



Excelligent Solutions Limited v Family Health Options Kenya (Environment & Land Case E420 of 2024) [2025] KEELC 4752 (KLR) (24 June 2025) (Ruling)

Neutral citation: [2025] KEELC 4752 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE E420 OF 2024
CA OCHIENG, J
JUNE 24, 2025**

BETWEEN

EXCELLIGENT SOLUTIONS LIMITED PLAINTIFF

AND

FAMILY HEALTH OPTIONS KENYA DEFENDANT

RULING

1. What is before Court for determination are two pending applications. The first application is the Plaintiff's Notice of Motion dated the 15th October 2024 and amended on 19th May 2025 where it seeks the following Orders:
 - a. Spent.
 - b. Spent.
 - c. Pending the hearing and determination of this suit, this Honourable court be pleased to issue an injunction restraining the Defendant/Respondent either by themselves, their agents, servants and /or personal representatives from interfering with the Plaintiff's/Applicant's business, renovations, quiet and peaceful possession of the demised premises in any manner whatsoever as stipulated in the formal letter of offer and the commercial lease agreement on the development known as Family Health Plaza, situate along Mai Mahiu Road, Off Lang'ata Road, Opposite T- mall on Land Refence No. 209/10193.
 - d. That this Hon. Court be pleased to grant/issue any other orders/directions as may be just and expedient with a view to dispensing justice.
 - e. The costs of this application be borne by the Defendant/Respondent.
2. The application is premised on grounds on its face and on the supporting affidavit of Emily Kwamboka Matoke, Director and Group Chief Financial Officer of the Plaintiff. She avers that vide a formal Letter



of Offer dated 29th November 2023, the Defendant let part of the premises known as Family Health Plaza on LR 209/193 to the Plaintiff for a period of twenty [20] years effective from 20th January 2024, at an initial monthly rent of ksh. 1,191,380/= for the first five [5] years after which the rent would escalate by 10% every five [5] years. The premises comprised of 3rd floor space measuring 2,101 square feet [Block A] and all floors of the Defendant's family care medical center measuring 10,424 square feet [Block B"].

3. The said Offer Letter stipulated that the Plaintiff was to provide a contractual deposit of Kshs. 2,054,100/= and advance rent, all totaling to ksh. 45,326,500/=. Further, that the Plaintiff would be allowed a four [4] months' grace period to set up its operations. She explains that it was provided in the offer letter that the balance of ksh. 26,156,180/= was to be paid on 30th March 2024 and further that the Plaintiff would in its operations use the Defendant's equipment and Hospital Management System in the interim on terms to be agreed upon.
4. She contends that after taking possession, it became apparent to the Plaintiff that the leased space was insufficient thus it requested the Defendant for additional space, of which the Defendant agreed to let it additional space at the rate of ksh.90/= per square feet but since the Plaintiff was not agreeable to the rate, the parties did not execute a second Letter of Offer.
5. She explains that the Plaintiff also sought to renovate the suit premises and pursuant thereto, it forwarded proposed renovation plans in respect of Block "A" to the Defendant, who approved them, then proceeded on the Plaintiff's behalf to apply to the County Government of Nairobi for approval of the intended renovation plans, which the County Government approved. She states that the Plaintiff also sought to renovate Block "B" and the plans thereof were duly approved by the Defendant in a meeting held on 9th July 2024 between the Plaintiff's technical team and the Defendant.
6. Further, that the Plaintiff then applied for and was granted the necessary approvals by the County Government on 21st June 2024 and though the Defendant had on 31st May 2024 forwarded their standard Lease to the Plaintiff, which both parties executed, they forwarded another lease unilaterally and which substantially departed from the standard lease and the formal letter of offer already executed. She points out that the said Lease attempted to reduce the terms of the Lease from the agreed twenty [20] years to a five [5]-year lease. Further, it also purported to lease to the Plaintiff additional two [2] empty halls on the 3rd floor of the Institute measuring 1,160 square feet at a rate of ksh,90/= per square feet, totaling to kshs. 104,400/= per month.
7. She avers that when the Plaintiff refused to accede to the new Lease, the Defendant filed Tribunal Case BPRT E739 OF 2024 seeking to injunct its ongoing renovations on the basis that it had not approved them and which injunction was granted on 12th July 2024. Further, that on 15th July 2024, the Defendant wrote to the County Government stating inter alia that the said renovations were ongoing, without the Defendant's approval, and this prompted the Plaintiff to mitigate its losses by re-applying for approvals for the intended renovations, which approvals were granted on the 6th September 2024.
8. She confirms that the aforementioned BPRT case was summarily dismissed but the Plaintiff is still unable to commence its renovations due to the County Government's stop order and as a consequence, its hospital operations are still at a halt. Further, that in order to mitigate its losses, it has engaged the County Government to resolve the conflicting position it has taken regarding the ongoing renovations.
9. She claims that vide a letter dated the 5th August 2024, the Defendant demanded an inspection of the suit premises in three [3] days alleging that the renovations being carried out by the Plaintiff were not authorized. Further, it also demanded for the equipment that the Defendant had allowed it to use



- and in response, the Plaintiff advised the Defendant that three [3] days' notice to inspect the demised premises was unreasonable and inordinate given their arrangements.
10. She insists that in a meeting of 9th August 2024, parties agreed to meet to compute the amounts due to the Defendant and it became apparent that the Plaintiff did independently ascertain that there was discrepancy in the offer letter and the Lease with regard to space in square feet, which led to an additional charge of Kshs. 3,694,920/=, including a further additional charge of kshs.345, 146. 40 for a five [5] year period.
 11. She explains that the Defendant is a tax exempt Non-Governmental Organization but the Plaintiff was not furnished with the relevant ETR to seek a refund of ksh,6,251,931/= from the total rent paid which was inclusive of VAT. She further claims that out of the ksh.26,156,180/= inclusive of VAT, which the Plaintiff was expected to pay to the Defendant by the 30th of March 2024, it is expected that the Plaintiff should retain ksh.3,607,749/= as VAT. Further, that Kshs.6,642,330/= has passed through the Defendant's Hospital management system [HMS] which it continues to retain. She reiterates that in offsetting all the aforementioned amounts, the Plaintiff only owes the Defendant ksh. 6,086,674.40/ =.
 12. She reaffirms that as a consequence of the Defendant's actions, the Plaintiff's hospital operations have been halted and the fate of the fifty [50] hired professional including doctors, nurses and pharmacists hangs in the balance. Further, that given the Defendants unpredictable, intrusive and aggressive conduct, the Plaintiff is apprehensive that the Defendant will try to frustrate it, out of the same premises despite receiving the aforementioned colossal amounts of money.
 13. She further reiterates that the Defendant has undertaken acts which have interfered with the Plaintiff's right to quiet possession with the purpose of crippling its operations and points out that on 9th May 2024, the Defendant's CEO took possession of equipment that it had agreed to lend the Plaintiff, prompting it to report to the police and the same were only released after police intervention.
 14. The application is also supported by the affidavit of Gideon Kigen, the immediate former Vice Chairperson of the Defendant. He avers that on the 29th of May 2024, the Plaintiff shared their proposed renovation plans with Counsel Oyagi who represented the Defendant and who in turn presented the same before the Defendant's board where he saw the proposed renovation plans. That the Defendant approved the plans and the information was communicated to the Plaintiff verbally by the Defendant's duly appointed agent/representative Counsel Ronald Oyagi.

Defendant's response

15. The application is opposed by the Defendant vide a replying affidavit sworn by Mr. Edward Marienga, its Chief Executive Officer. He avers that by a Letter of Offer dated 29th November 2023, the Defendant offered to lease 12, 525 square feet of its space on the suit premises to the Plaintiff. Further, that pursuant to the said letter, the total advance rent payable was Kshs. 71,482,680/ = covering a period of five [5] years inclusive of VAT and thereafter, rent would be payable monthly on or before 5th of every month. He deposes that the Plaintiff was to pay ksh. 45,272,364/ = inclusive of VAT upon signing of the agreement by both parties and no later than 5th of December 2023 and the balance of Kshs. 28,593,072/ = inclusive of VAT was to be paid on or before 30th March 2024.
16. He avers that from the onset, the Plaintiff failed to fulfill its obligation to pay rent and resorted to pay the rent due of Kshs. 45,272,364/ = at its own will and in installments between November 2023 and January 2024 and which was unacceptable to the Defendant and as a result the Defendant's National Executive Committee summoned the Plaintiff's Director for a meeting on 26th January 2024 to explain its lack of commitment to abide by the terms of the Letter of Offer.



17. He contends that the Plaintiff was accommodated and it promised to pay rent but it further breached the terms of the said Letter of Offer as it deliberately failed to pay the balance of rent amounting to Kshs. 28, 593, 072/=, which was due and payable on or before 30th March, 2024 and is still outstanding.
18. He explains that rent payable was not subject to any apportionment of outgoing, encumbrances or any future liabilities arising between the parties and refutes the Plaintiff's assertion that it was entitled to withhold Kshs. 9,859,680/= in VAT, arguing that tax exemption is not automatic for NGOs but is at the discretion of the Kenya Revenue Authority. Further that the Plaintiff has no authority to withhold value added taxes on behalf of the Kenya Revenue Authority. He reaffirms that the Defendant commits to furnishing the Plaintiff with the ETR receipts for the Value Added Tax upon paying the balance of the rent.
19. Regarding alleged discrepancies on leased space, he avers that the Plaintiff was given exactly 12,525 square feet across four floors, but is now occupying more space without paying for it and efforts to verify the space it occupies through a joint survey were frustrated by the Plaintiff, who denied Defendant's representatives' access. To this end, he urges the court to issue an order that a joint survey be conducted.
20. He admits that the Defendant allowed the Plaintiff to use its Hospital Management Information System [HMIS], with both parties agreeing that the amount processed was Kshs. 4, 092, 183.42 and not the alleged Kshs. 6.6 million claimed by the Plaintiff. He commits that the Defendant is willing to pay less CMIS fees but upon full rent settlement.
21. He claims that that there is no valid Lease agreement executed between the parties and as such, the tenancy is governed by the initial Letter of Offer. He points out that the Lease annexed to the application is allegedly signed by the Defendant's Treasurer alone against the advice of the Defendant's Board. He accuses the Plaintiff of unilaterally preparing the Lease, contacting the Defendant's board members directly through WhatsApp and email, and organizing a signing ceremony on 11th June 2024, but the board members declined to attend, save for its Treasurer. She insists that the alleged lease improperly altered key obligations.
22. He further claims that after several engagements, the parties agreed on 13th June 2024 that the Defendant would prepare a new Lease, which the Defendant prepared, signed on 15th June 2024 and forwarded to the Plaintiff but it declined to sign as it had its own reservations. He insists that between January and June 2024, the Defendant allowed the Plaintiff to use its hospital equipment, ambulance, and goodwill, free of charge to support its operations but in April 2024, the Plaintiff began asserting ownership over the said assets and in a meeting held on 27th August 2024, both parties agreed that the Defendant would repossess all equipment previously used by the Plaintiff free of charge, with a handover deadline of 15th July 2024. Further, that the Plaintiff could express interest in purchasing any of the assets before 29th June 2024 but the Plaintiff neither requested to purchase nor voluntarily returned all the assets.
23. He points out that it retained a vaccine fridge worth Kshs. 400,000/=, which had been donated to the Defendant by the Ministry of Health. He also avers that under Clause 6 of the Letter of Offer, it is entitled to charge compound interest at a rate of 2% per month on any unpaid rent and that the interest began accruing from February 2024, and as of August 2024, the cumulative rent and interest due was Kshs. 29,946,553.66.

Defendant's application



24. In the second Notice of Motion application dated the 8th November, 2024, the Defendant seeks the following Orders:
- a. Spent.
 - b. There be a stay on the on-going demolitions, pulling down of walls, removal of sinks, wash basins, doors, reinforcement steel and other important structural frames that support the building in the name of renovations at LR. No. LR No. 209/10193 a property registered in the name of Family Health Options Kenya Limited, the defendant/applicant herein pending the hearing and determination of this application.
 - c. Upon the hearing and determination of this application. The Tenant/Respondent stops all on-going demolitions. Pulling down of walls, removal of sinks, wash basins, doors, reinforcement steel and other important structural frames that support the building in the name of renovations at LR NO. 209/10193 a property registered in the name of Family Health Options Kenya Limited, the defendant/applicant pending obtaining all approvals by the County Government of Nairobi.
 - d. The Plaintiff/Respondent to bear the costs of this application.
25. The application is premised on grounds on its face and on the supporting affidavit of the Defendant's Executive Director, one Edward Marienga. He avers that Zellora Limited, a structural audit firm has unequivocally given its opinion that if the ongoing demolitions, pulling down of walls, removal of sinks, wash basins, doors, reinforcement steel and other important structural frames that support the suit building continues, it will be condemned and rendered unusable and unfit for purposes, which will lead to enormous irreversible losses to the Defendant.
26. He contends that even after it was noted that there were intense damages done by the Plaintiff and after it was stopped by the Nairobi County enforcement officers vide a stop order, it has proceeded to pull down the sections of the building that support it. He states that the court in issuing the ex parte orders herein to maintain the status quo, was not guided properly that the Plaintiff was not going to maintain the status quo but to fast track radical damage to the structure of the suit building.
27. He confirms that the Defendant has no problem with the Plaintiff being in quiet possession and occupation of the sections occupied for purposes of carrying out its business save for the dangerous demolitions, pulling down of walls, removal of sinks, wash basins, doors, reinforcement steel and other important structure and frames that support the building.
28. The application is opposed by the Plaintiff vide the replying affidavit sworn by Emily Kwamboka Matoke, a Director and the Group Chief Financial Officer of the Plaintiff. She reiterates the contents of her supporting affidavit to the Plaintiff's instant application and states that the first renovations undertaken by the Plaintiff were applied for by the Defendant. She denies that the said renovations compromise the structural integrity of the subject premises and avers that the County Government approved the said renovations, having duly considered their structural impact. She argues that if the Defendant is aggrieved by the County Governments approval of the subject completed renovations, its remedy lies with the Liaison Committee and not in Court.
29. She avers that the Plaintiff stands to be greatly prejudiced if the court was to grant the Defendant's request given that rent to the tune of Kenya Shillings Forty-Five Million Three Hundred and Twenty-Six Thousand Five Hundred [Ksh. 45,326,500/-], has already been paid to the Defendant for the period running until the Month of March, 2029. Further, that the Plaintiff's employees have already been hired and are still on pay roll during the said renovations.



30. In rejoinder to the Plaintiff's replying affidavit, Edward Marienga, the Defendant's Executive Director swore a further supporting affidavit. He avers that pursuant to Clause 13 of the Letter of Offer, it was mandatory for the Plaintiff to obtain prior written approval of the Defendant and/or its Architect of any proposed design and layout in case it wanted to make any alterations, modifications or improvement of the property. He reiterates that the architectural drawings and plans specifying the material to be used was to be duly approved by the relevant planning authority including but not limited to the County Government of Nairobi and after the approval, the same were to be submitted to the Defendant.
31. He alleges that vide a letter dated 29th April, 2004 the Plaintiff notified the Defendant of its intention to renovate the demised premises but the notification was not accompanied with any architectural designs and intention. Subsequently, by its letter dated 8th May, 2024 the Defendant informed the Plaintiff of the process for undertaking any renovation works on the suit premises and reiterated the same in a meeting held on 21st May 2024. He confirms that the Plaintiff commenced renovations without the Defendant's approval.
32. He states that vide a letter dated 1st July, 2024 he informed the Defendant's Board about the commencement of the illegal modification of the suit premises by the Plaintiff and he was advised to write to the Plaintiff to stop the unlawful demolitions, which he did vide a Letter dated 8th July, 2024.
33. He states that at a reconciliatory meeting convened by the DCI Lang'ata Sub-county on 27th August 2024, for the first time the Plaintiff purported to produce a renovation permit dated 28th February, 2024 allegedly issued by the County Government of Nairobi approving the renovation works. He confirms that it was agreed in the meeting that since these demolitions were done without the Defendant's written approval and relevant Government authorities' approvals, the Plaintiff would restore the Hospital to its original state and provide necessary documents to facilitate approval before the works. Further, that restoration works would be done mutually with the close involvement of the engineers from both parties but the Plaintiff declined to stop the unlawful renovation works and to restore the suit premises to its previous form.
34. He contends that the alleged first Renovation Permit is false, since it indicates that it was the Defendant who applied for it yet, the Defendant never submitted any application to the County Government of Nairobi. Further, that it was allegedly issued on 28th February, 2024 even before the Plaintiff notified the Defendant vide their letter dated 29th April, 2024 of its intention to renovate the suit property.
35. He further avers that it was until the Defendant was served with the pleadings in this suit that it established that the Plaintiff discretely and without involving it, applied for another renovation permit dated 21st June, 2024 after it realized that the Defendant had established that it had fraudulently obtained the first renovation permit following which, by a letter dated 19th March 2025, the Defendant wrote to the County Government of Nairobi to investigate how the Plaintiff obtained the two permits without application. He explains that after concluding investigations, the County Government by a letter dated 7th April, 2025 revoked all the building plans issued to the Plaintiff and ordered it to stop further renovation work.
36. He further contends that even if the two [2] permits were to be presumed to be valid, they were only valid for three [3] months yet the Plaintiff has continued to date with the unlawful renovations without a valid permit from NEMA and the National Construction Authority.
37. He further claims that on 22nd July, 2024, the County Government of Nairobi, Department of Physical Planning issued an enforcement notice stopping the construction works carried out by the Plaintiff on the suit property for being done contrary to the provisions of the [*Physical and Land Use Planning*](#)



Act No. 13 of 2019. Further, on 9th April, 2025 the County Government of Nairobi, Department of Physical Planning issued a stay order directing the Plaintiff to stay the development of the suit property and submit the required documents to the Director Planning and Compliance & Enforcement within fourteen [14] days but it is yet to comply.

38. He further reiterates that an audit of the suit property concluded that its structural integrity has been compromised following the unregulated reconstruction works, which include loading of new masonry walls on existing slab, demolition of doors, repositioning of the openings, and chasing of structural reinforced concrete columns. He insists that the Plaintiff has also demolished the floors of the building by sinking a large hole in each of the floors all the way to the basement to create a provision for an escalator where none existed adding that the basement of the building was not part of the space leased out to the Plaintiff.
39. He confirmed that the Defendant filed BPRT/E739/2024 Family Health Option Kenya v Emily Kwamboka Matoke, which was dismissed for want of jurisdiction.

Submissions

40. The Plaintiff in its submissions reiterates its averments as per its affidavits and relied on Section 65[1] [a] of the Land Act. It argues the Defendant's actions amount to interference with its rights as a Lessee. Further, that even if rent was outstanding, it would not justify interference with possession as the remedy lies in levying distress. It further submits that Section 67 of the Land Act prohibits the Defendant from unreasonably withholding consent for renovations. It reiterates that the lease annexed herein, which is executed by the Defendant's Treasurer and witnessed by the Defendant's advocate is valid and as such, Defendant is bound by the actions of its advocate and cannot escape obligations. The Plaintiff also submits that it has met the threshold for an injunction and has no intention of damaging the property. To buttress its averments, it relied on the case of Royal British Bank v Turquand [1856] 6E&B 327].
41. On its part, the Defendant submits that the Plaintiff does not meet the requisite threshold set out in the case of Giella Vs Cassman Brown and Co. Ltd. It points out that there is no valid Lease that has been signed between the Plaintiff and the Defendant and as such, their tenancy is governed by the Letter of Offer, which the Plaintiff has deliberately defaulted on, by renegeing on its obligation to pay rent thus issuing a temporary relief will be tantamount to waiving the Plaintiff's obligation to pay rent and suspending the provisions and the requirements of the Letter of Offer. It also submits that Clause 13 of the Letter of Offer mandatorily required the Plaintiff's written approval of the Defendant and approvals from other relevant authorities, prior to commencing renovation works on the demised premises and the Defendant has never given any written approval to the Plaintiff to renovate the suit premises. Further, that the architectural plans and designs allegedly approved by the County Government of Nairobi have since been cancelled vide a letter dated 7th April, 2025. It argues that if prayer [d] of the Plaintiff's application is granted, it will dispose of part of main suit, without hearing the suit on merits yet it is trite law that courts cannot grant a final order at the interlocutory stage as stated in the case of Olive Mwiwaki Mugenda & Another v Okiya Omtata Okoiti & 4 others [2016] eKLR .

Analysis and Determination

42. Upon consideration of the two instant Notice of Motion applications including the respective affidavits and rivalling submissions, the only issue for determination is whether the Plaintiff has made a case for grant of an interlocutory injunction pending outcome of the suit or if it should be compelled to halt the renovations it is undertaking on the suit premises.



43. The Plaintiff seeks orders to restrain the Defendant from interfering with its business operations and renovations on the leased premises situated on LR No. 209/10193. This is on the basis that there exists a valid Lease between the parties and on grounds that the Plaintiff has spent over Kshs.45 million to fulfil its obligations towards rent for the premises. The Plaintiff also claims that it obtained renovation approvals from the Nairobi County Government to undertake renovation on the demised premises.
44. The Defendant seeks orders to stop ongoing demolition and structural renovations allegedly being carried out on the suit premises without valid approvals and in a manner that threatens its integrity. It also claims that the Plaintiff is in breach of rent obligations and thus it is not entitled to equitable relief of injunction. The Defendant further alleges that the approvals were obtained fraudulently and without its consent, contrary to Clause 13 of the Letter of Offer.
45. On whether the Plaintiff is entitled to orders of interlocutory injunction pending outcome of the suit, I will rely on the conditions for consideration in applications for injunctions as settled in the case of *Giella v Cassman Brown & Company Limited* [1973] E A 358. It is not in dispute that the Plaintiff and Defendant have a long-term lease arrangement which is vide a Letter of Offer dated 29th November, 2023. Further, that the Plaintiff has been carrying out renovations on the suit premises.
46. The Defendant's Executive Director in its replying affidavit confirms that the Defendant has no problem with the Plaintiff being in quiet possession and occupation of the sections occupied in the demised premises for purposes of carrying out its business save for the demolitions and renovations. From these averments, it is clear that the Defendant does not intend to interfere with the Plaintiff's occupation of the suit premises so long as it stops undertaking renovations thereon. From the averments in the respective affidavits, it is evident that the Plaintiff actually has rent arrears but what is not clear is the exact amount owed.
47. On obligation of a tenant, in the case of *Samuel Kipkorir Ngeno & Another v Local Authorities Pension Trust [Registered Trustees] & Another* [2013] eKLR, it was held that:
- “9. A tenant's first and main obligation is to pay rent as and when it becomes due, for the landlord has the right to an income from his investments..” “12. The temporary injunction sought in the present application is an equitable remedy at the court's discretion. He who come to equity must come with clean hands. A tenant who is in huge arrears of rent is underserving of the court's discretion. The court cannot be the refuge of a tenant who fails to meet his principal obligation of paying rent as and when it becomes due.”
48. Based on the facts as presented while relying on the Letter of Offer dated 29th November, 2023, and associating myself with the decisions quoted, I opine that since injunctive remedies are equitable reliefs, noting that the Plaintiff has rent arrears, at this juncture, I find that I cannot issue injunctive orders to restrain the Defendant from the suit premises. I note that the Defendant has actually not sought to evict the Plaintiff from the demised premises. In the foregoing, I find that the Plaintiff has not established a prima facie case to warrant the orders of interlocutory injunction as sought. Further, in relying on the decision of *Nguruman Ltd v Jan Bonde Nielsen* [2014] eKLR, where the Court of Appeal held that where a party fails to establish a prima facie case, the Court need not deal with the other two limbs on injunctions and I will hence not determine them.
49. Since the Defendant has only sought for the Plaintiff to stop the renovations on suit premises, claiming the same is being undertaken without proper approvals, it is my considered view that the said renovations have to be stopped since it has emerged that it is compromising the suit premises.



50. In the circumstances, I find the Plaintiff's Notice of Motion application dated the 15th October, 2024 unmerited and will disallow it. I however find the Defendant's Notice of Motion application dated the 8th November, 2024 merited and will allow it.

51. Costs will be in the cause.

DATED SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 24TH DAY OF JUNE 2025

CHRISTINE OCHIENG

JUDGE

In the presence of:

Wandabwa for Plaintiff

Baraza for Defendant

Court Assistant: Joan

