



**REPUBLIC OF KENYA**

**High Court at Nairobi (Nairobi Law Courts)**

**Civil Case 476 of 2012**

**FREDRICK OTIENO OKEYO**

**(t/a OTIENO OKEYO & CO. ADVOCATES) .....PLAINTIFF**

**VERSUS**

**OLD MUTUAL LIFE ASSURANCE CO., LTD.....DEFENDANT**

**R U L I N G**

1. The Plaintiff filed this suit seeking the main reliefs that the Defendant be directed to renew the Plaintiff's lease over **Rooms 422 and 423** in the **4<sup>th</sup> Floor** of the **Old Mutual Building** standing on **L.R. No. 209/1405, Nairobi**. He also sought a permanent injunction to protect that tenancy and damages. He had pleaded that the Defendant had agreed to renew the lease which was to expire on 30<sup>th</sup> September 2012 but reneged at the last moment. The suit was filed on 26<sup>th</sup> September 2012.
2. Together with the plaint the Plaintiff filed **notice of motion dated 26<sup>th</sup> September 2013** seeking the main order of temporary injunction to restrain the Defendant from evicting him from the suit premises pending hearing and determination of the suit. The application is supported by the Plaintiff's affidavit.
3. The Defendant opposed the application by **two replying affidavits filed on 5<sup>th</sup> October 2012**. One is by one JANE MUTUA, the Property Manager of the Defendant. The other one is by one JULIUS GIKURU NJUGUNA, a manager with **Crystal Valuers**, the manager of the **Old Mutual Building** on behalf of the Defendant. They denied that there was any promise on the part of the Defendant to review the Plaintiff's lease.
4. Interim injunction was granted and was extended from time to time. On 18<sup>th</sup> March 2013 the interim injunction was extended to the date of delivery of the ruling subject to the Plaintiff paying outstanding rent/*mesne* profits of KShs 251,499/00 (then outstanding) within 14 days of that date. In default the interim injunction would stand vacated.
5. The application was canvassed by way of written submissions. Those of the Plaintiff were filed on 17<sup>th</sup> December 2012. The Defendant's submissions were filed on 14<sup>th</sup> December 2012. I have considered those submissions together with the cases cited.
6. The Plaintiff's case is based on equitable estoppel which the Plaintiff has pleaded arose out of the Defendant's promise to renew the lease, which promise the Plaintiff pleads he acted upon by purchasing new furniture for his office and by fitting a carpet. The Defendant has denied that it made such promise.

7. Whether or not there was such a promise, and whether or not the Plaintiff acted upon it, are matters of fact best left for trial of the action. Everything being equal the court would have been happy to extend to the Plaintiff protection pending disposal of the suit. But the lease agreement provided for communication between the parties to be in writing. There is no written request by the Plaintiff to renew the lease exhibited. Nor is there a written promise by the Defendant to renew the lease. A letter dated 11<sup>th</sup> September 2012 addressed to the Plaintiff by the Defendant's property valuers (exhibited by the Plaintiff) categorically states that the Defendant is not willing to renew the lease and demands vacant possession upon expiry of the lease on 30<sup>th</sup> September 2012.

8. Also, as already pointed out, the Plaintiff was in arrears of rent/*mense* profits of KShs 251,499/60 as at 18<sup>th</sup> March 2013. The payable monthly rents under the lease that was to expire at 30<sup>th</sup> September 2012 were as follows –

- (i) From 01/10/2006 to 30/09/2008 – KShs 21,000/00
- (ii) From 01/10/2008 to 30/09/2010 – KShs 26,500/00
- (iii) From 01/10/2010 to 30/09/2012 – KShs 32,820/00

The Plaintiff was thus in arrears of rent/*mense* profits for over seven (7) months.

9. In these circumstances I am not satisfied that the Plaintiff has demonstrated a *prima facie* case with a probability of success. That being my view of the matter, the application by notice of motion dated 26<sup>th</sup> September 2012 lacks merit. The same is dismissed with costs to the Defendant. It is so ordered.

**DATED AND SIGNED AT NAIROBI THIS 23<sup>RD</sup> DAY OF MAY 2013**

**H. P. G. WAWERU**  
**JUDGE**

**DELIVERED AT NAIROBI THIS 24<sup>TH</sup> DAY OF MAY 2013**