Rahisi Selection Limited v South Tetu Hostels & Bars Limited (Environment and Land Case E022 of 2024) [2025] KEELC 6078 (KLR) (19 September 2025) (Ruling)

Neutral citation: [2025] KEELC 6078 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NYERI

ENVIRONMENT AND LAND CASE E022 OF 2024

JO OLOLA, J

SEPTEMBER 19, 2025

BETWEEN

RAHISI SELECTION LIMITED ..... APPLICANT

AND

SOUTH TETU HOSTELS & BARS LIMITED ..... RESPONDENT

RULING

1. By the Notice of Motion dated 16th September, 2024, Rahisi Selection Limited (the Applicant) prays for an order that this court be pleased to issue a temporary order of injunction restraining the Defendant by itself, its employees or agents from evicting or in any way interfering with the Plaintiff's use and quiet possession of the premises known as Nyeri/Municipality/Block III/39 pending the hearing and determination of the substantive suit herein.

2. The application is supported by an Affidavit sworn by the Applicant's director Mukesh Premchand Shah and is premised on the grounds that:

    i. The Plaintiff/Applicant on the 1st May, 2023 entered into a lease agreement with the Respondent over the suit land i.e. Nyeri/Municipality/Block III/39 for a period of five years three months;

    ii. The lease agreement was not to be terminated save as per Clause 4.7 upon written agreement by both parties;

    iii. Barely three months into the agreement, the Respondent purported to issue a notice of termination of the agreement effective 1st October, 2023;

    iv. The purported notice to terminate the tenancy is irregular, unlawful and/or unprocedural; and

    v. It is in the interest of justice for the Respondent to be restrained from terminating a valid lease.

3. South Tetu Hostels & Bars Limited (the Defendant/Respondent) is opposed to the application. In a Replying Affidavit sworn by its director Kinyua Kagoi, the Respondent avers that it resolved to carry out major renovations on wing A of the demised premises and that it instructed M/s. Nguuri & Associates Architects to undertake a structural integrity test on the building and advised on the intended renovations which the said Architects could not undertake while the tenants occupied the building.

4. The Respondent avers that it issued two (2) months' notice to the tenants in Wing A and that two of them did not object. The Respondent further avers that the Applicant then filed a case at the Business Premises Rent Tribunal but the same was dismissed for want of prosecution. It is further the Respondent's case that the Applicant has not exhibited any evidence in support of the allegation that the renovations are an afterthought.

5. I have carefully perused and considered the application as well as the response thereto. I have similarly perused and considered the submissions and authorities placed before the court by the Learned Advocates representing the parties.

6. The Applicant herein prays for an order of temporary injunction restraining the Respondent from evicting or in any manner interfering with the Applicant's use and quiet possession of the premises known as Nyeri/Municipality/Block III/39 pending the hearing and determination of this suit.

7. On temporary injunctions, Order 40 Rule 1 of the Civil Procedure Rules provides as follows:

> " Where in any suit it is proved by affidavit or otherwise-
>
> a. That any property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to the suit, or wrongfully sold in execution of a decree; or
>
> b) That the Defendant threatens or intends to remove or dispose of his property in circumstances affording reasonable probability that the Plaintiff will or may be obstructed or delayed in the execution of any decree that may be passed against the Defendant in the suit, the court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale removal, or disposition of the property as the court thinks fit until the disposal of the suit or until further orders."

8. As was held in the celebrated case of Giella –vs-Cassman Brown (1973) EA 358:

> " 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 be normally 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."

9. In the case of Mrao –vs- First American Bank of Kenya Limited & 2 Others (2003) KLR 125, the Court of Appeal defined a prima facie case as follows:

> " ...a prima facie case in a Civil Application includes but is not confined to a 'genuine and arguable case'. It is a case which, on the material presented to the court, a tribunal properly

directing itself will conclude that there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter."

10. In the matter herein, the Applicant avers that on 1st May 2023, they did enter into a lease agreement over the suit property for a period of 5 years and 3 months. It is its case that barely 3 months into the lease, the Respondent purported to terminate the lease by issuing a Notice to vacate the same. The Applicant asserts that the said Notice was irregular, unlawful and un-procedural as it contravened the express terms of the lease agreement.

11. In response, the Respondent avers that it had resolved to carry out major renovations on Wing A of the demised premises and that the same could not be undertaken while the tenants remained in the building. As a result, the Respondent avers that it gave the Applicant and other tenants two (2) months' notice and that the others did not object. The Respondent denies that the intended renovations were an afterthought.

12. As it were, the Applicant did not bother to attach a copy of the Lease Agreement. Mercifully, the same is attached to the Replying Affidavit of Kinyua Kagio, a director of the Respondent as annexture "KK-1".

13. A perusal of the Agreement reveals that under Clause 2 thereof, the Applicant was to hold the same for the term of five (5) years and three (3) months with effect from 1st May, 2023. At the same time Clause 4.7 of the Agreement provided as follows:

> "No provisions in this lease shall be waived or varied by either party hereto except by agreement in writing which agreement shall be prepared and if the case so requires be duly registered in the land title registry at Nairobi at the sole cost and expense of the party seeking such waiver of variation."

14. It was clear from my reading of the above clause that neither party was allowed to unilaterally vary the major terms of the contract. Having entered into a long term contract for the premises, I did find it rather mischievous on the part of the Respondent to issue a Notice of Termination of the tenancy some three (3) months thereafter on account that it wanted to repair the building and add more floors thereto.

15. In the premises, I was persuaded that the Plaintiff/Applicant stood to lose its long term investment in the premises and that such injury may not adequately be compensated by an award of damages.

16. It follows that I find merit in the Motion dated 16th September, 2024. I allow the same with costs.

RULING DATED, SIGNED AND DELIVERED IN OPEN COURT AND VIRTUALLY AT MOMBASA THIS 19TH DAY OF SEPTEMBER, 2025

…….

J.O. OLOLA

JUDGE

In the presence of:

a. Ms. Firdaus Court Assistant.

b. Mr. Makura Advocate for the Plaintiff/Applicant

c. Mr. Mbugua Njoroge Advocate for the Defendant/Respondents