



REPUBLIC OF KENYA

High Court at Nairobi (Nairobi Law Courts)

Civil Case 4 of 2013

SAMUEL KIMANI MWAI..... PLAINTIFF

VERSUS

PATRICK PETER NJOGU KAMAU DEFENDANT

R U L I N G

1. By a written lease agreement the Defendant leased to the Plaintiff certain school premises standing on **L.R. No. 760/046, Nairobi** for a **period of 10 years from 1st June 2010 to 31st May 2022**. The rent payable would be as follows –

- i. 1st June 2012 to 31st March 2013: KShs 80,000/00 per month.**
- ii. 1st April 2012 to 31st March 2012: KShs 100,000/00 per month.**
- iii. 1st April 2012 to 31st May 2022: KShs 150,000/00 per month.**

2. The monthly rent was payable on or before the 1st day of each month. Rent deposits of KShs 450,000/00 were to be paid as follows –

- 1st Installment: KShs 240,000/00 by 25th May 2012.
- 2nd Installment: KShs 210,000/00 by 1st April 2012

3. Three scenarios for termination of the lease were provided for -

- (i) By either party giving a one-year notice; or
- (ii) By “lack of co-habitation compliance with the community or any government policy; or
- (iii) Non-payment of agreed rent.

4. The Plaintiff filed this suit on 8th January 2012 claiming that the Defendant has threatened to evict him from the leased premises. He seeks the relief of permanent injunction to restrain the Defendant from evicting him. He also claims the sum of KShs 538,785/00 which he pleads the Defendant had promised to remit to him on account of some students that he admitted to the school he runs in the leased premises who were previously the Defendant’s students in a school the Defendant had operated in the same premises before leasing them out to the Plaintiff.

5. Together with the plaint the Plaintiff filed **notice of motion dated 4th January 2012**. He sought temporary injunction pending disposal of the suit to restrain the Defendant from evicting him from the leased premises. That application is the subject of this ruling. It is brought under **Order 40, rule 2** of the **Civil Procedure Rules** (the **Rules**).

6. I have read the supporting affidavit sworn by the Plaintiff annexed to the application, and also the replying affidavit sworn by the Defendant in opposition to the application. It is a long document (with various documents annexed thereto) which gives a detailed history of the short relationship between the parties.

7. It appears that the Plaintiff has had difficulties in paying rent as agreed. The rent for the initial months was paid in bits and pieces after some cheques he had issued in payment thereof were either stopped by him or dishonoured by his bankers. Rents for October, November and December 2012 were admitted not to have been paid.

8. The Plaintiff's claim against the Defendant for the sum of KShs 538,785/00 appears to be outside the ambit of the lease agreement. If there was any business arrangement between the two under which the Defendant became indebted to the Plaintiff in the said sum, the same is not mentioned in the lease agreement. Nor is it provided for in any other agreement placed before the court. That claim, *prima facie*, does not appear to be germane to the landlord/tenant relationship of the parties.

9. Voluntary termination of the lease is provided for in the lease agreement upon a party giving to the other a one-year notice. Forced termination is also provided for in two instances –

(i) Where the leased premises apparently become inhabitable due to non-compliance “with community or any government policy”.

(ii) For non-payment of the agreed rent.

10. In these two instances no period of notice is provided for, in which case the applicable notice would be as may be provided for in law. Unfortunately neither learned counsel addressed the court on any applicable law. If there is no applicable law, then the notice would have to be reasonable. In this case the Defendant did give the Plaintiff notice of more than 30 days by letter dated 17th July 2012 to vacate the premises for non-payment of rent.

11. Ultimately, temporary injunction is a discretionary and equitable remedy. It will be granted where deserved. In this case the Plaintiff is clearly unable to pay agreed rent for the leased premises as and when they fall due. He is in substantial arrears. It would not be just to grant him an equitable remedy that would lead to injustice to the Defendant. Why should he be kept out of his property when the Plaintiff appears not able or willing to pay the agreed rents? The balance of convenience tilts in favour of the Defendant.

12. In the circumstances I find no merit in the application. The same is dismissed with costs to the Defendant. It is so ordered.

DATED AND SIGNED AT NAIROBI THIS 20TH DAY OF FEBRUARY 2013

H. P. G. WAWERU

JUDGE

DELIVERED AT NAIROBI THIS 22ND DAY OF FEBRUARY 2013