



REPUBLIC OF KENYA



KENYA LAW
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Teleposta Pension Scheme Trustees Registered v Wataari & 9 others (Environment & Land Case E134 of 2021) [2023] KEELC 18730 (KLR) (6 July 2023) (Judgment)

Neutral citation: [2023] KEELC 18730 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE E134 OF 2021**

JE OMANGE, J

JULY 6, 2023

BETWEEN

TELEPOSTA PENSION SCHEME TRUSTEES REGISTERED PLAINTIFF

AND

BERNARD KARIUKI WATAARI 1ST DEFENDANT
REBECCA LETANGULE 2ND DEFENDANT
REMIGIUS OKEYO 3RD DEFENDANT
JACQUELINE KEZIA 4TH DEFENDANT
CATHERINE N KIRARA 5TH DEFENDANT
KENNEDY BWOSI MISE 6TH DEFENDANT
FAITH NJOROGE 7TH DEFENDANT
JENNIFER OKOTH 8TH DEFENDANT
PAUL M GITAU 9TH DEFENDANT
KEN M SITIMA 10TH DEFENDANT

JUDGMENT

1. This suit relates to the apartments known as 3B, 5A, 7A,9A,1B,2B,5B,6B,7B,9B and 4A hereinafter referred to as the suit premises.
2. The plaintiffs vide a plaint dated 15th May, 2021 prays for the following orders;



- a. That the Defendants be directed and or ordered to give vacant possession and or vacate the suit premises i.e Houses Nos 3B, 5A, 1B, 2B, 5B, 6B, 7B, 9B and 4A within sixty (60) days from the date of the order and in default an order for eviction to issue.
 - b. That the officer commanding station – Kileleshwa Police Station to enforce the order (a) above.
 - c. Costs of the suit.
 - d. Such further order as the honourable court may deem fit to grant.
3. The plaintiffs aver that the Defendants filed HCCC 264 of 2007 which was heard and determined as ELC 381 of 2014 and later consolidated with ELC 157 of 2016. A consent Judgement was entered in ELC 157 of 2016 on 29th October outlining the parties responsibility in carrying out repairs at the suit premises. In the same Judgement, the court dismissed the claim by the plaintiffs in ELC 381 of 2014.
 4. The plaintiffs contend that the Defendants have never paid rent for the suit premises ever since they filed HCCC 264 of 2007. This has caused loss to the plaintiff who assert that they rely on the rent proceeds to discharge pension obligations to its members.
 5. The Defendants on their part filed a Defence in which they averred that they have filed an appeal, Civil Appeal 390 of 2019 against the decision rendered by the Environment and Land Court. They argue that the Court of Appeal issued a status quo order that protects them from any eviction. In any event, they plead that the Plaintiff owes them pension some of which was unlawfully applied towards the rent arrears. Furthermore, it is their case that the Plaintiff has previously levied distress for rent and failed to account for the proceeds.
 6. Mr. Peter Rotich testified on behalf of the plaintiff. He produced his witness statement dated 15th April, 2021. He told the court that the suit premises was vested on the plaintiff vide a legal notice to enable it pay the members benefits. The scheme decided to dispose of the property and sold some of the apartments to those who met the terms and conditions. He said that the Defendants herein did not meet the requirements hence were not given the option to purchase.
 7. Faith Njeri Njoroge testified on behalf of the 12 other occupants of the suit premises. She told the court that she and her colleagues were discriminated against when the houses were being sold, prompting them to file a case asking the court to order that they be given priority in the purchase of the suit premises. They lost the case in the Environment and Land Court and have now filed a case in the Court of Appeal. It was her evidence that the Court of Appeal gave interim orders in their favour.
 8. She admitted that they have not paid rent since 2007 but claimed that this was occasioned by the fact that they had not been told where to pay the rent. Indeed, at one point their cheques for rent were returned.
 9. The plaintiff's counsel in the written submissions emphasized that the Defendants had not denied that there were rent arrears. Counsel argued that the Court of Appeal orders had not exempted the Defendants from paying rent. Consequently, they should be evicted from the suit premises so as to allow the same to be renovated and leased out to tenants. Counsel submitted that the Court of Appeal order did not stay these proceedings hence had no effect on the eviction proceedings.
 10. It is common ground that the plaintiff is the proprietor of the suit premises. It is also not in dispute that the Defendants have not paid rent since the year 2007. Equally there is no contention that the Defendants filed a case seeking to be given priority to purchase the suit premises which case was dismissed. They were not deterred. The Defendants filed a case in the Court of Appeal wherein certain orders were issued.



11. The bone of contention seems to be whether the Plaintiff is entitled to vacant possession of the suit premises especially in light of the orders given by the Court of Appeal. In my view the orders given by the Court of Appeal are critical in deciding this suit.
12. The application before the Court of Appeal which was filed by the Defendants herein who are the appellants in Civil Appeal 390 of 2019 was produced in the Defendants bundle of documents. The appellants prayed for the following orders;
 - i. That the matter be certified urgent and heard ex parte in the first instance.
 - ii. That an order of temporary injunction do issue to restrain and prohibit the Respondents, its servants, assignees and or agents from issuing to the applicants a notice to vacate, threatening to evict, evicting and or otherwise interfering with the applicants quiet enjoyment of the suit premises Houses no 3B, 5A, 7A,9A,1B,2B,5B,6B,7B,9B and 4A along Kangundo Raod/ Killeleshwa pending the hearing and determination of the application and appeal.
 - iii. That a conservatory temporary injunction do issue to restrain and prohibit the Respondents, its servants, assignees and or agents from distressing rent, attaching goods, and sale by public auction goods in the applicants premises Houses no 3B, 5A, 7A,9A,1B,2B,5B,6B,7B,9B and 4A pending the hearing and determination of the application inter parties and the appeal.
 - iv. That the OCS Kileleshwa Police Station to comply with this order to enforce, maintain peace and order.
 - v. That Costs of the application be provided for.
13. On the 1st day of February, 2022, the Court of Appeal, with the consent of the parties issued an order allowing prayer 2 of the above application as prayed. It is clear from a plain reading of the above application and the prayers it sought specifically prayer 2 that the Court of Appeal issued an order restraining eviction of the Defendants who were the applicants in the above application. This Court cannot issue contrary orders. I note that the Court of Appeal did not allow prayer 3 and indeed it is on this basis that the Plaintiffs have severally attached the goods of the Defendants.
14. I therefore find that in view of the Court of Appeal order restraining eviction of the Defendants, the plaintiff cannot obtain vacant possession of the suit premises. Consequently, the suit is dismissed with costs.

DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS THIS 6TH DAY OF JULY 2023.

Judy Omenge

JUDGE

In the presence of: -

Ms Mathenge for the Plaintiff

Ms Musya for the Defendants

Steve - Court Assistant

