



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MOMBASA
CIVIL SUIT NO. 273 OF 2005

MAC GEORGE GUESTHOUSEPLAINTIFF

VERSUS

GITHERE INVESTMENT LTD.....1ST DEFENDANT

DEANSBROOK SCHOOL LTD2ND DEFENDANT

R U L I N G

On the 1st day of October 2001, Mcgeorges Guest House Ltd. The Plaintiff herein, entered into a lease agreement with Githere Investments Ltd., the 1st Defendant herein in which the 1st defendant leased the premises comprised in Titles No. 377/378/XXI/MI (Mombasa Block 377/378/XXI) to the plaintiff for 5 years 3 months. The lease agreement clearly indicated that the tenancy would terminate on the 31st day of December 2005. The Plaintiff had the option to request for a renewal of the lease three months before the same lapsed.

On the 30th day of September 2005, the 2nd Defendant gave notice to the plaintiff of its intention not to renew the lease because the defendants had plans to dispose of the property. The plaintiff was given the option to purchase the property or in the alternative to vacate the same at the end of the lease period. The 1st defendant, Githere Investment Ltd, wrote another letter dated 10th November 2005 to the plaintiff requesting the plaintiff to do a joint inspection of the premises before the 31st December 2005 when the lease was expected to lapse. On the 23rd day of November 2005, the 2nd defendant wrote to the plaintiff plainly stating that the lease would not be renewed. The plaintiff was shocked by the decision, and it decided to institute this suit against the defendants.

In a summons dated 16th December 2005, the plaintiff has asked for an order of injunction to restrain the defendants from interfering with the plaintiff's quiet possession and occupation of LR No. Mombasa/Block XXI/377, and Mombasa/Block XXI/378 and to further restrain the defendant from evicting the plaintiff from the suit property pending the hearing and determination of this suit. The summons is supported by the affidavit of George Kuria Kinyanjui sworn on the 16th day of December 2005. the application is resisted by the defendants who filed grounds of opposition and a replying affidavit sworn by Alice Githere dated 29th December 2005.

It is the submission E.W. Njeru advocate for the plaintiff that the defendants should have renewed the lease on the basis of the request made by the plaintiff dated 27th September 2005. she argued that the plaintiff had not breached any of the terms of the lease hence it should have been given an extension of the lease. The learned advocate further argued that the plaintiff was willing and capable of paying the contractual rent.

The defendants on their part opposed the application on the ground that it does not meet the principles of injunction. It was the argument of Mr. Ndegwa advocate for the defendants that the suit was resubjudice Mombasa C.M.C.C. No. 618 of 2003. It is the submission of Mr. Ndegwa that the plaintiff did not apply for the renewal of the lease as portrayed in correspondences exchanged between the parties. It is also the submission of the defendants that the plaintiff had failed to meet the terms of the expired lease hence it was not entitled to have the lease renewed. The defendants' replying affidavit contained annexures showing that the plaintiff has not had a peaceful time in remitting the monthly rents as per the lease agreement.

The issue is quite simple. The bone of contention is whether or not the plaintiff is entitled to have the lease renewed. It is not disputed by the plaintiff that the defendants served a notice of their intention not to renew the lease. It is not also disputed that the plaintiff was given the first option to purchase the property. It is not further disputed that the plaintiff even took the initiative to advertise the property for sale on behalf of the defendants. The plaintiff has now come to this court complaining that the lease should have been renewed because he did not breach any of the terms of the lease. Let me reproduce the relevant part of the lease in this regard as follows:

“On the written request of the lessee made not less than three calendar months prior to the expiration of the terms hereby granted and if there shall not at the time of the expiry of such request be any existing breach or non-observance of any of the covenants on the part of the lessee herein contained at the expenses of the lessee to grant to the lessee a new lease of the demised premises for a further term of 5 years 3 months from the expiration of the present term at the rent to be negotiated two years of the term granted subject to the like covenant agreements conditions and restrictions save this provision for renewal.”

The question is; can the defendants be restrained on the basis of this lease and facts submitted? There is the uncontroverted facts deponed in the replying affidavit of Alice Githere that the plaintiff has been in arrears of rent. Annexed to that affidavit is a copy of the plaint in Mombasa C.M.C.C. no. 618 of 2003. In that plaint the plaintiff prayed for inter alia:

“An order directing the defendant to continue receiving rent from the plaintiff the monthly installments of Kshs.150,000/- until the arrears of rent is paid in full”

It is a term of the expired lease for the plaintiff to pay rent promptly and not to be in arrears. In the circumstances therefore the defendants were justified not to renew the lease. The plaintiff was not candid to this court when it claimed it had not breached some of the terms of lease. In my view the plaintiff has not established a prima facie case with a probability of success. It is not the function of courts of law to force parties to enter into contracts.

It has been alleged that even if the plaintiff had shown a prima facie case it would not suffer an irreparable loss. It is not disputed that when the plaintiff received the unfavourable news from the defendants it requested them to include in its sale the value of the improvements on the property to the tune of 7,000,000/-. It even offered to advertise the property for sale on behalf of the defendants to enable it easily recover its money.

In a nutshell, I agree with the submissions of Mr. Ndegwa advocate that the plaintiff will suffer no irreparable loss or injury. Considering the principle of inconvenience, it is evident that the defendants will be more inconvenienced than the plaintiff if the order of injunction is granted. It is very clear from the annexures attached to the affidavits of both parties that it has been very difficult for the defendants to recover rent leave alone arrears of rent from the plaintiff. The defendant will not be in a position to sell their property so long as an order of injunction is in place.

The end result is that the application is dismissed with costs to the defendants.

Dated and delivered at Mombasa this 24th day of February 2006

J.K. SERGON

J U D G E

In the presence of E. Njeru for the applicant

Muthama h/b for Mr. Ndegwa for the Respondent.