

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAKURU

CIVIL CASE NO. 2 OF 2004

DR. ESTHER KANINI MUTAKHA.....1ST PLAINTIFF

LUCY WAMAITHA NDEGWA.....2ND PLAINTIFF

SUSAN MWIHAKI WANYOIKE.....3RD PLAINTIFF

JANE WAMBUI WANYOIKE.....4TH PLAINTIFF

VERSUS

MUTATI TRANSPORTERS LIMITED.....DEFENDANT

RULING

On the 8th of January 2004, the plaintiff's in this case (*who were four at the time*) filed suit against the defendant seeking various reliefs. Contemporaneous with filing the said suit, the plaintiffs made an application under **Order XXXIX Rules 1 and 2 of the Civil Procedure Rules and Section 3A of the Civil Procedure Act** seeking the orders of this court that the defendant be compelled by an order of mandatory injunction to remove building materials which the said defendant had poured in the corridors and the entrances leading to the premises leased by the plaintiffs. The plaintiff further sought the orders of the court to restrain the defendant by temporary injunction from bringing building materials within the vicinity of the entrance of the premises leased by the plaintiffs or alternatively interfering with the plaintiff's lease over the said premises pending the hearing and determination of the application. On the 18th of June 2004 the plaintiffs filed an amended chamber summons whereby they sought a further order of this court that the defendant be compelled by mandatory injunction to rebuild and re-install a corridor along the front of the 1st plaintiffs tenement and also restore the entrance to the said demised premises. The plaintiffs further sought that the grills which have been removed by the defendant be refixed and the water supply be reconnected. The application was supported by the annexed affidavit of the plaintiffs. Of particular mention is the affidavit sworn by the 1st plaintiff Dr Ester Kanini Mutakha. The defendant opposed the application. Its director, one Margaret Njeri Mburu swore several affidavits in opposition to the plaintiff's application. Before the application could be heard, the 2nd, 3rd and 4th plaintiffs withdrew their suit against the defendant. At the time of the hearing of the application, it was only the 1st plaintiff who was still pursuing this case.

Several developments took place before and during the hearing of the application filed by the plaintiff. The defendant was ordered to restore the water supply and reinstall the grills which it had removed during the pendency of the suit. The defendant complied with the order.

The arguments in this application were made over a period of time due to the fact that the defendant had failed to comply with the orders of this court. However by the time the hearing of the application was concluded, the plaintiff was satisfied that the defendant had complied with the orders of the court. Miss Magana, Learned Counsel for the plaintiff and Mr Waiganjo and Miss Ndungu for the defendant made detailed submissions before this court in support of their respective clients cases. I have carefully considered the arguments made. I have also read the entire pleadings filed by the parties to this application and the decided cases which the plaintiff and the defendant relied on. The issue for determination is whether the plaintiff has establish her case to be granted both the orders of mandatory injunction and interlocutory injunction pending the hearing and determination of this suit filed by her.

It is not disputed that the plaintiff is a tenant in a building owned by the defendant known as Gate House within the Municipality of Nakuru. The plaintiff is a protected tenant. Under **Section 4(1) of the Landlord and tenant (Shops, Hotels and Catering Establishments) Act** a landlord is prohibited from altering the terms of a lease of a protected tenant without reference to the Business Premises Tribunal. A landlord is further barred from terminating a tenancy of a protected tenant without reference to the said tribunal. From the affidavit evidence filed, the defendant in this case undertook certain renovations of the said building without informing the plaintiff. As a result of the said works of renovation, building materials were dumped at the entrances and the corridors leading to the offices of the plaintiff. The plaintiff was inconvenienced. She wondered why the defendant was undertaking structural changes to the building without first applying to the Business Premises Tribunal to grant it authority to alter the terms of the tenancy of the plaintiff. The said renovations and alterations resulted in the plaintiff being forced to use one entrance, whilst before the renovations there were two entrances. A veranda in the front of her leased premises was blocked off. The grills that were placed at the entrance to the demised premises were removed. The water supply to the demised premises were cut off. The plaintiff was aggrieved. She filed suit and obtained an injunction to restrain the defendant from continuing with the structural alteration of the building. As stated earlier at the beginning of this ruling, the defendant was compelled by the order of this court to reconnect the water supply which had been disconnected and to restore the grills which had been removed. The plaintiff is seeking the orders of this court to compel the defendant to restore her tenancy to the condition that it was prior to the commencement of the said renovations and alterations.

On its part the defendant has argued that it did not interfere with the leased premises occupied by the plaintiff. It is the defendant's case that the defendant had been leased room No. 7 which did not include verandah. The defendant argued that if the plaintiff was inconvenienced during the renovation and alteration of the building, then that was a damage which can be calculated and therefore be compensated.

I have considered the arguments made. It is not denied that the defendant undertook renovations on the said premises leased to the plaintiff. Part of the renovations resulted in the alteration of the entrance to the premises leased by the plaintiff. During the renovations, the plaintiff was inconvenienced by the building materials which were placed at the entrances to the building and to the corridors. Her patients were also inconvenienced. She had the water supply to her leased premises disconnected. From affidavit evidence and the submissions made before this court, it is apparent that the defendant did this in a deliberate attempt to force the plaintiff out of the said demised premises. Indeed the defendant succeeded in harassing and intimidating the 2nd, 3rd and 4th plaintiffs to the extent that they moved out of the said premises.

It is also apparent that the defendant did this deliberately because it had secured what it considered to be a lucrative tenant. This lucrative tenant, a bank, made the defendant to undertake certain renovations which resulted in an entrance which the plaintiff used to be blocked off. Part of the veranda which can be said to have constituted part of the tenancy was blocked off. The plaintiff was restricted to use only one entrance. The defendant's conduct since the filing of this suit left a lot to be desired. It deliberately disobeyed the orders of this court. The defendant refused to instal the grills and re-connect the water until it was ordered to do so by this court. It appears that the defendant set out to frustrate the plaintiff to either abandon this suit or alternatively vacate the premises after the conditions of the tenancy had been altered to the detriment of the plaintiff. The defendant believes that it can pay its way out of any legal logjam that may result from its actions; hence the offer that that they were ready to compensate the plaintiff for the inconvenience that she had suffered. The law however does not work that way. Where an individual has been given certain protection by the law, in this case the plaintiff as a protected tenant under the **Landlord and Tenants (Shops, Hotels and Catering Establishment) Act (Cap 301 Laws of Kenya)**, the courts of law which enforce the requisite provision of the law. The defendant cannot opt or choose to ride roughshod on a tenant even if it thinks it has the financial muscle to pay compensation.

I therefore hold that the said renovations and alterations were undertaken to frustrate and force the plaintiff out of the demised premises. The defendant never intended to follow the law to terminate the plaintiff's tenancy. Where a defendant breaches the law and in the process affects the right of the plaintiff, the courts have to intervene. In the present case I do find that the plaintiff has established a prima facie case that the defendant intended to terminate her tenancy without following the law. I will

therefore grant her the prayer of interlocutory injunction sought. The defendants by itself or its agents are hereby restrained from interfering with the plaintiffs tenancy or terminating it pending the hearing and determination of this suit. The defendants are further restrained from doing any act that may frustrate the plaintiff's tenancy in the said leased premises pending the hearing and determination of the suit filed herein.

I will not issue the mandatory injunction sought due to the fact that the critical aspects of the renovations affecting the plaintiff were restored by the orders of this court. However, the issue of how the renovations adversely affected the plaintiff can be canvassed during the hearing of the main suit.

The plaintiff shall have the costs of the application.

DATED at NAKURU this 20th day of May 2005.

L. KIMARU

JUDGE