



REPUBLIC OF KENYA



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**Mekan (E.A) Limited v Akshrap Holdings Limited (Environment & Land
Case 284 of 2017) [2025] KEELC 442 (KLR) (6 February 2025) (Judgment)**

Neutral citation: [2025] KEELC 442 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 284 OF 2017**

JA MOGENI, J

FEBRUARY 6, 2025

BETWEEN

MEKAN (E.A) LIMITED PLAINTIFF

AND

AKSHRAP HOLDINGS LIMITED DEFENDANT

JUDGMENT

1. The Plaintiff herein brought this suit to Court vide a Plaint dated 14/11/2010 seeking the following:
 - a. Special damages for Kshs. 6,794,250/-.
 - b. General damages.
 - c. An Order restraining the Defendant whether by itself or its agents/servants against locking the demised premises and against blocking the Plaintiff's vehicles and vehicles of the Plaintiff's customers from accessing and or exiting the demised premises.
 - d. An Order restraining the Defendant against selling the illegally distrained goods.
 - e. An Order restraining the Defendant against breaching the terms of the lease contract between it and the Plaintiff.
 - f. Costs of this suit.
 - g. Any other relief which the Court may deem appropriate in the interest of justice.
2. The Defendant filed in response a Defence dated 24/07/2013 which was amended to include a Counter-claim after the Court granted the order to amend vide the Ruling dated 14/12/2015 and the grant was conditional upon the Counter-claim being within the provisions of the *Limitation of Actions Act* Cap 22 Laws of Kenya. Thus the Defence and Counter-claim is dated 18/12/2015. In the



Counter-claim the Defendant reiterates its averments in paragraphs 3 to 12 of the Defence and seeks the following:

1. The amount of outstanding rent arrears of Kshs. 16,580,976/-.
 2. General damages.
 3. Costs of the suit.
 4. Interest at the prevailing commercial rates of interest from 30th October 2006 until actual payment in full.
 5. Such further or other reliefs as may be appropriate in the circumstances.
3. In response to the Counter-claim the Plaintiff filed a Defence to the Counter-claim and a set off dated 9/02/2016 and denied owing any rent arrears to the Defendant totaling Kshs. 16,580,976/- or at all. The Plaintiff on a without prejudice basis stated that the Defendant's Counter-claim was statute barred and should be struck out.
4. The Plaintiff on a without prejudice basis filed a set off to the Counter-claim and stated that if the Court were to find that the Defendant was entitled to any portion of the Counter-claim on account of rent under the allowable period under the Limitations of Actions Act, then the same should be set off against the portion of the Plaintiff's damages. The Plaintiff prays for dismissal of the Counter-claim.
5. After various interlocutory Applications, the matter was finally set down for hearing. On 14/03/2023 the Plaintiff's Counsel Mr. Njoroge made an application to cease acting for the Plaintiff and he was instructed to serve the Plaintiff. Thereafter the Defendant was directed to serve the Defendant through substituted service which they did. On 17/04/2024 the Defendant confirmed having served the Plaintiff via substituted service in the Daily Nation dated 06/02/2024 and they made an application to have their Counter-claim heard via formal proof since there was no appearance by the Plaintiff. Finally the matter was set for Formal Proof hearing on 20/05/2024.

Counter Claim Hearing – Plaintiff's Case

6. PW1 - Ramji Shamji Patel testified as the only witness in the Counter-claim and adopted his witness statement and list of documents and evidence in chief and exhibits accompanying the counter-claim dated 18/12/2015.
7. It was his testimony that the counterclaim is for the outstanding rent of Kshs. 16,580,976/- which emanates from the Lease Agreement dated 01/08/2006. It was his testimony that the Plaintiffs (Defendants in the Counter-claim) had paid quarterly rent for about 2 years then they started defaulting. With that the Plaintiff (Defendant's in the main suit) closed their case.
8. Directions were issued on filing of submissions. I have read the same and I have considered the same in my Judgment.

Determination

9. Having gone through the pleadings and evidence tendered by the Plaintiff in the counterclaim, there is only issue for determination which is: Whether the Defendant and the Plaintiff in the Counter-claim has pleaded and proved that there is an outstanding rent arrears of Kshs. 16,580,976/- owed to him by the Plaintiff (Defendant in Counter-claim).
10. The Defendant who is also the Plaintiff in the counterclaim has pleaded that the Plaintiff who is Defendant in the Counter-claim despite repeated and numerous demands made to them from time



to time to pay the outstanding rent arrears, has refused, neglected and failed to pay the outstanding amounts. That as a consequence, the Defendant who is the Plaintiff in the Counter-claim has suffered loss and damage.

11. He also has pleaded that the Plaintiff who is the Defendant in the Counter-claim admitted owing the said amounts in its Plaintiff at paragraphs 16, 17 and 18.
12. The Defendant who is the Plaintiff in the Counter-claim in the witness statement averred that whereas the Plaintiff who is Defendant in the counter-claim complained of having electricity issues while in occupation of the suit property which it had leased from the Defendant (Plaintiff in Counter-claim (cc)) that it was clear that the obligation and onus of providing electricity rested on Kenya Power and Lighting Company and not the Plaintiff.
13. That the Plaintiff (Defendant in cc) claimed remissions against the Defendant alleging the premises to be untenable despite being in occupation. Further that the parties herein recorded a consent for status quo which ensure the Defendant (Plaintiff in cc) did not distress for rent as Plaintiff (Defendant in cc) was in occupation of the suit property. Yet despite the status quo order and during pendency of the matter the Plaintiff (Defendant in cc) vacated the suit premises while still in rental areas of the now disputed rent in breach of the lease.
14. That since the Plaintiff (Defendant in cc) did not commence business until December, 2006 it cannot claim loss of business which had not even commenced.
15. The Defendant in the Counter-claim filed a Defence to the Counterclaim and set off but failed to show up and produce any documents before this Court or offer any evidence in support of it Defence to the Counter-claim and set off.
16. It is trite law that where a party fails to offer testimony in support of its pleadings the pleadings, remain mere statements. In *North End Trading Co. Ltd T/A Kenya Refuse Handlers Ltd Vs. City Council of Nairobi* (2019) eKLR the Court held that where a Defendant does not adduce evidence, the Plaintiff's evidence is to be believed as allegations in the Defence are not evidence.
17. In *Edward Mariga thro' Stanley Mobisa Magira Vs. Nathaniel David Shutter & Another* (1979) eKLR the Court held where there is no evidence by the opposite party, the version put forward by the present party is to be taken as unchallenged while in *CMCC Aviation Ltd Vs. Crusair Ltd* (1987) KLR 103, the Court held averments in pleadings are not made on oath and the Courts depend upon evidence for proof of their contents.
18. In this suit the Plaintiff in the Counter-claim has produced a Lease Agreement and alleged non-payment of rent thus accumulation of rent arrears. The Defendant in the counterclaim has raised issues with the rent payable placing the grand total at Kshs. 5,242,815/-. Stating that rent payable for the period 1/01/2010 to 31/07/2020 was Kshs. 259,545/- per month, and for 7 months the total is Kshs. 1,816,815/-. While rent payable for the period 1/08/2010 to 31/07/2011 was Kshs. 285,500/- per month and for 12 months totaling Kshs. 3,426,000/- bring the cumulative total to Kshs. 5,242,815/-.
19. That the period between 3/01/2010 to 25/07/2011 all rent due was paid and that is the period when the lease/tenancy was terminated and that no rent arrears is owed.
20. However, no substantiation of the said allegations and pleadings have been made through evidence. In absence of such evidence it means the Plaintiff in the Counter-claim has given its evidence which the Defendant has not challenged at all.



21. In my considered view the rights of the Plaintiff in the Counter-claim need to be protected. I therefore find the Plaintiff entitled to the same. The Counter-claim is hereby allowed and the Defence by the Defendant in the Counter-claim is dismissed. I therefore issue the following orders:-
- a. The Plaintiff in the main suit is hereby dismissed.
 - b. The Court directs that the outstanding rent arrears of Kshs. 16,580,976/- owed to the Plaintiff in the Counter-claim is to be paid by the Defendant in the Counter-claim.
 - c. The Court grants general damages of Kshs. 100,000/- to the Plaintiff in the Counter-claim.
 - d. Costs of the suit and the Counter-claim are awarded to the Plaintiff in the counter claim.
22. Orders accordingly.

DATED, SIGNED AND DELIVERED AT NAIRIOBI ON THIS 6TH DAY OF FEBRUARY 2025.

MOGENI J

JUDGE

In the presence of:-

No appearance for the Plaintiff

Ms. Koki for the Defendant

Mr. Melita - Court Assistant

