schedule for the optional 5 years is only applicable if the Plaintiff utilizes the 5 years option in the event that both parties have agreed to an extension of the lease for a further 5 years. It was submitted that there can be no loss suffered by the Plaintiff if the lease has come to an end and that it is the Defendant who is at a risk to suffer irreparable loss since the Plaintiff continues to use her petrol pumps and equipment without paying for the same and that the Plaintiff is occupying the premises without paying rent.

6. The principles applicable when granting or refusing to grant an order for injunction were well settled in **Giella v. Cassman Brown & Co. (1973) E.A. 358**. For an applicant seeking injunctive orders to succeed in his/her application, it must be established that there is a prima facie case with a probability of success, that he/she stands to suffer irreparable loss and that if the court is in doubt, the court shall consider on which party the balance of convenience tilts.

7. In dealing with the first limb, this court should determine whether or not prima facie it was mandatory for the lease agreement to be extended for a term of five (5) years. The facts leading to the filing of this suit and the motion is straight forward. The Plaintiff by a lease agreement dated 12<sup>th</sup> May, 2000 leased the property for a term of fifteen (15) years commencing on 1<sup>st</sup> May, 2000. The agreement provided for an option to renew the lease for a further term of 5 years at the expiry of the fifteen (15) years. The rent payable for the further five (5) years was also agreed upon in the lease agreement.

8. I have seen the lease dated 12<sup>th</sup> May, 2000. In its recital, the same stated: -

***“RUTH WANJIRU WAWERU WAKAPA ..... hereby leases to KOBIL PETROLEUM LIMITED..... the piece of land comprised in the above Title together with all buildings.... for a term of fifteen (15) years from the 1<sup>st</sup> day of May Two Thousand and one (1) Term option of five (5) years to commence immediately at the expiration of fifteen (15) years Term ..... After the first Five (5) years, the prevailing monthly rent will be increased upwards by 10% and subsequently after every five (5) years for the balance of the Lease Term and the one (1) Term option Five (5) years.”***

9. From the foregoing, it is quite clear that the term created was for fifteen (15) years and one (1) term of five years. The terms and conditions applicable to the entire period of twenty (20) years were agreed upon and set out in the lease. At page 8 of the lease, it is very clear that the stated one Five (5) year term was exercisable at the option of the plaintiff and not both parties as contended by the Defendant. In my view, once an option to renew clause is inserted in a lease and the terms attendant to that term are settled, it becomes a binding contract enforceable at the instance of the lessee unless there are other intervening reasons e.g. breach of fundamental terms and conditions of the lease.

10. In the case of **Sands Vs. Mutual Benefits Ltd (1971) EA 156**, it was held that in the absence of an agreement or a method of securing an agreement to renew, there was no, effective renewal of the lease. Further, that a lease agreement, if its terms are sufficiently certain, may be specifically enforced like any other contract. From my disposition on the terms of the lease, the terms were clear even on the rent payable for the further term. The Plaintiff has therefore, in my view, established that prima facie the contract for the further term is enforceable.

11. Secondly, it was stated that the termination of the lease shall occasion the Plaintiff irreparable loss that cannot be quantified since the Plaintiff has established good will within the area. On the other hand, the Defendant contended that the Plaintiff continues to use her petrol pumps and equipment without paying for them and that the Plaintiff continues to occupy the premises without payment of rent. While the Defendant has not furnished evidence that the pumps used by the Plaintiff are hers, the Plaintiff having operated its business for fifteen years must have established a clientele and following my finding on the first limb, it stands to suffer substantial loss if temporary orders sought are not granted. In view of the foregoing, I will not belabour to consider the third limb but in any event, the balance of convenience

tilts in favour of maintaining the status quo. In the circumstances I find merit in the application and allow the application in terms of prayer Nos. 3 and 4 of the motion.

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**A MABEYA**

**JUDGE**

**Dated, Signed and Delivered at Nairobi this 18<sup>th</sup> day of September, 2015.**

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**A. MABEYA**

**JUDGE**