



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT MOMBASA

CIVIL SUIT NO. 79 OF 2013

LUCY N. MOMANYI T/A

L. N. MOMANYI & COMPANY ADVOCATES PLAINTIFF

V E R S U S

JOEL OMBATI NYAMWEYA 1ST DEFENDANT

KENYA POWER & LIGHTING COMPANY LIMITED 2ND DEFENDANT

RULING

1. I am called to render a ruling on the Plaintiff's Notice of Motion dated 25th June 2013. By that Motion the Plaintiff seeks an injunction to restrain the Defendants from blocking the Plaintiff's access to her office situated on the 7th floor of Electricity House, Nkrumah Road, Mombasa. She also seeks an order to stop the Defendants from interfering with her quiet possession of that office. Her final prayer is for the maintenance of status quo in respect of her office.
2. The Plaintiff by her plaint pleaded that she is a holding over tenant of an office in Electricity House where she occupies 400sq ft. That property is owned by the 2nd Defendant. She pleaded that the rental for the space she has is Kshs. 36,035/- per month. It is alleged by the Plaintiff that on 31st January 2013 and on 19th June 2013 the 1st Defendant wrongfully with connivance of the 2nd Defendant blockaded the Plaintiff's office where she runs her law firm under the name of L. N. Momanyi & Co. Advocates. She alleged that the said blockade was wrongful and was intended to embarrass her in her calling as a Lawyer.
3. In the Plaintiff's affidavit in support of her Motion she narrated how the Defendants on two different occasions without notice blockaded her office by placing wood on her door. In that regard she relied on photographs which are part of her documents in this case which show that blockade. She stated that it wasn't until the 2nd Defendant's head office intervened that the said blockade was removed. She stated that the said blockade was actuated by malice on the part of the 1st Defendant.
4. It should be noted that the 1st Defendant is employed by the 2nd Defendant as a property officer.
5. The Defendants relied on an affidavit sworn by the 1st Defendant. By that affidavit they denied that their action was unlawful and alleged that the Plaintiff is a trespasser on the 2nd Defendant's

property namely; Electricity House. They allege that she was a trespasser because her lease with the 2nd Defendant had expired. Indeed it expired on 31st July 2012. That despite that expiry the Plaintiff continued in occupation of the 2nd Defendant's property which occupation did not have the consent of the 2nd Defendant. The 1st Defendant in his said affidavit further deponed as follows-

9. ***The Plaintiff has at all times been in arrears of rent. When the 2nd Defendant made attempts to recover the arrears of rent, the Plaintiff rushed to Court and filed two cases being Mombasa Chief Magistrate's Civil Case Number 919 of 2003 – Lucy Momanyi t/a Lucy Nyamoita & Co. Advocates versus Kenya Power & Lighting Company and Realite Ltd and Mombasa High Court Civil Case Number 642 of 2011 – Lucy N. Momanyi practicing as L. N. Momanyi & Co. Advocates versus Kenya Power & Lighting Company Ltd and Joel Titus Musya t/a Makuri Enterprises. Those cases are still pending in Court.***
10. ***Even as at the time of filing this present suit, the Plaintiff was still in arrears of rent in respect of the term that expired on the 31st July 2012. As at 17th April 2013, the arrears amounted to Kshs. 1,443,047/-. The Plaintiff has to date not paid those arrears.***
11. ***The 2nd Defendant is also entitled to mesne profits in respect of the period the Plaintiff has continued to occupy the 2nd Defendant's property at the rate of Kshs. 36,000/- odd per and this is now in excess of Kshs. 432,000/- odd.***
12. ***I have written several letters to the Plaintiff bring to her attention the acts of trespass and about the rent arrears but the Plaintiff has not responded positively to those letters. (Pages 13 to 16)."***

6. There is one objection raised by the Plaintiff which at this initial stage I need to deal with. The Plaintiff objected to the 2nd Defendant relying on the replying affidavit sworn by the 1st Defendant. She objected on the ground that the 1st Defendant did not have a written authority from the 2nd Defendant to swear that affidavit. I reject that argument. It suffices in my view that the 1st Defendant deponed that he was authorized by the 2nd Defendant to swear the affidavit on its behalf. In my humble view the rightful party who would object and insist on such an authority being in writing would be the 2nd Defendant itself. Such objection in my view would arise where the 2nd Defendant would allege that the 1st Defendant has acted without its authority. In this case the 1st Defendant having deponed that he has the 2nd Defendant's authority the Plaintiff's objection is rejected.

7. I am careful not to decide in this Ruling the issues of fact brought up in the Motion. This is in line with the case **MBUTHIA -VS- JIMBA CREDIT FINANCE CORPORATION & ANOTHER [1988]KLR** where the Court of Appeal stated that a Court in considering an interlocutory application should not decide issues of fact but rather it should weigh up the relevant strengths of each sides proposition.

8. Bearing that in mind I find that there is one issue that is not in dispute. It is not in dispute that the Plaintiffs term of lease expired in July, 2012.

9. Although the Plaintiff denies being in rent arrears she did tacitly by her letter dated 15th April 2013 concede that some rent was due to the 2nd Defendant. This is clear from her fourth and fifth paragraphs of that letter where she stated-

"We shall have meeting (sic) with your finance personnel in Mombasa to reconcile the exact amount owing since 2010.

We undertake to pay once confirmed monthly rent of Thirty Thousand Shillings (30,000/-) together with current quarterly rent that shall be ascertained upon surrender."

10. Although the Plaintiff submitted that the applicable law to this matter

was Section 52 of the Registered Land Act (RLA), it should be noted that RLA was repealed by the Land Registration Act 2012. RLA was repealed by that Act on 2nd May 2012. The Land Registration Act 2012 and in particular Section 60(1) is relevant to this matter. It provides as follows-

“If a lessee remains in possession of land without the consent of the lessor after the lease has been terminated or the term of the lease has expired, all the obligations of the lessee under the lease continue in force until such time as the lessee ceases to be in possession of the land.”

Section 60(2) goes on to state that if a lessor accepts rent for more than two months after the lease has been terminated the tenancy is deemed to be month to month tenancy.

11. The Plaintiff as stated before filed two cases; one is before the Chief

Magistrate's Court Mombasa and the other is before the High Court

Mombasa. From the facts revealed in the parties affidavits it would seem that those two cases relate to the Plaintiffs tenancy at the 2nd Defendant's property. I am of the view that it is necessary for this Court to determine whether there is need to order consolidation of those pending cases with this matter. In that regard I will give a mention date at the reading of this Ruling at which date directions would be given by the Court.

12. In considering the Plaintiff's Motion it is my view that there is need for

an order to be made for the maintenance of status quo for a limited period. This is because even if the term of the lease has expired the Defendant without an order of the Court on a prima facie basis cannot be justified in blockading the Plaintiff's office.

13. It is for those reasons that I grant the following orders-

- a. **An order is made for the Defendants to maintain status quo for only three (3) months from this date hereof in respect of the Plaintiff's occupation on 7th floor of 2nd Defendant's property known as Electricity House being property No. Msa Block XXIV/20 along Nkrumah Road, Mombasa. The Plaintiff is however obligated to continue paying rent when due.**
- b. **The parties are hereby ordered to hasten the process of pretrial. In that regard the Defendants shall file and serve their defence and all their documents including witness statements within fourteen (14) days from this date hereof. The Plaintiff shall also file and serve a complete set of documents and witness statements within fourteen days from this date hereof.**
- c. **A mention date shall be fixed at the reading of this Ruling where the Court shall give pretrial directions.**

Dated and delivered at Mombasa this 17th day of October, 2013.

MARY KASANGO

JUDGE