



Ruto & 2 others (Suing as officials for and on behalf of Tenants of Lantana Masionetes) v Board of Trustees Postal Corporation of Kenya Staff Pension Scheme; Laser Proerties Service Limited (Interested Party) (Environment and Land Appeal E033 of 2022) [2023] KEELC 930 (KLR) (9 February 2023) (Ruling)

Neutral citation: [2023] KEELC 930 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND APPEAL E033 OF 2022**

**OA ANGOTE, J
FEBRUARY 9, 2023**

BETWEEN

**MOSES KIPROTICH RUTO 1ST APPELLANT
LUCY WANJIRU KANYUI 2ND APPELLANT
JOHN KENNEDY OMANGA 3RD APPELLANT
SUING AS OFFICIALS FOR AND ON BEHALF OF TENANTS OF LANTANA
MASIONETES**

AND

**BOARD OF TRUSTEES POSTAL CORPORATION OF KENYA STAFF
PENSION SCHEME RESPONDENT**

AND

LASER PROERTIES SERVICE LIMITED INTERESTED PARTY

(Emanating from Nairobi CM Civil Suit MC ELC 506 of 2021)

RULING

1. In the notice of motion dated April 19, 2022, the appellants have sought for the following orders;
 - a. That pending the hearing and determination of this appeal an order of temporary injunction be issued against the respondents including their agent, servants and or any other person acting under their instructions or behalf, moreso the interested party barring them from among others implementation of the letter dated December 22, 2021, including interfering in any manner whatsoever, aside from as provided by law, with appellants and all the other tenants'



occupancy and tenancy of houses situated on LR No 150/VI/117 (117/VI) Lantana Road Westlands.

- b. That cost of this application be borne by the respondents jointly and severally.
2. The application is supported by the affidavit of the 1st appellant who deponed that he is the chairman of Lantana maisonettes standing on land reference number 150/VI/117 on Lantana Road, Westlands, Nairobi (the suit property) and that the maisonettes run from house Nos A8601 to A 8635.
3. The 1st appellant deponed that the tenants of Lantana maisonettes have occupied the suit property for the last thirteen years, where they have paid rent every monthly without fail and that during the entire period, neither the respondent nor the interested party have done any valuation of the suit property or increased the rent.
4. The appellants deponed that on December 22, 2021, the respondent, through the interested party sent to the applicants a letter dated December 22, 2021; that by virtue of the said letter, all the tenants were granted seven (7) days to pay the new monthly rent of Kshs 60,000 per month up from Ksh 24,000 and that the new tenancy agreement was never attached on the letter.
5. It was deponed that the appellants commenced Nairobi CM Civil Suit MC ELC 506 of 2021 in the lower court and filed an interlocutory application to stay the implementation of the contents of the letter of December 22, 2021.
6. According to the appellants, although the lower court held that the notice of December 22, 2021 was illegal, it refused to grant them an order of injunction and that unless this court issues an injunction order, the respondent will effectively implement the contents of the impugned letter. The respondent did not file a response to the application.
7. The appellants filed submissions. In their submissions, counsel urged that there exists a compelling line of authority supporting the proposition that the existence of a continuing breach of law negates the need for a consideration of the issue whether damages would be sufficient and that a complainant cannot be compelled to accept damages as compensation.
8. It was submitted that the appellants will suffer irreparable harm that cannot be satisfied by an award of damages if the respondent is allowed to proceed with its unilateral variation of the tenancy agreements and effect the increase in rent, and to exercise distress if the appellants do not comply. Counsel relied on numerous authorities which I have considered.
9. The record shows that the appellants filed an application similar to the present one in the lower court. The application was premised on the ground that the respondent's increment of rent and demanding the same to be paid forthwith before December 29, 2021, which was within seven (7) days from the date of the letter and during christmas vacation, was to make sure the appellants do not get an opportunity of reviewing the terms of the new tenancy agreement.
10. According to the appellants, the respondent's action was meant to deprive them of the property during the christmas vacation and deny them an opportunity of seeking legal redress.
11. In his response in the lower court, the respondent's Chief Executive Officer deponed that the respondent granted all the tenants a notice period of more than one (1) month (up to February 1, 2022) and not seven (7) days as alleged and that the appellants were supplied with the tenancy agreements.
12. In her ruling, the learned Magistrate held that the applicants admitted that the interested party sent to them a letter dated December 22, 2021 on the same date, and that the letter required the tenants to sign



the tenancy agreements which were to take effect on February 1, 2022. According to the Magistrate, this shows that the notice as to when the new rent was to take effect was adequate.

13. The penultimate paragraph of the ruling read as follows;

“However, as much as the notice is defective, the injunction cannot issue to prevent a property owner from increasing the rent in its abode ...”

14. I have perused the impugned letter of November 22, 2021. The letter was clear that the reviewed rent of Kshs 60,000 per month was to take effect from February 1, 2022. To that extent, the notice was adequate.

15. In any event, since the date the letter was authored until now, it is over a year. If the only complaint by the tenants is on the alleged short notice, the same cannot apply now, and an injunction cannot issue.

16. Indeed, considering that either party could terminate the lease by giving two (2) months written notice, the appellants were at liberty to do so if they were not comfortable with the increased rent.

17. That being the case, this court finds that the appellants have not established a *prima facie* case with chances of success for an injunction to issue. The application is dismissed with costs.

DATED, SIGNED AND DELIVERED VIRTUALLY IN NAIROBI THIS 9TH DAY OF FEBRUARY, 2023.

O. A. Angote

JUDGE

In the presence of;

Mr. Ochieng for the Appellant

Mr. Musyoka for the 1st Defendant/respondent

Court Assistant - June

