



Blue Diamond Ventures Limited & another v Mbakimo Limited & 3 others (Environment & Land Case E437 of 2021) [2022] KEELC 2412 (KLR) (5 May 2022) (Ruling)

Neutral citation: [2022] KEELC 2412 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE E437 OF 2021
LC KOMINGOI, J
MAY 5, 2022**

BETWEEN

BLUE DIAMOND VENTURES LIMITED 1ST APPLICANT

LISPA NDUITA CHEGE 2ND APPLICANT

AND

MTAKIMO LIMITED 1ST RESPONDENT

ERICK KIMARI KAMANU 2ND RESPONDENT

JEDIDAH MBAIRE KIMARI 3RD RESPONDENT

ANNE MUTHONI KAMANU 4TH RESPONDENT

RULING

1. This Is the Notice of Motion dated December 10, 2021 brought under section 3A of the [Civil Procedure Act](#), cap 21 Laws of Kenya, order 40 rule 1, 2 and order 51 of the *Civil Procedure Rules, 2010* and all other enabling provisions of the law.
2. It seeks orders:
 1. Spent.
 2. Spent.
 3. That this honorable court be pleased to grant an order of temporary injunction restraining the defendants/respondents by themselves, employees, servants, agents and/or assigns from demanding or collecting rent form any of the tenants occupying the leased premises in LR NO Dagoretti/Kangemi/1813 or interfering in any way with their quiet possession and enjoyment of their



rental premises for the purpose of preserving status quo pending hearing and determination of the plaint before this honourable court.

4. That this honorable court be pleased to grant an order of temporary injunction restraining the defendants/respondents by themselves, employees, servants, agents and/or assigns from demanding or collecting rent form any of the tenants occupying the leased premises in LR NO Dagoretti/Kangemi/1813 pending the hearing and determination of this case in which the Applicants have sued the Respondents before this honourable court.
 5. That the costs of this application be provided for.
3. The grounds are on the face of the Application and are:-
- a. That the property in dispute is L.R NO Dagoretti/Kangemi/1813 which was leased to the plaintiffs by the respondents via a lease agreement dated November 1, 2016.
 - b. That the lease agreement was for purposes of building permanent residential and commercial apartments for rental purposes and the lease term was for a period of 21 years.
 - c. That the respondents have failed to surrender part of the demised premises occupied by rental houses which were built by the plaintiffs and have been collecting rent of about Kshs.120,000/- per month from 2016 till now.
 - d. That October 11, 2021, the respondents issued the applicants' tenants with a notice of change of management of the leased premises amounting to breach the lease agreement.
 - e. That the respondents have since then continued to interfere with the applicants' tenants' quiet occupation of their rental premises.
 - f. That the defendants/respondents are without any justifiable claim and their failure to surrender a part in the demised property named LR NO Dagoretti/Kangemi/1813 amounts to trespass and breach of the lease agreement.
 - g. That the plaintiffs/applicants stand to suffer irreparable damage which would not be adequately compensated by way of an award of damages in monetary terms.
 - h. That the plaintiffs/applicants have a prima facie case which is currently pending before this honourable court.
 - i. That it is in the interest of justice and fairness that this application be granted as prayed.
 - j. Such other orders to be adduced at the hearing hereof.
4. The application is supported by the affidavit of Lisper Nduga Chege, the 2nd plaintiff/applicant sworn on the December 10, 2021.
5. The Application is opposed. There is a replying affidavit sworn by Erick Kimari Kamanu, the 2nd defendant/respondent sworn on the December 12, 2022.
6. The Notice of Motion was canvassed by oral submissions on March 9, 2022.
7. It is the plaintiffs/applicant's case that the 2nd defendant/respondent re-entered the suit premises on October 8, 2021 and demanded the tenants to vacate. He also issued the tenants with a notice of change of management of the suit premises and provided the account number in which the rent should be deposited.



8. It is further the plaintiff's/applicants case that they have been barred from collecting rent.
9. The defendants/respondents on the other hand state that the plaintiffs/applicants have not paid rent since 1st November 2016. That they have re-entered the suit premises as per the terms of the Lease Agreement.
10. I have considered the notice of motion and the affidavit in support. I have also considered the affidavit in response and the rival submissions. The issues for determination are:-
 - i. Whether the plaintiffs'/applicants' application meets the threshold for grant of temporary injunction.
 - ii. Who should bear costs of this application?
11. In an application for injunction the onus is on the Applicant to satisfy the court that it should grant an injunction. The principles were laid down in the precedent setting case of *Giella v Cassman Brown & Co Ltd* [1973] EA 358. In the case of *Mrao Ltd v First American Bank of Kenya Ltd & 2 others* [2003] KLR 125 the Court of Appeal stated what amounts to a prima facie case. I am guided by the above authorities.
12. I have gone through the plaint dated December 10, 2021, the Plaintiffs herein seek:-
 1. Special damages as particulars of special damages hereinabove.
 2. General damages for breach of Lease Agreement.
 3. A declaration of termination of Lease Agreement registered on April 19, 2019.
 4. Costs and incidentals to the suit.
 5. Interest on 1, 2 and 4 above.
 6. Any other relief this honourable court may deem fit and just to grant.

Parties are bound by their pleadings. From the prayers sought this court would be acting in vain if it granted any injunctive orders as there is no prayer for injunction in the Plaint.

13. From the averments of the 2nd defendant/respondent it is clear that the plaintiffs'/applicants have been in rent arrears from the year 2016. The same was not controverted by the plaintiff/applicant.
14. In the case of *Kenleb Cons Ltd v New Gatitu Services Station Limited & another* [1990] KLR 557 Bosire J (as he then was) held that:-

“to succeed in an application for injunction an applicant must not only make a frank and full disclosure of all relevant facts to the just determination of the application but must also show that he has a right, legal or equitable, which requires protection by injunction.”

I have considered the facts herein and I find that the plaintiffs/applicants have failed to demonstrate that they deserve this court's protection.

15. In conclusion, I find no merit in this application and the same is dismissed. The costs do abide the outcome of the main suit.
It is so ordered.

DATED, SIGNED AND DELIVERED NAIROBI THIS 5TH DAY OF MAY 2022.

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L. KOMINGOI

JUDGE

In the presence of:-

Mr. Turunga for the Plaintiffs

Mr. Musyoki for Mr. Mwangi for the Defendants

Steve - Court Assistant

