



REPUBLIC OF KENYA

High Court at Nairobi (Nairobi Law Courts)

Civil Case 85 of 2008

Editorial Summary

1. *Court Vacation*
2. *Civil Suit*
3. *Subject of Main suit*

Landlady/Tenant

- 3.1 *Tenancy agreement with effect from 19th October 2005 for a period of 10 years, 1 month.*
- 3.2 *(Lease agreement disputed claim to be 5 years, 1 month.)*
- 3.3 *Landlady Jatane Nawe Gube aged 72 years old passes away on 26th February 2007.*
- 3.4 *Daughter – Aisha Ramadhan and sister – Halima Nawe threaten to have tenant/plaintiff Mohamed Aila Jibo evicted.*
- 3.5 *Note – rents between February 2007 to December 2007 at the rate of Ksh. 80,000/- was being collected.*
- 3.6 *Tenant/plaintiff files suit on 14th March 2008 seeking declaration:*
 - i) *That he cannot be evicted without proper termination of lease.*
 - ii) *That there be letters of administration held for the*

deceased estate.

iii) *Injunction to restrain defendants with interference of plaintiff's usage and occupation of LR*

36/11/203

iv) *That the tenant/plaintiff do deposit rents into court.*

3.7 *Exparte order by Gacheche granted (17th March 2012)*

i) *For injunction.*

ii) *For rents to be deposited in court.*

3.8 *Interparte hearing before Sitati J:*

i) *Who is asked to extend exparte orders.*

ii) *Hon. Judge declines under Order XXXIX r 3(2) Civil Procedure Rules to extend orders.*

iii) *Applicant/tenant asks judge to disqualify herself.*

iv) *Judge disqualifies herself.*

3.9 *Interparte hearing Waweru J*

i) *Application for review 14th March 2008 and 25th March 2008 injunction and setting aside. Application 14th March 2008 dismissed.*

3.10 *Nambuye J – application dated 24th August 2011.*

i) *Hon. Judge declines to set aside orders of injunction by Waweru J.*

ii) *Review orders barring the 1st defendant from receiving rent from plaintiff granted conditionally Nambuye J.*

iii) *“The condition being that the 1st defendant does not receive the said funds in her personal capacity but the personal representative of the estate of the*

by

as

deceased.”

through

iv) *Prayer 2 –“ funds deposited to court be availed*

sound

the estate account. Particulars of account with a

financial institution required for purposes of court making orders.”

v) *Prayer 3 declined “1st defendant be at liberty to amend counter claim.”*

v) *Costs to respondent.*

4. *Vacation rules:*

4.1 *Application dated 13th August 2012 and filed on 14th August 2012 to be admitted during the vacation rules.*

4.2 *Hearing of 29th March 2012, plaintiff’s application during vacation be set down for hearing by appellant defendant.*

4.3 *Application by plaintiff No. 7 to release to the plaintiff Ksh. 1,760,000/- until determination of suit.*

4.4 *Objection/reply by 1st defendant, the same be dismissed having been filed outside the time stipulated by Waweru J.*

4.5 *Full grant was obtained in Succession Cause 1679/07 on 1st December 2011.*

4.6 *Application of 24th August 2011 to have sums released to 1st defendant.*

4.7 *Application opposed*

4.8 *Nambuye J has now heard application. That sum be released on grounds that she is rightful administratrix.*

4.9 *Rents paid only for 22 months not 52 months.*

4.10 *Stay of distributing estate by GBM Kariuki made in probate matter.*

5. Application 29th March 2012

By appellant/tenant

5.1 *Nambuye J's orders to release funds was conditional to compliance.*

5.2 *GBM Kariuki has issued stay of execution of administration of estate.*

IN REPLY:

By respondent/landlady:

5.3 *Waweru J – saw rent entitled but landlady had no letters of grant.*

5.4 *Nambuye J permitted the landlady to collect rent.*

5.5 *Orders barred on issue of distributing estate.*

6. *Held:*

6.1 *Matter is governed by probate matter.*

6.2 *An appeal under Muslim law is permitted to be heard in the Court of Appeal.*

6.3 *Nambuye J's orders to abide the appeal.*

7. *Case Law:*

a) *In the Estate of Jatane Nawe Gube* P&A
(Deceased)
1679/07

8. *Advocates :*

i) *J.H. Kinyanjui instructed by M/s Harrison Kinyanjui & Co Advocates for plaintiff/tenant*

ii) *C.A. Oluoch holding brief for S.G. Thita instructed by M/s S.G. Thuita & Co Advocates for defendant/landlady.*

... PLAINTIFF

MOHAMMED AILA JIBO

VERSUS

AISHA RAMADHANI

HALIMA JATAWE DEFENDANTS

RULING

I. INTRODUCTION

1. Should the sum of Ksh. 1,760,000/- being rents deposited to court by the plaintiff herein, be released to the 1st defendant, the administratrix of the estate?
2. The application dated 29th March 2012, by the plaintiff tenant prayed that the said sum should not be released to the

1st defendant/administratrix landlady. That the release of the funds was conditional (Nambuye J) and in the succession matter GBM Kariuki J had issued orders of stay of execution of the distribution of the estate of a deceased.

II BACKGROUND

3. The main suit herein is pending and has never been heard. What has occurred in the last four years have been multiplicity of application after application. Whereas the background of this matter has been outlined in the rulings of the various judges, I wish to just outline the same for ease of reference.
4. Mohammed Aila Jibo – the plaintiff herein filed suit on the 14th March 2008, together with an application seeking orders of injunction of the same date.
5. From the proceedings, Mohammed Aila Jibo (herein referred to as the tenant) stated that he had a tenancy agreement with one Jatane Nawe Gube as his landlady. This agreement duly signed was from the 19th October 2005 for a period of 10 years, 1 month. (The lease agreement is disputed and is alleged to actually be for 5 years, 1 month.)
6. The landlady then aged 72 years old passed away on 26th February 2007. The tenant continued to pay his rents to her only daughter, the 1st defendant herein called Aisha Ramadhani. The deceased sister is Halima Jatane, the 2nd defendant herein.
7. According to the tenant, the 1st defendant, threatened to evict him from the suit premises. This necessitated that he filed the suit before court. On the 14th March 2008, he sought declaration:-
 - i) That he cannot be evicted without proper termination of the lease.**
 - ii) That there be letters of administration held for the deceased's estate.**
 - iii) That there be an injunction to restrain the defendants from interfering with the tenant's usage and occupation of the suit premises LR 36/11/203.**
 - iv) That the tenant pay and deposit rents into court.**

8. On the 17th March 2012 Gacheche J gave exparte orders that

8.1 An injunction do issue restraining the defendants from evicting the tenant.

8.2 That the rents are to be deposited to court.

9. The interparte hearing was to come before Sitati J. She is asked to extend the ex parte orders. The Hon. Judge rightly declines to extend the orders due to Order XXXIX r 3(2) Civil Procedure Rules, now Order 40 r 4(2) Civil Procedure Rules. The tenant asks the Hon. Judge to disqualify herself which she duly did.

10. There were two applications pending. The one dated 14th March 2008 for an injunction and another dated 25th March 2008 for a review of setting aside the interim orders of 17th March 2012 filed by the tenant and landlady 1st defendant respectively.

11. Waweru J dismissed the 1st defendant's application to set aside orders of Gacheche J of 17th March 2008. The application for injunction 14th March 2008 was confirmed interparte. The rents are to be deposited in court. The defendant No. 1 did not have a full grant to gather the estate.

12. The two defendants changed advocates on 11th August 2011 from

M/s Lumumba, Mumma & Kaluma Advocates to

M/s Mwangi & Guandara Advocates. They filed an application dated 18th August 2011 seeking orders that:

12.1 The Hon. Court discharge the injunction restraining the defendants from collecting rent from the plaintiff.

12.2 The sum of Ksh. 1,760,000/- that is deposited in court be released to the 1st defendant.

12.3 That the plaintiff/tenant be ordered to pay the balance of rent due to the estate within 14 days.

13. This application came before Nambuye J and in her ruling of

21st October 2011 she held:

13.1 The orders of injunction (issued and confirmed by Waweru J) will remain in place and not be discharged.

13.2 A review of orders barring the 1st defendant from receiving rent from the plaintiff is granted conditionally by Nambuye J.

13.3 The condition being "that the 1st defendant does not receive the said funds in her personal capacity but as the personal representative of the estate of the deceased."

13.4 That the funds deposited in court (namely Ksh. 1,760,000/- stated at prayer 2) be availed through the estate account. The particulars of account [being] with a sound financial institution required for purposes of the court making orders.

13.5 Prayer 3 asking the plaintiff tenant to pay the balance of all rents due to the estate within 14 days was delivered by the Hon. Judge. The applicant 1st defendant was at liberty to amend her counter-claim.

13.6 Costs awarded to the tenant.

14. In the meantime, the 1st defendant appears to have gone to the Family Division and obtained a full grant – referred to by Nambuye J in her ruling.

15. The tenant filed a notice of motion dated 29th March 2012 seeking the court's order that **"the sum**

of Ksh. 1,760,000/- deposited in court should not be released to the defendant respondent until determination of the matter.”

16. The respondent 1st defendant opposed the said application.

17. This application has been pending for six months. It was during this court vacation that the 1st defendant prayed that the said application of 29th March 2012 be heard during the court vacation. The reasons given is that she requires to pay the council rates and land rent. That the urgency be that she takes advantage of the waiver by the council.

18. This court certified the application as urgent on 14th August 2012. The parties came to court for interparte hearing of the application of 12th March 2012.

19. The subject of this ruling herein is the application dated 12th March 2012 that was filed on 12th April 2012 by the tenant seeking the following orders:-

19.1 _____

19.2 That the sum of Ksh. 1,760,000/- be deposited in court by the plaintiff should not be released to the defendant/respondent until the full de termination of this matter.

19.3 _____

20. The grounds being that the tenant had a tenancy agreement with the deceased. The 1st defendant filed Succession Cause No. 1679/07 as administratrix to the estate of her late mother and landlady to the plaintiff. Ironically, the matter came before Gacheche J who first handled this case on an interlocutory application. She made a decision dated 18th March 2010 whereby she appointed the 1st respondent in the objection proceedings an administratrix of the estate of the deceased.

21. The plaintiff/tenant had originally been an objector with others. He withdrew. Upon the decision being made, the objectors filed an appeal to the court of appeal Section 50 of the Law of Succession Act Cap 160 Laws of Kenya permits estates of Muslims faith only, to be appealable to the Court of Appeal.

22. The reasons given by the tenant/plaintiff is that he is concerned that the funds would be misappropriated. There is no other reason.

23. Orders for stay of execution of the decision was granted, presumably by GBM Kariuki.

24. This may mean that the estate has no administratrix.

25. In reply, the said 1st defendant/respondent claimed the orders of Nambuye J was specific. That the sum be released. There appears to be no appeal against this order.

26. The 1st defendant/respondent is the administratrix of the estate having obtained a full grant on 1st December 2011 to so act.

27. The application before court was filed out of time dated the 29th March 2012.

IV ISSUES

28. The issue as to whether the sum of Ksh. 1,760,000/- should be released to the 1st defendant or not was determined by Nambuye J. Her decision cannot be stopped unless it is appealed against, to the Court of Appeal.

29. The appellant/tenant prays that only Ksh. 61,000/- be released to meet the pressing payments of the rates by the City Council of Nairobi.

30. Nambuye J's orders required that the sum of Ksh. 1,760,000/- be released to the 1st defendant upon there being an account for the estate.

31. The 1st defendant states whereas she is now the administratrix, she is only barred from distributing the estate, not collecting the assets and liabilities.

V FINDINGS

32. I have perused the ruling by Gacheche J on the probate matter dated the 18th March 2011 (described as a judgment). In the said decision, Aisha Ramadhan, the petitioner therein was appointed as the administratrix to her mother's estate. She was required to file the assets and liabilities form including all the beneficiaries to the estate if any.

33. Normally six months would lapse before the confirmation of a grant.

34. In this case, there is the decision of Nambuye J which is on record and which this court cannot set aside unless appealed against as stated earlier to the court of appeal.

35. It would be advisable for the 1st defendant to amend her counter-claim as ordered by Nambuye J and the description of herself as an administratrix "on behalf of the estate of the deceased."

36. Parties in the meantime must finalize the main suit.

37. I would decline to issue orders in favour of the plaintiff/tenant. The application dated 12th March 2012 be and is hereby dismissed with costs to the 1st defendant.

DATED THIS 21ST DAY OF AUGUST 2012 AT NAIROBI

M.A. ANG'AWA

JUDGE

Advocates:

i) *J.H. Kinyanjui instructed by M/s Harrison Kinyanjui*

& Co Advocates for plaintiff/tenant

ii) *C.A. Oluoch holding brief for S.G. Thita instructed by*

M/s S.G. Thuita & Co Advocates for defendant/landlady.