



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MILIMANI

ELC APPEAL CASE NO.E038 OF 2021

(Being an Appeal from the ruling by Business Premises Rent Tribunal (Hon. Charles Chege) delivered on 4 June 2021 in Tribunal Case No. 985 of 2020 Nairobi)

DHANWANT SINGH BHAMRA T/A BHAMRA STEEL WORKS.....APPLICANT/TENANT

=VERSUS=

MENH S. KENTH, AVTAR S. KENTH, HARJEET S. KENTH

T/A MEGH SINGH PROPERTIES.....LANDLORD/RESPONDENT

RULING

1. The Appellant/Applicant filed a Notice of Motion dated 9th June 2021 in which he sought injunctive orders disguised as preservative orders. The Application is expressed to be brought under order 42(6) (1) of the Civil Procedure Rules, Section 1A,1B,3,3A 63(C) of the Civil Procedure Rules and Section 13(7) of the Environment and Land Court Act.
2. The Applicant has been a tenant of the Respondents for past 16 years. The Applicant moved to the Business Premises Rent Tribunal and filed a reference based on a complaint over rent payments. The Tribunal after hearing the complaint dismissed the same and ordered the Applicant to pay rent arrears owing. The Respondents following the dismissal of the Applicant's compliant instructed auctioneers to levy distress against the Applicant. This is what prompted the Applicant to move to court to forestall the levy of distress for rent.
3. The Applicant contends that sometime in 2007, the Respondents took about one third of the space which he had rented and stored scrap metal. The Applicant thought that this was a temporary storage but that the Respondents has refused to move out despite the fact that he is charging full rent for the leased premises.
4. The Applicant argues that the Respondent has been increasing rent arbitrarily and has not been issuing proper receipts for rent paid to the extent that he does not know what rent he owes the Respondents. He states that in his own calculations he has overpaid the Respondents by over Kshs.3,000,000/= . He contends that the Respondents are harassing him by demanding rent arrears of Kshs.1,500,000/= . He further argues that the Respondents are charging him more rent compared to what the neighboring tenants are being charged.
5. The Respondents opposed the Applicant's application on the ground that the Applicant is abusing the court process to frustrate their quest to get rent arrears. The Respondents contend that they had agreed with the Applicant on rent. The agreement was in form of a memorandum which was signed by the parties. The agreed rent was Kshs.136,000/= per month and the lease period was to run for 5 years and 6 months with effect from 1st January 2021.
6. I have considered the application by the Applicant and the opposition thereto by the Respondents. I have also considered the oral submissions by the parties. The only issue for determination is whether the Applicant has met the threshold for grant of injunction which he has conveniently chosen to call preservative orders. An Applicant who has preferred an appeal is at liberty to apply for injunction within the appeal. what the court should consider in determining whether to grant an injunction is whether the appeal is arguable.
7. In the instant case, the Applicant appears to be complaining about rent owed which is disputed. The relationship between the Applicant and the Respondents appears to have been on a mutually agreed rent. The space which is occupied by the Respondents was agreed on. It appears that the Applicant is now claiming that he was duped into agreeing to the storage thinking that it was going to be temporary.
8. The parties have signed a memorandum on payment of rent at Kshs.136,000/= plus VAT for a period of 5 years and 6 months. Considering the nature of relationship between the two parties, I do not see any arguable appeal in this matter. The Respondents are seeking to recover rent arrears. The Respondents cannot be stopped from carrying out this exercise by grant of injunction when there was no arguable appeal. I find no merit in this application which is dismissed with costs to the Respondents.

It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 28TH DAY OF JUNE 2021.

E. O. OBAGA

JUDGE

In the Virtual presence of:-

Mr Achach for Appellant/Applicant

Mr Mageto for Respondent

Court Assistant: John

E. O. OBAGA

JUDGE