



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MOMBASA

ELC CIVIL CASE NO. 97 OF 2017

SAMUEL ADEE.....PLAINTIFF

VERSUS

AMINA ABDULRAHAMAN.....DEFENDANT

RULING

1. This is the Notice of Motion dated 19th February 2018. It is brought under Order 40 rule 1 (a) of the Civil Procedure Rules and Section 3, 3A and 63(c) of the Civil Procedure Act.
2. It seeks orders that:
 1. Spent
 2. Spent
 3. Spent
 4. **That pending the hearing and determination of this suit there be a temporary injunction restraining the defendant by herself or her agents, servants and/or employees from removing, collecting or in any many interfering with the plaintiff's movable property in the tenancy property known as Plot Number 2510 Section I MN.**
 5. **That the costs of this application be in the cause.**
3. The grounds are on the face of the application and are listed as in paragraph a-k. I do not need to reproduce them here.
4. The application is supported by the affidavit of Samwel Adeo, the plaintiff/applicant herein sworn on the 19th February 2018 and a further affidavit sworn on 21st February 2018 and 15th March 2018.
5. The application is opposed. There is a replying affidavit sworn by Amina Abdulrahman the defendant/respondent herein on 25th March 2018.
6. On the 22nd January 2018, the parties indicated to the court that they were negotiating on a settlement out of court. The court gave them time to negotiate. On 20th March 2018, they told the court that they were not able to agree hence the need to write this ruling.
7. It is the plaintiff/applicant case that he is a tenant of the defendant paying rent of Kshs28,000 per month. That the defendant/respondent has falsely proclaimed his property for Kshs.259,000/- being arrears of rent from July 2017 to February 2018. Further that the defendant/respondent has wrongfully calculated the monthly rent at Kshs 35,000 per month instead of Kshs 28,000 per month. That he is not in arrears of rent.
8. It is the defendant's/respondent's case that they agreed that the plaintiff/applicant pays rent of Kshs.35,000 per month with effect from the year 2015. That the applicant started paying Kshs.35,000 per month. She annexed a bundle of cash deposit slips. Further that the applicant is in arrears to the tune of Kshs.259,000/-. She prays that the application be dismissed.
9. I have considered the notice of motion dated 19th February 2018, the affidavit sworn in support and the annexures. I have also considered

the replying affidavit and the annexures. The issues for determination are:-

(i) Whether or not the plaintiff/applicant’s case has met the threshold for grant of temporary injunction.

(ii) Who should bear costs?

10. It is now appropriate to consider the facts that have emerged and the legal principles applicable. The principles were laid down in the precedent setting case of **Giella vs Cassman Brown & Company Limited [1973] EA 358**. In the Case of **Mrao Limited vs First American Bank Limited & 2 others [2003] KLR 125** the Court of Appeal in determining what amounts to a prima facie case stated:

“So what is a prima facie case? I would say that in civil cases it is a case in which on the material presented to the Court a tribunal properly directing itself will conclude that there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter”

I am guided by the above authorities

11. In the case of **Njenga vs Njenga (1991) KLR 401 Bosire J** (as he then was) held that :-

“an injunction being a discretionary remedy is granted on the basis of evidence and sound legal principles”.

12. It is the plaintiff/applicant’s case that he was paying a monthly rent of Kshs 28,000 per month. That the defendant/respondent falsely proclaimed on his property for Kshs 259,000 as alleged accumulated rent. Further that he is challenging the termination of the tenancy. The defendant/respondent on the other hand has annexed copies of deposit slips marked as “A” showing that from 2015 the plaintiff/applicant was paying rent of Kshs.35,000 per month.

13. In his further affidavit sworn on the 15th March 2018, the plaintiff/applicant failed to address this issue. His claim, that he is not in arrears of rent is neither here nor there. I find that he has failed to show that he has a prima facie case with a probability of success at the trial. I am not persuaded by the facts presented by the plaintiff/applicant that he deserves the orders sought. In **Kenleb Cons Ltd V New Gatitu Service Station Ltd & Another 1990 KLR 557** where it 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 am not satisfied that the plaintiff/applicant herein deserves this kind of protection.

14. In **Ooko vs Barclays Bank of Kenya Limited [2002] KLR 394 page 398** Ringera J (as he then was) held:-

“The second condition is that an interlocutory injunction will not normally be granted unless the applicant can show that he will suffer an irreparable injury which cannot be compensated by an award of damages. The onus is obviously on the applicant to do that. In the instant matter, the plaintiff did not even attempt to do so. She was content to submit that once a prima facie case had been made, it was not necessary to consider any other matters and that the defendant had not shown it could compensate her adequately in damages. To my mind, the plaintiff’s submission was misconceived”.

15. I am guided by the above authority in finding that het plaintiff/applicant herein has failed to demonstrate that he will suffer irreparably if these orders are not granted.

16. I am also of the view that the balance of convenience tilts in favour of the defendant/respondent who is the owner of the suit premises.

17. In conclusion, I find that the plaintiff/applicant has failed to meet the threshold for grant of temporary injunction. I find hat the same lacks merit and it is dismissed. The costs of the application do abide the outcome of the main suit.

It is so ordered.

Dated and signed in Nairobi on this.....day of2018

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L. KOMINGOI

JUDGE

Dated and delivered at Mombasa on this 5th day of October 2018.

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JUDGE