



**Ngumbau Investments Limited t/a Courtyard Hotel v Kitele Investments Limited & another
(Environment & Land Case 23 of 2018) [2022] KEELC 14557 (KLR) (26 October 2022) (Ruling)**

Neutral citation: [2022] KEELC 14557 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS
ENVIRONMENT & LAND CASE 23 OF 2018
A NYUKURI, J
OCTOBER 26, 2022**

BETWEEN
NGUMBAU INVESTMENTS LIMITED T/A COURTYARD HOTEL PLAINTIFF
AND
KITELE INVESTMENTS LIMITED 1ST DEFENDANT
ADMINISTRATORS OF THE ESTATE OF THE LATE LABAN MAINGI
KITELE 2ND DEFENDANT

RULING

I ntroduction

1. Before court is a notice of motion dated May 10, 2021 filed by the defendants seeking for the following orders;
 - a. That this honourable court do issue orders that the monies deposited in court as rent money amounting to the sum of Kenya Shillings Four Hundred and Fifty Thousand only (Kshs 450,000/-) that was deposited by the plaintiff/respondent in the court's account be released to the applicants/defendant's advocate *vide*;
Acc Name: Bashir & Noor Advocates Client Account
Acc No: xxxx
Branch: Kenyatta Avenue - Amanah
 - b. That costs be provided for.
 - c. That this honourable court do issue any other relief it deems fit.
2. The application is anchored on the grounds on its face as well as the supporting affidavit of Daphine Mueni Musyoka, who is the administrator of the late Laban Maingi Kitele, the 2nd defendant. The



applicant's case is that the applicants are lessors of the suit property and at the time of filing suit, they did not have grant of letters of administration for the late Laban Kitele as the succession process was incomplete.

3. According to the applicants, this court ordered the plaintiff to deposit rent to the court's account. That the Plaintiff deposited in court rent for the months of May, June and July 2018 totalling to Kshs 450,000/-. Further, that the applicants have now been issued with grant of letters of administration, they should be allowed to receive the money deposited in court.
4. The application was opposed. Antony Ngunga, the Managing Director of the plaintiff filed a replying affidavit sworn on October 26, 2021, in opposition to the application. It was the respondent's case that the application was premature, misconceived, baseless and an abuse of the court process as it was meant to mislead the court.
5. It was the respondent's position that the applicants were issued with grant of letters of administration on January 10, 2017, which was a year before the plaint was filed on February 5, 2018. The respondent denied the existence of a court order directing them to deposit the rent in court and stated that they deposited the rent in court as there was an issue as to who is entitled to receive the same.
6. The respondent further asserted that their claim was for Kshs 21,517,011.78 and therefore it was premature for the court to release the deposited rent at this stage as the court may determine the suit in favour of either party and that the amount should be released upon determination of the suit as no prejudice will be suffered by the Applicants.
7. The application was canvassed by written submissions. On record are the applicants' submissions dated October 22, 2021 and the respondent's submissions dated October 26, 2021.

Submissions

8. Counsel for the applicants reiterated the averments in the supporting affidavit and submitted that this court vide its ruling dated October 12, 2018 found that only administrators of the late Laban Maingi Kitele had authority to deal with his property. Further, that it was on the premise of that finding that this honourable court ordered that the rents for the suit property be deposited in the court's account.
9. It was further submitted that *High Court Succession Cause No 298 of 2017* had been concluded and certificate of confirmation of grant issued showing that the two applicants were the administrators of the estate of the late Laban Kitele, and hence they are lawfully entitled to receive and administer the rent deposited in court.
10. On their part, counsel for the respondent submitted that the application was premature, baseless, misconceived and an abuse of the court process. That contrary to the applicant's assertions, they were issued with grant of letters of administration a year before they instituted this suit.
11. Counsel contended that the reason for the respondents depositing the sum of Kshs 450,000/- in court was because there was a dispute on who was entitled to receive the same, and that contrary to the applicant's assertions, there was no court order directing the respondents to deposit the rent in court.
12. It was further argued for the respondent that their plaint sought for payment of over Kshs 21 million and therefore it was premature to seek for release of the deposited rent amount.
13. Counsel was of the view that the applicants had not demonstrated any prejudice or injustice that may be suffered if the application is not allowed. They submitted that the respondent stood to suffer prejudice if the money was released prematurely while the suit was pending determination and in



the event the court decides in their favour, execution may be strenuous, in view of the fact that the plaintiff's case had raised an arguable case.

Analysis and Determination

14. The applicant's application is based on two reasons, namely that the time the suit was filed, they were not administrators for the estate of the late Laban Kitele and that the sum of Kshs 450,000/- being rent for May, June and July 2018 was deposited in court on account of a court order.
15. The applicants never attached the court order directing the plaintiff to deposit rent in court and the plaintiff has denied the existence of such order. It is trite law that he who alleges must prove. As there is no order directing the plaintiff to deposit the rent amount in court, I find that the defendants' application is premised on incorrect allegations.
16. In addition, a person becomes an administrator of the deceased person upon issuance of grant of letters of administration to them. As can be seen from annexure DMM2, which is the certificate of confirmation of grant, it is clear that letters of administration intestate were issued to the applicants on July 10, 2017. The record shows that this suit was filed on February 5, 2008. Therefore, the applicant's allegation that they did not have a grant of letters of administration at the time of filing suit is incorrect.
17. The applicant purported to argue that in the ruling of October 12, 2018, this court found that only the administrators of the estate of Laban Kitele had authority to deal with his property; and that it is on the premise of that finding that the court ordered the respondent to deposit the rent in court. It is not disputed that the rent deposited was for May, June and July 2018. From the letter by counsel for the plaintiff dated May 24, 2018, which was marked as annexure AN-2, it is clear that the decision to deposit the rent in court was done by the plaintiff in May 2018 and not by a court order in October 2018.
18. It is a general principle of law that he who comes to equity must do so with clean hands. The application herein is based on untruthful assertions meaning that it has no factual basis. From the record, the name of Daphine Mueni Musyoka, though shown that she is one of the administrators of the estate, yet she is not a party to this suit. It would therefore not serve the interests of justice to grant the orders sought.
19. In the premises, I find and hold that the application dated May 10, 2021 lacks merit and the same is dismissed with costs.
20. Orders accordingly.

DATED, SIGNED AND DELIVERED AT MACHAKOS VIRTUALLY THIS 26TH DAY OF OCTOBER, 2022 THROUGH MICROSOFT TEAMS VIDEO CONFERENCING PLATFORM

A. NYUKURI

JUDGE

In the Presence of;

Ms Akoko holding brief for Mr. Noor for the Defendants/Applicants

Ms Mwaniki holding brief for Mr. Kimathi for the Plaintiff/Respondent

Ms Josephine Misigo – Court Assistant

