



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

COMMERCIAL AND TAX DIVISION

MISCELLANEOUS APPLICATION NO. E312 OF 2021

TIMOTHY ATIENO AWOUR T/A NAIROBI CONNECTIONS LTD.....APPLICANT

AND

CHATUR PROPERTIES LIMITED.....LANDLORD

IMAX AFRICA LIMITED.....TENANT

RULING

1. The application for consideration is a Notice of Motion dated 26th April, 2021 brought under Section 3A of the Civil Procedure Act and the Auctioneers Act as well as Rule 9(1-2) of the Auctioneers Rules.
2. The main prayer sought is that the court do authorize the Officer Commanding Parklands Police Station or his officers with the rank of Inspector or the Administration police in that jurisdiction to accompany Timothy Atieno Awour or his agent to provide security and maintain law and order as they cut away Tenant's proclaimed goods upon **IMAX AFRICA LIMITED** situated at **Diamond Plaza 11, L.R NO. 209/2013/2.3& 4 NAIROBI**. The Applicant also prays that the costs of this application be borne by the Tenant.
3. The application is premised on the grounds on the face of it and on the Supporting Affidavit of Timothy Atieno Awour, the appointed Landlord's Auctioneer, licenced Auctioneer Class B under Auctioneers Act No. 5 of 1996.
4. The background to the application is that the tenant is owing the Landlord rent arrears amounting to Ksh. 74,103,467.88. The Applicant, on 14th January, 2021 upon receiving instructions to distress for rent proceeded to the premises but found them locked. This was after the expiry of the of the 14-day Proclamation Notice. In effect therefore, unless break-in orders are granted, the Applicant will not be able to distress for rent.
5. Notably, the Tenant failed to respond to the application despite being served twice with the same.
6. I have accordingly considered the application alongside the annexures to it as well as the brief oral submissions of the Applicant and I take the following view of the application.
7. The Applicant herein is a duly licenced Auctioneer as shown in a copy of his licence No. 006227 due for expiry on 31st December, 2021 annexed to the application. He is therefore duly authorized to distress for rent.
8. Other supporting documents conferring mandate on him to distress for rent and are annexed to the application include:
 - a. A copy of a letter of instructions by the Landlord dated 14th January, 2021.
 - b. A copy of a schedule of proclaimed goods issued on 14th January, 2021 with a signature of the debtor, thus acknowledging service.
 - c. A copy of the Tenant/Landlord Lease Agreement dated 11th June, 2018.
9. The above documentation is a testament that indeed the Tenant owes rent to the Landlord and that the rent is due for distress. The Tenant

on the other hand has failed to defend the application. Consequently, I find and hold that the orders sought by the auctioneer are deserving and not in vain. I accordingly order as follows:

a) That the Officer Commanding Parklands Police Station or any of his officers authorized by him/her do accompany the Applicant herein, **Timothy Atieno Awour** or his duly authorized agent(s), to provide security and maintain law and order as they cut away the Tenant's proclaimed goods upon **IMAX AFRICA LIMITED** situated at **DIAMOND PLAZA II, on Land Reference No. 209/2013/2.4 & 4.**

b) That the costs of this application be borne by the Tenant.

DATED AND DELIVERED AT NAIROBI THIS 10th JUNE, 2021.

G.W.NGENYE-MACHARIA

JUDGE

In the absence of the Applicant.