



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)

Civil Suit 291 of 2008

MENGESHA TEFERA W. MARIAM.....PLAINTIFF

VERSUS

AL NOOR EXHIBITIONS LIMITED.....1ST DEFENDANT

NEW ALI NOOR EXHIBITIONS LIMITED.....2ND DEFENDANT

SHARRIF AWO MOHAMED.....3RD DEFENDANT

R U L I N G

1. The application before me is the Chamber Summons dated 3/07/2008 filed under Certificate of Urgency on the same day and expressed to be brought under Order 39 Rules 1, 2A, 2, 5, 7 and 8 of Civil Procedure Rules by which the Applicant seeks ORDERS THAT:-

1. Now spent

2. Now spent

3. The court be pleased to grant a preliminary/interim injunction restraining the defendant by itself, or its employees, servants or agents from terminating the tenancy agreement between itself and the Plaintiff, or in any other way interfering with the plaintiff quiet possessions and occupation of premises during the currency of the Licence/Lease Agreement pending the determination of the suit. (sic)

4. The court be pleased to grant an order of stay regarding the current tenancy relationship between plaintiff and the defendants in regard to the premises in question pending the determination of the main suit.

2. The application is supported by some seven (7) grounds on the face thereof, the heart of which is that the Plaintiff stands to suffer great investment losses if the threat by the Defendant to have the Plaintiff forcefully evicted from his leasehold interest in that property known as stall numbers A15, A16, A30 and A31 in Wing A within the Defendants building on plot No.209/70/1628 along Accra Road in Nairobi (the suit property) is carried out. The application is also supported by the sworn affidavit of Mengesha Tefera W. Miriam. The deponent says that he has been a tenant of the Defendant Al Noor Exhibitions Limited in the suit property as per the letter dated 15/03/2007. He also says that he got permission to sublet the premises by subdividing the same into small spaces called "*tables or stalls*". The lease, according to the deponent, was for a period of five years initially and was renewed for a further term of five years. He

says he paid the sum of Kshs.62,500/= p.m. in rents which amount was later reduced to Kshs.53,480/= due to loss of stall No. A17. The deponent says he paid Kshs.190,000/= for each of the three of the five stalls for which the lease had been renewed while he paid the sum of Kshs.120,000/= for each of the other two stalls. He says that when the Defendant found out that the Plaintiff was using the premises for his own purposes, the Defendant decided to threaten the deponent with eviction and the eviction of the Plaintiff's sub-tenants.

3. The deponent feels aggrieved by the threat and says that the Plaintiff is being oppressive and that unless the orders sought are granted, he is likely to suffer irreparable harm and in particular that he will lose the money used in renovating the suit property. The deponent asks this court to injunct the Defendant against interfering with the quiet enjoyment of the suit premises pending determination of this suit.

4. This application was filed contemporaneously with the plaint dated 3/07/2008 and filed in court on the same day. The Plaintiff avers that he entered into a lease agreement with the Defendant then known as Al Noor Exhibitions Limited for a renewable five-year term, the first of which expired on 31/12/2006. The Plaintiff avers further that the lease was renewed for a further five-year term from 1/01/2007 to 1/01/2012 initially at the monthly rent of Kshs.62,500/= but later reduced to Kshs.53,840/=. The Plaintiff further avers that in or about 27/06/2008, the Defendant purported to terminate the lease agreement with immediate effect. The Plaintiff avers that if the Defendant is allowed to carry its threat into effect, the Plaintiff will be greatly prejudiced; and will suffer loss in licence renewal fee (Kshs.810,000/= per month) loss of income from sub-tenants (Kshs.114,000/= per month) and renovations (Kshs.320,000/=). The Plaintiff prays for judgment against the Defendants for

(a) A permanent injunction restraining the defendant by itself, or its employees, servants or agents from terminating the tenancy Agreement between itself and the plaintiff, or in any other way interfering with the plaintiff quiet possessions and occupation of premises during the currency of Licence/Lease Agreement.

Alternatively:-

- (b) Rescission of the Agreement for breach by the Defendant
- (c) Refund of the sum of Kshs.810,000/= being lease renewal fee paid to the defendant
- (d) Refund of Kshs.320,000/= being the cost incurred on renovations
- (e) Kshs.4,764,000/= for loss of income for 3 years

And:-

- (f) General damages
- (g) Special damages
- (h) Cost of this suit
- (i) Interest on a, b, c, d, e, f, g, and h above
- (j) Any other or further awards from this honourable court as the court deems fit.

5. The application is opposed. The Replying Affidavit is sworn by SHARRIF AWO MOHAMMED. The Defendant admits receiving payments from the Plaintiff towards rent, but says that such payment is not prima facie or sufficient proof of a lease and does not amount to a lease as indicated by the Plaintiff. The deponent also says that despite the fact the Plaintiff was a mere tenant, he was masquerading as an agent of the 2nd Defendant. The Defendant considers the Plaintiff a trespasser and that in any event, he is

engaged in unauthorized subletting of the suit premises. The deponent of the Replying Affidavit has annexed to it copies of several correspondence, among them the following –

- annexure SAI – being copy of a general letter dated 4/06/2008 addressed to all tenants by the management advising them to vacate the suit premises on or before 3/07/2008
- Annexure SA2 – being copy of a letter by Kounah & Co. Advocates to the Plaintiff asking him to take note of the notice referred to in annexure SA1 and advising him that the lease had been terminated.
- Annexure SA 3 – being copy of another letter dated 2/07/2008 by M/s Kounah & Co. Advocates stating that the Plaintiff had no authority to sublet the premises.

6. In the Further Supporting Affidavit, the Plaintiff annexed a number of letters and other documents to show that the Defendant had allowed him to sublet the premises. In particular are –

- Letter dated 5/07/2007 – by which the Plaintiff sets out the terms of the lease
- Letter dated 14/06/2005 addressed to the owner of stall No. A15 and A16 warning him that any future interference with the electrical wiring will lead to “*terminating your lease agreement with us.*”
- Letter dated 28/06/2008 to the tenants of stalls A15, A16, A30 and A31 (subtenants of the Plaintiff) advising them to pay rent directly to New Al Noor Exhibitions Office (this is the 2nd Defendant herein).

7. By these and other letters, the Plaintiff claims that he was a tenant of the Defendant; that the Defendant did recognize the existence of the subtenants and finally that there is in existence a lease between the Plaintiff and the Defendants. He also says that on 11/01/2008, he paid legal fees of Kshs. Fourteen Thousand (Kshs.14,000/=) being charges for preparation of the lease.

8. This application was canvassed before me on 9/07/2008. Both M/s Hayanga for the Plaintiff and Mr. Kounah for the Defendant ventilated the averments of their client’s respective affidavits. Mr. Kounah submitted that in spite of the letters and other documents produced by the Plaintiff, there was no lease agreement between the parties. On this point, it is my considered view that by whatever name it may be described, there is a lease agreement between the parties. The Plaintiff has been paying rent under this arrangement. The Defendant has accepted such payments and referred to the lease agreement between the parties in its correspondence. There is thus no doubt in my mind that the Defendant has all along acknowledged the Plaintiff as a tenant and has further acknowledged that the Plaintiff had sublet the premises. In my view, even if the Defendant did not give consent for the subletting it condoned the same and ratified it by its conduct.

9. Having made the above finding, the next question to ask is whether the Plaintiff has satisfied the conditions for the granting of an injunction as set out in the now renown case of *Giella –vs- Cassman Brown & Co. Ltd.* [1973] EA 358 which are that

- (a) the applicant must show that he has a prima facie case with a probability of success;
- (b) An injunction will not normally be granted unless the applicant shows or demonstrates that he will suffer irreparable loss unless the order sought is granted;
- (c) If the court is in doubt, it will decide the case on a balance of convenience.

10. I have carefully considered the case before me and I do find and hold that the Plaintiff has demonstrated that he has a prima facie case with a probability of success. The Defendant has not exhibited any document to show why the lease with the Plaintiff has to be terminated. I have already observed that the Defendant either gave authority to the Plaintiff to do the subletting or he condoned the Plaintiff’s act of subletting. By the letter of 28/06/2008, the Defendants purported to acquire the

Plaintiffs' sub-tenants in stalls A15, A16, A30 and A31, yet by the Defendants letter of 15/03/2007, the Defendants clearly advised the Plaintiff that their lawyers had been authorized to prepare the lease document after the Plaintiff paid the sum of Kshs.810,000/= in respect of the stalls numbered A15, A16, Part A30 and A31. For this reason, the Plaintiff is entitled to an injunction.

11. Secondly, I am satisfied that the Plaintiff is likely to suffer loss if the order sought is not granted. The Plaintiff has put evidence before this court of payments he has made to the Defendants; that he leased the premises for business, part of which is subletting with the consent of the Defendants. In a highly competitive business environment, it is unlikely that the Plaintiff will find similar accommodation on the same terms. Even if I was in doubt on the above two points, I am persuaded that the balance of convenience in this case would tilt in favour of the Plaintiff.

12. In the result, I do allow the application dated 3/07/2008 and order that there shall issue an injunction restraining the Defendant by itself, or its employees, servants or agents from terminating the tenancy agreement between itself and the Plaintiff, or in any other way interfering with the Plaintiff's quiet possessions and occupation of premises known as Stall Nos A15, A16, A30 and A31 of the suit premises pending the hearing and determination of this suit. Costs of this application shall be borne by the Defendants.

It is so ordered.

Dated and delivered at Nairobi this 18th day of October 2008.

R.N. SITATI

JUDGE

Delivered in the presence of:-

M/s Hayanga (absent) For the Plaintiff

Mr. Kounah (present) For the Defendant