



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT ELDORET

ELC NO. 104 OF 2020

UASIN GISHU TENANTS ASSOCIATION.....PLAINTIFF

-VERSUS-

COUNTY GOVERNMENT OF UASIN GISHU & ANOTHER..DEFENDANT

RULING

Introduction:

1. This is a ruling in respect of two applications brought by the Plaintiff/Applicant. The first application is dated 16th November, 2020 and it seeks the following orders:-

- a. Spent
- b. Spent
- c. The Respondents either by themselves, their servants, employees and/or agents be restrained from evicting the tenants of Pioneer Estate, Kodhek Estate, Mayabi Estate, Kilimani Estate, Kuria Estate, Kamanda Estate and Uhuru Estate and/or repossessing their rental houses pending the hearing and determination of this suit.
- d. Costs of this application be borne by the Respondents.

2. The second application is dated 19th April, 2021 and it seeks the following orders:-

- a. Spent
- b. Spent
- c. The Honorable Court do find the Contemnor/Respondents to be guilty of contempt and disobedience of the Court Order of **Status quo** which were issued on 18th November, 2020 and as extended on 1st March, 2021 by consent to 22nd April, 2021 when the matter is scheduled for Ruling.
- d. That pursuant to **prayer C** above this Honorable Court in exercise of its inherent powers do punish the Contemnor/Respondents for contempt and disobedience of the Court order of status quo by imprisonment for a period not exceeding six (6) months or by imposition of a fine or both.
- e. The Respondents purported Notice of Repossession of House Number 409 – 019 occupied by LEAH JERONO KONGA'S (the Tenant) was/is illegal, unconstitutional, null and void **ab initio** as it contravenes the terms of the Tenancy Agreement as entered between the parties thereto.
- f. Spent
- g. The costs of this committal application be paid by the Contemnors/Respondents.

Background:

3. The Applicant is an association which is registered under the Societies Act and one of its functions is to carter for the interests of its members. The 1st Defendant/Respondent owns residential Housing Estates in Pioneer Estate, Kodhek Estate, Mayabi Estate, Kilimani Estate, Kamanda Estate, and Uhuru Estate which it has leased to tenants who are members of the Applicant.

4. Prior to the registration of the applicant on 27th November 2018, individual tenants had filed various suits against the 1st Respondent. Some of the suits were heard to conclusion and some were withdrawn. In **Petition No 18 of 2013 (Samuel K. Maiyo & 5 others –Vs- County Government of Uasin Gishu & others**, the Plaintiffs were challenging demand for rent which was based on County Government of Uasin Gishu Finance Act of 2013.

5. As at the time judgement was delivered in the above petition on 27th November, 2014, the issue of the Constitutionality of the Finance Act of 2013 had been decided in **Eldoret High Court Constitutional Petition No. 3 of 2014 (The North Rift Motorbike Taxi Association (NRMBTA) –Vs- The Uasin Gishu County Government)**. In this High Court Petition, the Finance Act 2013 of Uasin Gishu County was declared Unconstitutional, null and void.

6. The Court in the judgement of 27th November 2014 ordered that the status quo obtaining before the enactment of the Finance Act, 2013 of Uasin Gishu County had to be maintained. The status quo which was to be maintained was in respect of rents which had been collected based on the Finance Act of 2013 which had been nullified. This is why the Court directed that any rents collected based on the Finance Act of 2013 was to be credited to the account of each tenant.

7. The order of status quo made vide judgment of 27th November, 2014 was clarified and rightly so in the ruling delivered by Justice Ombwayo on 25th January, 2019. In an application dated 17th July, 2019 made in Petition No. 18 of 2013, the Petitioners wanted the orders of status quo made vide judgment of 27th November, 2014 as subsequently addressed by Justice Ombwayo be maintained until the 1st Respondent complied with the terms of the judgment of 27th November, 2014. In a well reasoned ruling delivered by Justice Kibunja on 6th May, 2020, the Judge found that the orders of maintenance of status quo was in respect of the Finance Act of 2013 and that the same were to lapse by 30th June 2013 but the Court on its own motion extended it to 30th June, 2019. The Court found that the orders of status quo lapsed on 30th June 2019 hence the dismissal of the Applicant's application.

The first Application

8. The Applicant contends that between 9th and 11th November, 2020, the tenants of Kodhek, Pioneer and Mayabi Estates found notice of termination of tenancy dated 4th November, 2020 dropped at their doorsteps indicating that their tenancies had been terminated forthwith. The Applicant argues that the import of the notices were that its members were to be evicted from their rental premises contrary to the terms of the tenancy agreements they signed with the 1st respondent.

9. The Applicant further argues that its members are apprehensive that they may be evicted through illegal and unorthodox means as was the case with tenants of Macharia Estate.

10. The Applicant's application was opposed by the Respondents through a replying affidavit sworn on 15th December, 2020. The Respondents contend that the Applicant's application is frivolous and is an abuse of the process of the court. The Respondents further contend that the issues which the Applicant is raising were fully addressed by a ruling delivered on 6th May, 2020 and that the present application is res judicata.

11. The Respondents argue that the Court through its ruling of 6th May 2020 found that the notice for renewal of tenancies were valid and that the Applicants were to continue paying rent at the prevailing rates as from 1st July, 2019 as the status quo in place had expired.

12. The Respondents further argue that the Applicant is seeking to appeal against the ruling of 6th May, 2020, through the backdoor instead of going to the Court of Appeal. The Respondents pointed out that the Applicant had filed **Eldoret HCCC No. 24 of 2020 (Uasin Gishu Tenants Association –Vs- County Government of Uasin Gishu & Another)** which suit was struck out as the same had been filed in a Court without jurisdiction.

13. The Respondents contend that the Applicant's members had agreed to move out of their houses by 15th September, 2019 after long discussions with the 1st Respondent but instead of paying rent and rent arrears, the Applicant's members keep on filing suits and applications without paying rent and arrears. The 1st Respondent states that it is currently owed rent arrears in excess of Kshs 40,000,000/=

14. The Respondents argue that the Applicant's members are in illegal occupation of their houses as tenancy agreements were not renewed.

15. In a further affidavit, the Applicant denied that this application is not res judicata as the issues raised in petition No 18 of 2013 were on Constitutionality of Finance Act 2013 whereas the instant suit relates to the issues of termination of tenancies. The Applicant further contends that the ruling of 6th May, 2020 had been misinterpreted by the Respondents as that ruling did not authorise evictions of the tenants.

16. The Applicant maintains that there are existing orders of maintenance of status quo as per the judgment in petition No 18 of 2013 and that the Respondents are in breach of the subsisting orders. The Applicant further argues that the 1st Respondent has not reconciled its accounts in respect of each tenant and that there is discrepancy between the amounts in the termination notices and what the tenants were given from the billing offices of the 1st Respondent.

17. I have carefully gone through the Applicant's application as well as the opposition to the same by the Respondents. I have also gone

through the submissions filed by the parties herein. The issues which emerge for determination are firstly whether this application is res judicata. Secondly, whether the Applicant has demonstrated that it has a prima facie case with probability of success. Thirdly whether this application is an abuse of the process of Court.

Whether this application is res judicata

18. In the instant case, the Applicant is seeking orders of injunction against the Respondents. In the application dated 17th July, 2019 which was filed in Petition No. 18 of 2013, the Applicants who are members of the present Applicant were seeking to have the orders of status quo which had been given vide judgment delivered on 27th November, 2014 and subsequently extended vide ruling delivered on 25th January, 2019 maintained pending compliance of the terms of the judgment.

19. The Applicants in the application which gave rise to the ruling of 25th January, 2019 dealt with the issue of injunction. The Applicants' prayer was rejected. When the Applicants moved back to Court to seek that orders of status quo given vide judgment of 27th November, 2014 and through ruling of 25th January, 2019, maintained pending compliance of the terms of judgment, their application was rejected in a ruling delivered on 6th May, 2020.

20. In the former application, the Applicants were seeking injunction to stop their eviction from their rental houses. The 1st Respondent had issued a press advertisement calling for renewal of the leases. In the present case, the Applicant is seeking the same relief as in the former application. The 1st Respondent had issued a press advertisement calling for renewal of tenancies and subsequently issued termination notices. This application is therefore res judicata as it is seeking reliefs similar to the ones which were rejected in a ruling delivered on 6th May, 2020. This is enough to dispose of this application but I will nevertheless address the other issues.

Whether the applicant has demonstrated that it has a prima facie case with probability of success.

21. The Applicant's members are in rent arrears. At some stage, the Applicants members and the 1st Respondent entered into an agreement that the Applicant's members were to be spared eviction as they looked for alternative accommodation. They were given up to 15th September 2019. The Applicant's members did not move out and they are not paying rent or clear the huge arrears which are said to be over 40,000,000/-

22. In the proviso to the tenancy agreement, which the Applicant's members signed, clause 2 thereof allowed the 1st Respondent to move into the houses and do anything they wished if rent remained unpaid for 14 days after becoming due. In the notices which were issued to the Applicant's members, the tenants were warned that if they did not pay outstanding rent and arrears auctioneers were to be sent to levy distress and recover Vacant possession.

23. The Applicants have huge arrears of rent. There is no evidence to show that the Applicant's members have paid the arrears. In the circumstances it is clear that the Applicant's members have not demonstrated that they have a prima facie case with probability of success to warrant issuance of injunction.

Whether this application is an abuse of the process of the Court.

24. The Applicant's members have previously filed cases before different Courts in which they sought similar reliefs. There was ELC Petition No. 18 of 2013 which was determined on 27th November, 2014. In this petition the Applicant's members had sought for injunctive reliefs. The Applicant's members also filed Eldoret HCCC No. 24 of 2020 which was struck out for want of jurisdiction. The Applicant's members have now filed the present suit in which they are seeking similar reliefs.

25. The Applicant's members are seeking Court protection when they are not paying rent and they do not want to renew their tenancies. Filing a multiplicity of cases in different courts and filing of numerous applications amounts to abuse of the process of the Court.

26. From the above analysis, it is clear that the applicant's application lacks merit. The same is dismissed with costs to the Respondent. It is so ordered.

The second application:

27. In this application, the Applicant is seeking to have the officers of the 1st Respondent punished for contempt of Court order which was given on 18th November, 2020 and subsequently extended until delivery of this ruling.

28. When the Applicant moved to Court for injunctive orders, the Court ordered that the status quo was to be maintained. The Applicant argues that as the status quo was subsisting, the Respondents' officials went and threw out one of its members from her house. The deponent of the supporting affidavit to the Applicant's application is the one who alleges to have been assaulted and thrown out of her house.

29. The Applicant's application was opposed through a replying affidavit sworn on 7th June 2021. The Respondents contend that on 13th April 2021, notices were issued to all tenants occupying the 1st Respondent's houses that there was to be a headcount of tenants and assessment of the County houses. The tenants in Pioneer, Kapsoya, Garden and Kodhek Estates were to be visited on 16th April, 2021. The tenants were expected to be present during the headcount.

30. On the 16th April, 2021, a headcount was conducted whereby all tenants except Leah Jerono Kongai cooperated. The said Leah Jerono

Kongai had an altercation with the officials of the 1st Respondent after which she locked her house and went away. The said Leah Jerono Kongai through her lawyer moved to Court whereby she obtained orders compelling the 1st Respondent's officials to have her move back to her house. The orders were complied with.

31. I have carefully considered the application by the Applicant as well as the opposition to the same by the Respondents. I have also considered the submissions by the parties herein. The only issue for determination is whether the Applicant has proved that the Respondents officials are in contempt of the Court order given on 18th November, 2020.

32. Before I proceed to analyse the issues for determination, the Court's attention was drawn to two affidavits which were filed by the Applicant without leave of the Court. These are the affidavits sworn on 5th July, 2021 and 25th October 2021 respectively. Rules of procedures have to be followed. If the Applicants wanted to file supplementary affidavits, leave of the Court had to be sought. As there was no leave of the Court sought, the two affidavits are hereby expunged from the record.

33. The law is clear that for one to be found guilty of contempt, it must be proved beyond reasonable doubt that there was a valid court order issued; that the said order was served upon the contemnor or that the contemnor was aware of the order and that the contemnor deliberately disobeyed the order.

34. In the instant case, there is no doubt that the Court directed that the status quo be maintained. The order was known by the counsel for the Respondents as the same was brought to counsel's attention on 16th December, 2020 and he confirmed that he had understood the orders. In fact, on 7th June, 2021, the Respondents counsel Mr. Yego complained to Court that the interim orders in place were prejudicial to the Respondents.

35. The only issue for determination is whether the orders of status quo were disobeyed. Contempt proceedings are quasi criminal because if the contempt is proved, the contemnor may be jailed hence the need for the same to be proved beyond reasonable doubt.

36. The reason why the orders of status quo were granted is that the Applicant's tenants had received termination notices in respect of their tenancies. The Applicant therefore moved to Court to avert the possible eviction arising from the termination notices.

37. What happened on 16th April, 2021 at the house of Leah Jerono Kongai was not an eviction. The officials of the 1st Respondent had gone to conduct a headcount and assessment of the County houses. The assessment was to ascertain the condition of the houses and the number of tenants occupying the houses. Other than Leah Jerono Kongai, all the tenants of Kilimani, Uhuru, Mayabi, Kidiwa, Kamanda, Tom Mboya, Kuria, Transit, Saint Mary's, Pioneer, Kapsoya, Garden and Kodhek Estates were cooperative.

38. If it was an eviction, the Respondents should not have singled out only one tenant out of the thousands of tenants occupying county houses. I have no doubt that what befell Leah Jerono Kongai was as a result of non-co-operation with the Respondents' officials. She was under obligation to have the condition of her house ascertained. The status quo did not prevent the Respondents from taking a head count of their tenants and ascertain the condition of the houses. What the Court stopped is the eviction of the Applicant's tenants. It is therefore clear that the Respondents were not in breach of the orders given on 18th November, 2020. I therefore find no merit in the application which is dismissed with costs to the Respondents.

It is so ordered.

DATED, SIGNED AND DELIVERED AT ELDORET ON THIS 3RD DAY OF FEBRUARY, 2022

E. OBAGA

JUDGE

In the virtual presence of:-

Mr. Yego for Respondents

Court Assistant –Mercy

E. OBAGA

JUDGE

3RD FEBRUARY, 2022