



REPUBLIC OF KENYA



KENYA LAW
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Ndolo v Nuni Genera Trading Limited & 2 others (Environment and Land Appeal E077 of 2022) [2022] KEELC 15644 (KLR) (20 December 2022) (Ruling)

Neutral citation: [2022] KEELC 15644 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND APPEAL E077 OF 2022
LN MBUGUA, J
DECEMBER 20, 2022

BETWEEN

JOSEPH NGUI MWAU NDOLO APPLICANT

AND

NUNI GENERA TRADING LIMITED 1ST RESPONDENT

LEONARD CHEGE & 29 OTHERS 2ND RESPONDENT

LUMUMBA MWAU NDOLO 3RD RESPONDENT

RULING

1. The application before me seeks the following orders:
 - i. Spent
 - ii. Pending hearing and determination of this application the honourable court be pleased to grant a temporary order of injunction restraining the honourable tribunal either by itself, agent, servants, employees or through whomsoever or howsoever from transferring the money deposited with it in regard to the property.
 - iii. Pending hearing and determination of this appeal the honourable court be pleased to grant an order of injunction restraining the honourable tribunal either by itself, agents, servants, employees or through whomsoever or howsoever from transferring the money deposited with it in regards to the property.
2. The application is premised on the following grounds: that,
 - i. By a motion dated June 2, 2020, the 1st respondent moved the honourable tribunal seeking for orders that the 2nd respondent handover vacant possession of the suit premises.



- ii. The 1st respondent served notices of termination of tenancy upon the 2nd respondents on grounds that they intended to carry out major renovation which cannot be carried out without obtaining vacant possession.
- iii. The family of the late David Mwau Ndolo through a letter dated March 27, 2020 written to the 1st respondent by Matata R.M & Company Advocates revoked the agency of the said company and cancelled the termination notices issued to the 2nd respondents.
- iv. The said agency having been terminated the 1st respondent lacked capacity to institute the instant proceedings.
- v. No evidence was tendered to show the nature of repairs intended to be carried out in respect of the premises to warrant vacant possession.
- vi. According to the certificate of confirmation of grant issued on November 18, 2020, the suit property was distributed to Joseph Ngui Mwau Ndolo & Lumumba Mwau Ndolo to hold in trust for the beneficiaries of the 1st house household.
- vii. By a motion dated March 26, 2021 the 1st respondent applied to the tribunal that the rent deposited to it by the 2nd respondents be released to them.
- viii. The 3rd respondent in his affidavit dated April 22, 2021 denied giving any authority to the 1st respondent to institute proceedings for release of funds or vacant possession against the 2nd respondents.
- ix. The lease relied upon by the applicant as the basis for termination of the tenancies of the 2nd respondents and for requiring the funds held by the tribunal to be released to it was disputed and there was a letter dated February 17, 2020 from the firm of Ochieng Achach & Kaino Advocates disowning the same lease.
- x. *Vide* a ruling dated 2nd September the honourable tribunal dismissed the 1st respondents applications with costs.
- xi. The matter having concluded, the appellant vide an application dated January 17, 2022 moved the tribunal to have the money held by the tribunal in respect of the suit premises be released to him.
- xii. *Vide* a supporting affidavit dated August 4, 2022 the 3rd respondent applied to the tribunal to have the money held be released to the beneficiaries of the estate.
- xiii. The honourable chairman, Business Premises Rent Tribunal in Tribunal case No 554 of 2020 Nairobi on August 19, 2022 delivered judgment in favour of the 3rd respondent against the appellant by agreeing the money held with it be distributed among the beneficiaries.
- xiv. Pursuant to the judgment the 3rd respondent and other beneficiaries have already forwarded their bank account details to the tribunal and the money held by the tribunal might be transferred anytime to their bank accounts.
- xv. Unless this court intervenes by way of a temporary order of injunction, the honourable tribunal will transfer the money held by it to the beneficiaries' bank accounts.
- xvi. It is in the interest of justice that this matter is placed before the duty court and the orders sought hereunder granted."



3. The applicant has also sworn a supporting affidavit where he has reiterated the grounds set out in the application adding that he is the one who has been taking care of his sick mother in terms of medical bills, food and clothing and her general well-being. He contends that he has now run out of money to look after her, and that the mother has a life interest in the suit property. He contends that the children's right to the suit property can only crystalize upon the determination of the said life interest of their mother.
4. The 1st respondent was represented in court on October 12, 2022 when the court gave directions for them to file and serve their responses by November 3, 2022. None has been filed.
5. The applicant's counsel had contended that the application does not concern the 2nd & 3rd respondents. Nevertheless, the court gave specific directions that the applicant was still to serve all the documents by October 19, 2022 upon the other respondents directly. The applicant had averred that he was informed that Sagana Biriq advocate have been appearing for the respondents. However, there is not affidavit of service post the date of October 12, 2022 meaning there was no compliance with the court order of that day on service. There is no tangible evidence to indicate that the orders sought would not affect the 2nd & 3rd respondents, particularly the 3rd respondent who appears to be a beneficiary of the estate. Thus from the word go, the application fails on account of none service.
6. However, even if the application had been served, this court would still not have granted the orders sought on account of the fact that the said orders are not in tandem with the certificate of confirmed grant issued on November 24, 2020. The applicant has admitted that as per the aforementioned grant, the suit property was distributed to him and the 3rd respondent to hold in trust for the beneficiaries of the 1st household but he goes on to advance a claim that the widow has exclusive rights over the suit property and that the rights of the children have not crystalized.
7. The fact of the matter is that there is a confirmed grant dated November 24, 2020 in which the suit property was distributed to Joseph N M Ndolo, Lumumba Mwau Ndolo, Mary Yula Mwau and Beatrice Ndunda Mwau to hold in trust for the beneficiaries of the 1st household. This being a court of equal status with the High court, then the court cannot purport to give orders in contravention of an order of the High court (probate).
8. Thus the application dated September 14, 2022 is hereby dismissed with no orders as to costs.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 20TH DAY OF DECEMBER, 2022 THROUGH MICROSOFT TEAMS.

LUCY N. MBUGUA

JUDGE

In the presence of:-

Anam holding brief for Achach for Appellant

Court assistant: Eddel

