



REPUBLIC OF KENYA



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Mt Kenya Sun v Registered Trustees of the Agricultural Society of Kenya (Nairobi Branch) (Land Case E025 of 2024) [2025] KEELC 1008 (KLR) (5 March 2025) (Ruling)

Neutral citation: [2025] KEELC 1008 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NANYUKI
LAND CASE E025 OF 2024
LN MBUGUA, J
MARCH 5, 2025

BETWEEN

MT KENYA SUN PLAINTIFF

AND

**REGISTERED TRUSTEES OF THE AGRICULTURAL SOCIETY OF KENYA
(NAIROBI BRANCH) DEFENDANT**

RULING

1. This suit was commenced vide a plaint dated 16/12/2024 whereby the plaintiff contends that they entered into a lease agreement with the defendant on 14/6/2022 in respect of the suit parcel title no. NSG/LR NO. 2787/482 owned by the defendant. That the plaintiff complied with terms of the aforementioned agreement but the defendant issued a 30 days' notice for the termination of the lease. Thus, some of the prayers sought in the plaint includes a permanent injunction to restrain the defendant from interfering with the suit property, a declaration that the plaintiff has no rental arrears and alternative prayer for a set off of Kshs. 30,000,000.
2. The plaint was contemporaneously filed with an application of even date where the plaintiff/applicant seeks orders inter alia that an order do issue suspending the running time of the 30 day notice issued by the defendant to the plaintiff on termination of the lease pending the hearing and determination of the suit. That an order of injunction be issued restraining the defendant from in any way interfering with the suit property including leaving distress or evicting the plaintiff or even terminating the tenancy. In the alternative, the plaintiff seeks an order of status quo to be maintained as well as freezing the payments of the disputed amounts.
3. The application is premised on grounds on the face of the application and the supporting affidavit of one Isaac J.M Githinji who is the Director of the Plaintiff.



4. It is the case of the plaintiff that the defendant is the registered owner of the suit property having a lease running for 99 years, whereas the plaintiff is the lawful tenant of the defendant in respect of the suit premises in terms of the lease agreement dated 14/6/2022. He contends that the same lease runs for a period of five years and three months commencing on 1/7/2022 until 31/10/2027.
5. It is argued that the plaintiff has continued to fulfil all the obligations set out in the aforementioned lease agreement, and in particular he has faithfully and consistently been making rental fee payments and is therefore at a loss as to the intention of the defendant in issuing a 30 day notice on termination of the lease.
6. The plaintiff contends that when they took over the suit premises in year 2022, they incurred costs of Kshs. 10,000,000 in structural repairs which amount was to be refunded or rebated in rent. That the plaintiff also invested a sum of Kshs. 20,000,000 on the suit premises in repairs, renovations and improvements expenses which amount is yet to be refunded or rebated in rent.
7. The plaintiff further argues that they have employed more than 100 employees who stand to be rendered jobless if the orders sought are not issued.
8. The plaintiff contends that the defendant has no mandate to demand the sum of Kshs. 3,450,000 in view of the fact that the alleged rental arrears are disputed.
9. In opposition thereof, the defendant filed a replying affidavit dated 24/1/2025 sworn by Amos Kirui the Manager of the Defendant's Nanyuki Branch. He admits that indeed the parties entered into the lease agreement dated 14/6/2022 whereby the defendant leased out their land known as Nanyuki Show Ground to the Plaintiff. That in terms of the said lease agreement the plaintiff was to pay monthly rent of Kshs. 350,000 of which the defendant had the option of terminating the lease before expiry of the term if the plaintiff defaulted in rent payment.
10. It is argued that contrary to the averments set out by the plaintiff the plaintiff begun falling into rent arrears early in the term of the tenancy which prompted the defendant to write a demand letter dated 27/3/2024. That the Plaintiff acknowledged that they had the rent arrears and they promised to clear the same vide their letters of 24/7/2024, 29/7/2024, 30/7/2024 and 14/8/2024.
11. However, the plaintiff did not honour their commitment to pay the rental arrears and on 1/11/2024, they sought an extension of paying the same, of which the defendant gave them the final period to clear all the arrears by 30/11/2024. Again, the plaintiff did not comply prompting the defendant to issue the termination notice dated 3/12/2024.
12. The defendant therefore contends that the plaintiff is not being truthful when it states that it has fulfilled all the obligations under the lease agreement. Adding that they (the defendant) stand to suffer immense financial loss, as they shall not be receiving rent income from the suit property.
13. The court has considered the rival arguments proffered by the parties. The question falling for determination is whether the prayers sought by the plaintiff in their application dated 16.12.2024 are merited. In essence, the court has to consider whether the plaintiff deserve the injunctive or status quo orders so as to sustain the term of the lease pending the hearing of the suit.
14. The principles underpinning the grant of temporary injunctions are now settled. The same are found in the celebrated case of *Giella vs Cassman Brown* (1973) EA 358 where it was stated thus:

“The conditions for the grant of an interlocutory injunction are now, I think, well settled in East Africa. First, an applicant must show a prima facie case with a probability of success. Secondly, an interlocutory injunction will not normally be granted unless the applicant



might otherwise suffer irreparable injury, which would not adequately be compensated by an award of damages. Thirdly, if the court is in doubt, it will decide an application on the balance of convenience.”

15. The Court of Appeal in *Nguruman Limited V Jan Bonde Nielsen & 2 Ors* [2014] eKLR expounded on this principle stating thus;

“In an interlocutory injunction application, the applicant has to satisfy the triple requirements to:-

- (a) Establish his case only at a prima facie level,
- (b) Demonstrate irreparable injury if a temporary injunction is not granted, and
- (c) Ally any doubts as to (b) by showing that the balance of convenience is in his favour.

These are the three pillars on which rests the foundation of any order of injunction, interlocutory or permanent. It is established that all the above three conditions and stages are to be applied as separate, distinct and logical hurdles which the applicant is expected to surmount sequentially. (See *Kenya Commercial Finance Co. Ltd V. Afraha Education Society* [2001] Vol. 1 EA 86) If the applicant establishes a prima facie case that alone is not sufficient basis to grant an interlocutory injunction, the court must further be satisfied that the injury the respondent will suffer, in the event the injunction is not granted, will be irreparable. In other words, if damages recoverable in law is an adequate remedy and the respondent is capable of paying, no interlocutory order of injunction should normally be granted, however strong the applicant’s claim may appear at that stage. If prima facie case is not established, then irreparable injury and balance of convenience need no consideration. The existence of a prima facie case does not permit “leap-frogging” by the applicant to injunction directly without crossing the other hurdles in between.”

16. Has the plaintiff met the threshold for issuance of the orders sought? The plaintiff aver that they have continued to fulfil all the obligations set out in the aforementioned lease agreement by faithfully and consistently making rental fee payments and were therefore at a loss as to why the defendant was issuing a 30 day notice on termination of the lease. This argument is repeatedly captured at paragraph 4 of the plaint, ground no. 5 in the application and paragraph 6 in the supporting affidavit of the deponent of the plaintiff.
17. The material so far presented before this court indicates otherwise. The plaintiff has availed 5 documents in support of their application, the 1st three being a certificate of incorporation, the lease and the termination notice. The 4th document is a letter by the plaintiff dated 1.9.2023 where they are recounting their woes in establishment of the business. The letter does not contain any tabulation of rent payment in terms of the lease. As for the 5th document, it is a letter dated 29.11.2024 by the plaintiff to the defendant where the former is stating that; “We are committed to reducing any outstanding balance as requested in our earlier correspondence dated 1st November 2024”.
18. . Why would the plaintiff commit themselves to reduce the outstanding balance if they had no arrears? As it were, the defendant has given a consistent account of how the issue of arrears was born, eventually maturing into a termination notice of December 2024. In their letter of 27.3.2024, the defendant was notifying the plaintiff that they had arrears of Ksh. 2, 650 000. The figures are supported by a statement of account as well as various invoices.



19. Then in the letter of 24.7.2024, the defendant is giving the plaintiff upto 30.7.2024 to clear the outstanding arrears. In response thereof, the plaintiff wrote the letter of 29.7.2024 committing themselves to pay arrears and also evaluating their financial status by 15.8.2024. There is then a document by Isaac Githinji dated 14.8.2024 headed "Acknowledgment of debt and commitment to pay arrears".
20. The plaintiff did not seek to swear any further affidavit to counter these documents availed by the defendant indicating that indeed the plaintiff was not paying rent.
21. What I discern is that indeed the plaintiff was in rent arrears as early as in March of year 2023. There is also nothing to indicate that the figures set out as rent arrears in the aforementioned letters were made a subject of contest at any one time. To this end, I find that the plaintiff has not established a prima facie case to warrant the issuance of any injunctive orders.
22. What more, clause 25 of the lease agreement states that in the event of a dispute, the matter was to be referred for arbitration. There is no evidence to indicate that the plaintiff has invoked the aforementioned clause.
23. As clearly stated in the lease agreement, the same contains termination clause no 23 (b) in the event of default on payment of rent by the plaintiff. Thus at this juncture, the court declines to suspend the aforementioned notice.
24. An argument has been proffered by the plaintiff that they incurred a sum of Kshs 30,000,000 in repairs of the premises. However, this is not an issue which was made a subject of contest so as to vary the terms of the lease.
25. In the case of Sbs Dunhil Group (East Africa) Limited v Shah & others & 4 others (Environment and Land Case Civil Suit E112 of 2023) [2024] KEELC 3752 (KLR) (24 April 2024) (Ruling) Neutral citation: [2024] KEELC 3752 (KLR) (Mbugua j), the court cited the case of Nguruman Limited v Jan Bonde Nielsen & 2 others [2014] eKLR, where it was stated that;

"It must also be remembered that it is a serious thing to restrain a registered proprietor of a property over what is undeniably his unless there are justifiable grounds to do so"
26. Similarly in the case at hand, there is no justification to deny the defendant the right to its property, seeing that the plaintiff is not paying rent. Thus, the application dated 16.12.2024 is found to have no merits, the same is hereby dismissed with costs to the defendant.

DATED, SIGNED AND DELIVERED AT NANYUKI THIS 5TH DAY OF MARCH 2025 THROUGH MICROSOFT TEAMS.

LUCY N. MBUGUA

JUDGE

In the presence of:

Wacuka for Plaintiff

Katana for Defendant

Court Assistant: Nancy Mwangi

