

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MOMBASA

ELC CASE NO. 39 OF 2020

SULEIMAN BITTOKK ABDHI T/A AZHAR PROGRESSIVE HIGH

SCHOOL & 40 OTHERS.....PLAINTIFFS/RESPONDENTS

VERSUS

ALI SALIM KARAMA

MAKAWI SALIM KARAMA.....DEFENDANTS/APPLICANTS

RULING

The application is dated 23rd August 2021 and is brought under Section 3 of the Distress of Rent Act, Section 3A of the Civil Procedure Act, Order 51 Rule 1 of the Civil Procedure Rules seeking the following orders;

1. That this Application be certified as urgent, service thereof be dispensed with and the same be heard Ex-Parte in the first instance.
2. That the Honourable Court do issue an order of distress for rent pending hearing and determination of this Application.
3. That the Court do issue an order of eviction against the Plaintiff/ Respondent and persons working under its business for having defaulted in paying the rent of the suit premises Plot No. 9129/I/MN situated in Kongowea, Mombasa County.
4. That the Officer Commanding Station and the Officer Commanding Police Division, Kongowea Police Station do ensure compliance of the Court Orders.
5. The costs of this application be provided for.

It is based on the grounds that the Defendants/Applicants are the legal owners and landlords of Plot No. 9129/I/MN. That the Defendants/Applicants entered into a tenancy agreement with the Plaintiff /Respondent dated 20th March 2019 where it was agreed the rent payable as Kshs, 35,000/=on quarterly basis on or before 10th day of a quarter. The Plaintiff/Respondent was not paying rent as agreed in the Tenancy Agreement and this led to the Defendants/Applicants to distress for rent. That the plaintiff/respondent filed an application in court dated 16th November, 2020 and the court gave an ex parte interim orders on 18th November, 2020 for the plaintiff to pay half of the amount for rent arrears. That the plaintiff/respondent failed and/or neglected to clear the rent arrears of the last two quarters of the year 2020 amounting to Kshs.160,000 which was the remaining balance of the previous outstanding rent arrears. That the defendant has not paid the monthly rent for the premises since he obtained interim orders on 18th November, 2020 while he continues to occupy and operate his business in the suit premises. That the outstanding rent arrears now amounts to Kshs. 475,000 which the defendant has no intention of settling it. That the said interim orders never exempted the plaintiffs from paying the monthly rent of the premises and neither did the same restrain the defendants/applicants from demanding for outstanding rent for the period of 18th November, 2020 to 1st August 2021. Hence the said orders cannot be used as a shield from the payments of the rents. That the applications have lawfully demanded for the payment of outstanding rents which they are entitled to and the plaintiff/respondent refused and/or neglected to settle the same. That the defendants/applicants instructed auctioneers to issue a proclamation Notice dated 2nd June 2021 for recovery of the rent arrears. However, the respondent is using the expired interim orders to frustrate the recovery of the rent. That the plaintiff/respondent is not willing to cooperate and the rent arrears are still increasing hence affecting the defendants/applicants source of livelihood. That it is in the interest of justice for the Honourable Court exercise leniency in granting orders sought herein.

The plaintiff/respondent submitted that he is the proprietor of the Azhar Progressive High School situated at the disputed premises belonging to the Respondents/ Applicants. That at no time has he failed, refused or neglected to pay rent to the Respondents/ Applicant herein and it is also not true that he failed to honour or obey the conditional orders issued by this Honourable Court on 18th November 2020. Attached and marked as SBA-1 is a copy of the conditional order. That the Applicant / Respondent herein is untrustworthy and or insincere and he is taking this Court for a ride by failing to disclose that indeed on 10th December 2020 he received a sum of Kenya Shillings One Hundred and Sixty Thousand (160,000/=) from Plaintiff /Respondents as ordered by this honourable court and which was supposed to be half of the money demanded. Attached and marked SBA-2 is a copy of payment receipt acknowledge and stamped by the Respondent's Applicants. That they have never refused or neglected to pay rent however the Defendant/ Applicants herein only has to blame himself as he has kept on frustrating the normal operation of the school and the academic progression of the learns and which has been done in pure disobedience of the Honourable Court orders issued on the 18th November, 2020 restraining the respondent/applicant from interfering with the plaintiff/respondent possession and occupation. That the defendant herein converted one of the classes into a trader's storage facility yet there were court orders restraining him from interfering with quite possession of the plaintiff/respondent, and his illegal action led to the school incurring massive losses as parents could not allow their children to study in unconducive environment. Attached and marked SBA-2(a) and (b) photos showing the contemptuous Act. That the defendant/applicant has failed, neglected or refused to disclose that the plaintiff/respondent herein has filed an application dated the 14th June 2021 where he seeks that the defendant/applicant herein be committed to civil jail for contempt of this Honourable Court orders and therefore he cannot have his cake and eat it too. That the court orders issued on

the 18th November, 2020 are still in force and its incumbent upon the defendant/applicant to respect and abide to the same. Attached and marked as SBA-3 is to court order. That the applicant did not disclose these pertinent facts to the court on their application and therefore the applicant did not come to court with clean hands.

This court has carefully considered the application and submissions therein. The application is based on the grounds that the Defendants/Applicants are the legal owners and landlords of Plot No. 9129/I/MN. That the Defendants/Applicants entered into a tenancy agreement with the Plaintiff /Respondent dated 20th March 2019 where it was agreed the rent payable as Kshs, 35,000/=on quarterly basis on or before 10th day of a quarter. That after getting interim orders from the court the defendant has not paid the monthly rent for the premises since he obtained interim orders on 18th November, 2020 while he continues to occupy and operate his business in the suit premises. That the outstanding rent arrears now amounts to Kshs. 475,000 which the defendant has no intention of settling it. The respondents submitted that the court orders issued on the 18th November, 2020 are still in force and its incumbent upon the defendant/applicant to respect and abide to the same. I find that the orders sought in this application are final and cannot be granted at this interim stage. It is clear that the respondents are in occupation of the suit premises and are in rent arrears. The only solution is to have this matter heard and determine. The parties are to take a mention date at the earliest opportunity for directions on the said petition. This application is not merited and is dismissed. Costs to be in the cause.

It is so ordered.

DELIVERED, DATED AND SIGNED AT MOMBASA THIS 9TH NOVEMBER, 2021

N.A. MATHEKA

JUDGE