



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT THIKA

ELC CASE NO. 67 OF 2020

ALEXANDRINA NGUGI & 5 OTHERS.....PLAINTIFF/APPLICANT

VERSUS

BOARD OF TRUSTEES

KIAMBU INSTITUTE OF SCIENCE AND TECHNOLOGY.....DEFENDANT/RESPONDENT

RULING

By a Notice of Motion Application dated 25th August 2020, the Plaintiffs/Applicants has sought for the following orders against the Defendant/Respondent: -

- 1) ***THAT the Defendant/Respondent either by itself, servants, agents, representatives and/or assignees be restrained from increasing rent, attaching, auctioning, repossessing, evicting, harassing and/or in any other manner from dealing with the Plaintiffs quiet possession at L.R NO.81/32 belonging to the Defendant/Respondent pending the hearing and final determination of this Application and suit.***
- 2) ***THAT the Plaintiffs/Applicants to continue to pay the current rent pending the hearing and determination of this Application and suit.***
- 3) ***Costs of this Application be provided for.***

The Application is supported by the Affidavit of **GEOFFREY KAMAU** who has authority to swear on behalf of the other Applicants. He averred that the Defendant/Respondent has unreasonably increased rent to the suit premises from **Kshs.16,800/=** to **Kshs.37,058/=** via a Notice dated 22nd July 2020, without any justifiable cause and the said housing units are not fit since the same have been valued and/or accessed at the Rent Restriction Tribunal and standard rent has been fixed at **Kshs.9000/=** for three bedroom and **Kshs.6,500/=** for a two bedroom houses via Tribunal Ruling delivered on 21st September 2016.

He further averred that at all material times, the Applicants are tenants of **Kiambu Institute of Science and Technology** residential premises as both academic and non-academic staff. He deponed that on 1st June 2018, upon the Defendant's/Respondent's request, they agreed that rent payable be adjusted to **Kshs.16,800/=** which they are paying up to date. He further deponed that they seek an injunction to restrain the Defendant/ Respondent either by itself, servants, agents, representatives and/or assignees be restrained from increasing rent, attaching, auctioning, repossessing, evicting, harassing and/or in any other manner from dealing with the Plaintiffs'/Applicants' quiet possession at **LR NO.81/32**, belonging to the Defendant/Respondent, pending the hearing and final determination of this Application and suit.

The Application is opposed and the Defendant/Respondent filed Replying Affidavit sworn by **JUDY KARIUKI** dated 3rd November 2020, together with written submissions dated 10th December 2020, drawn by the Law Firm of **KINUTHIA WANDAKA & CO ADVOCATES**. The Applicants' filed a Further Affidavit dated 30th September 2020, with their Written Submissions dated 13th November 2020, drawn by the Law Firm of **ERIC N AMATI & CO ADVOCATES** which the Court has carefully considered and renders itself as follows;

The Court cannot find and hold at this stage of the proceedings whether the rent should be increased or not. The said determination will have to await the calling of evidence, testing of the same in cross examination and evaluation of the tendered evidence.

At this stage, the Court is only mandated to arrive at a finding of whether the Applicants has met the threshold for grant of injunctive orders. The threshold was set out in the case of **Giella...Vs... Cassman Brown & Co. Ltd 1973 EA 358**, where the Court held:-

“The conditions for granting a temporary injunction in East Africa are well known and these are: First, the 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 might 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. See also E.A Industries ..Vs..Trufoods (1972) EA 420.”

Further in the case of **Edwin Kamau Muriu Vs Barclays Bank of Kenya Ltd Nairobi HCCC No. 1118 of 2002**, the Court held that:-

“In an Interlocutory Application, the Court is not required to determine the very issues which will be canvassed at the trial with finality. All the Court is entitled at that stage is to determine whether the Applicant is entitled to an Injunction sought on the usual criteria.”

Has the Applicant satisfied the above criteria? The Plaintiffs/ Applicants have adduced evidence in this Court in form of rent payment receipts and pay-slips to signify that they are tenants and are employees of **Kiambu Institute of Science and Technology** (Defendant herein). Further they have tabled evidence to show that the Defendant/Respondent has issued a Notice dated **22nd July 2020**, for rent increment thus the Court finds that the evidence of threatening to evict the Applicants is prima facie proof that the substratum of the suit properties would be interfered with. Therefore, this Court finds and holds that the Plaintiffs/Applicants have established that they have a prima facie case with probability of success at the trial.

If the Defendant/Respondent is allowed to proceed and issue new rent payments, the Applicants' may vacate the premises and in the event the Plaintiffs/Applicants are successful litigants at the end of the main trial, then they would have suffered an irreparable loss or damages which might not sufficiently be compensated by an award of damages. See the case of **Olympic Sports House Ltd...Vs...School Equipment Centre Ltd (2012) eKLR**, where the Court held that:-

“a party cannot be condemned to take damages in lieu of his crystalized right which can be protected by an order of injunction.”

On the balance of convenience, the Court finds that it tilts in favor of maintaining the **status quo** and the **status quo** herein i.e. the Plaintiffs/Applicants to continue paying rent as they are paying at the moment thus the Notice to increase rent by the Defendants/ Respondent shall not take effect until the suit is heard and determined.

Having carefully considered the instant Notice of Motion Application dated **25th August 2020**, the Court finds it **merited** and the same is allowed entirely in terms of prayers **No. 3** and **4** with being in the cause.

It is so ordered.

DATED, SIGNED AND DELIVERED AT THIKA THIS 22ND DAY OF APRIL 2021.

L. GACHERU

JUDGE

22/4/2021

Court Assistant - Phyllis

ORDER

In view of the declaration of measures restricting Court operations due to the **COVID-19** Pandemic, and in light of the directions issued by His Lordship, the Chief Justice on **15th March 2020**, this **Ruling** has been delivered to the parties online with their consents. They have waived compliance with **Order 21 rule 1** of the **Civil Procedure Rules** which requires that all judgments and rulings be pronounced in open Court.

With Consent of and virtual appearance via video conference – Microsoft Teams Platform

Mr. Amati for the Plaintiffs/Applicants

M/s Kamau for the Defendant/Respondent

L. GACHERU

JUDGE

22/4/2021