



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

MILIMANI LAW COURTS

ELCNO.E066/2020

ERIC MUEMA MAKAU

T/A FAR HORIZON HIDES AND SKINS.....PLAINTIFF

VERSUS

NEW MARKET LEATHER FACTORY LIMITED.....DEFENDANT

RULING

1. This is a Ruling in respect of three separate applications. The first application is dated 13th August 2020. It is brought by the Plaintiff. It seeks the following orders:

1) Spent

2) Spent

3) That a temporary injunction do and is hereby issued against the Defendant/Respondent by itself, its servants or agents or any one authorized by it or claiming under it from levying distress for rent, commencing or completing any process of sale of the assets of the Plaintiff/Applicant or otherwise howsoever subjecting the Plaintiff his servants or agents to any annoyance or harassment with the intention thereby of inducing or compelling the Plaintiff to pay, vacate the demised suit premises or any part thereof and/or in any manner to occasion the frustration or termination of the tenancy enjoyed by the Plaintiff over the demised suit premises pending the hearing and final determination of this suit.

4) That the Applicants be at liberty to apply for such further orders and/or directions as this Honourable Court may deem fit and just to grant.

5) That the costs of this Application be provided for.

2. The second application is dated 11th September 2020. It is brought by the Defendant. It seeks the following orders: -

1) Spent

2) That this court be pleased to order that the interim orders issued on the 17/8/2020 should be discharged and/or vacated and that the Plaintiff should be immediately restrained from accessing the leased premises or using the Defendant's machinery on the leased premises.

3) That in the alternative this court be pleased to order that the Plaintiff be directed to provide security for the outstanding arrears in excess of Kshs.17,123,000 , as well as security for the value of the machinery on the leased premises.

4) That this court be pleased to further vary the interim order issued on the 17/8/2020 and require the Plaintiff to continue making payment of current rent on the leased premises and to further pay hire charges for using the Defendant's machinery on the leased premises.

5) That costs hereof be provided for in any event.

3) The third application is dated 26th October 2020. It is brought by the Plaintiff. It seeks the following orders: -

1) Spent

2) That there be a reinstatement of orders issued by this Honourable on 17th August 2020 and vacated on 12th October 2020.

3) That there be a stay of the advertised sale through public auction of the proclaimed goods which are in the custody of the Applicant on 29th October 2020 by High Class Auctioneers pending the hearing and determination of this suit.

4) That costs of this application be provided for.

4. The Plaintiff entered into a lease agreement with the Defendant in which the Plaintiff was to use the Defendant's premises at a monthly rent of Kshs.552,000/= inclusive of VAT. The parties further entered in machine rental agreement at the rate of Kshs.250,000/= per month. The Plaintiff defaulted in monthly payments forcing the Defendant to instruct an Auctioneer to levy distress for rent. This is what forced the Plaintiff to move to court.

The first application.

5. The Plaintiff moved to court seeking injunctive orders restraining the Defendant from levying distress for rent. The Plaintiff contends that the demand for rent has no basis as he is not in any arrears of rent. The Plaintiff argues that he entered into an agreement in which he was to pay a monthly rent of 250,000 and that he has been paying rent as agreed and that therefore, the Defendant has no basis for trying to levy distress.

6. The Defendant opposed the Plaintiff's application based on a replying affidavit sworn by Mohamed Asif. The Defendant contends that the Plaintiff has come to court with unclean hands and has sworn an affidavit with full of falsehoods. The Defendant argues that contrary to the Plaintiff's allegations that he signed an agreement for payment of monthly rent of Kshs.250,000/= the truth is that the Plaintiff signed a lease agreement for use of the Plaintiff's premises at a monthly rent of Kshs.552,000/= inclusive of VAT and a separate agreement for hire of the Defendant's machinery at the rate of Kshs.250,000/= per month.

7. The Defendant further contends that the Plaintiff is in rent arrears of Kshs.17,123,000/= and that he has even given cheques in settlement of the rent arrears which cheques have been returned unpaid. The Plaintiff has even undertaken in writing to clear the rent arrears and that it is therefore ironical that he can claim that he is not in arrears of rent.

8. I have considered the Plaintiff's application and the opposition to the same by the Defendant. I have also considered the submissions filed herein. The only issue for determination is whether the Plaintiff has disclosed a prima facie case to warrant issue of an injunction. The Plaintiff moved this court for an equitable remedy. Whereas, he claims that he does not owe any rent arrears, the Defendant has demonstrated that he is in rent arrears and that he has issued cheques which have been returned unpaid.

9. The Plaintiff also lied that he signed an agreement for rent of Kshs.250,000/= per month when the truth is that he had a separate agreement for rent of Kshs.552,000/ per month in addition to the agreement for rent of machinery at Kshs.250,000 per month. It is clear that the Plaintiff does not deserve the equitable remedy of injunction. He does not have a prima facie case with probability of success. His application lacks merit. The same is dismissed with costs to the Defendant.

It is so ordered.

The Second Application.

10. In this application, the Defendant seeks discharge of ex-parte injunction granted in favour of the Plaintiff on 17th August 2020. In the alternative the Defendant prays that the Plaintiff be ordered to provide security for the outstanding arrears which are in excess of 17,123,000/=as well security for the value of the the machinery in the leased premises. The Defendant also seeks an order directed at the Plaintiff to continue paying current rent and hire charges for the machinery in the leased premises.

11. The Plaintiff did not file any replying affidavit or grounds of opposition. This application has been partially overtaken by events in that the interim orders which were granted to the Plaintiff on 17th August 2020 were not extended when the matter came up for inter-partes hearing on 12th October 2020. There is also no basis for grant of an order for security or payment of the current rent or hire for machinery. I therefore dismiss this application with no order as to costs.

It is so ordered.

The Third Application.

12. In this application, the Plaintiff is seeking reinstatement of the interim orders which were vacated on 12th October 2020. The Plaintiff also seeks stay of the sale which had been advertised. There was no replying affidavit or grounds of opposition filed by the Defendant. I have already found that the Plaintiff did not deserve any injunctive orders while dealing with the first application. There is therefore no basis for reinstating the orders which were vacated on 12th October 2020 or even stay of sale. I therefore find no merit in this application which is dismissed with no order as to costs.

It is so ordered.

Dated, Signed and Delivered at Nairobi on this 11th day of February 2021.

E.O.OBAGA

JUDGE

In the Virtual presence of:-

Mr Mwangi for Defendant/Respondent

Court Assistant: Hilda

E.O.OBAGA

JUDGE