



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS,
CIVIL SUIT NO. 811 OF 2006

DAVID MBUVI.....1ST PLAINTIFF/RESPONDENT

CATHERINE KANINI MBEBA.....2ND PLAINTIFF/RESPONDENT

BOTH T/A GRAFFITTI CREATION

VERSUS-

KENYA PORTS AUTHORITY.....DEFENDANT/APPLICANT

RULING

In the matter before me the applicant/ defendant has sought through a notice of motion dated 11th October 2013 to have the plaint dated 24th July 2006 and subsequent pleadings and applications filed by the plaintiffs /respondents struck out; that interlocutory orders of injunction in favor of the respondent be vacated; that the interlocutory orders of injunction in favor of the respondent be deemed to have lapsed and that in the alternative and without prejudice to the orders sought that orders of injunction in place be discharged. The application is brought under sections 1A, 1B, 3A, 63 (e) of the Civil Procedure Act Cap. 21 Laws of Kenya and Order 2 rule 15 (d) Order 40 rules 6 and 7 of the Civil Procedure Rules, 2010.

The application is based on 4 grounds on the face of the application together with the supporting affidavit of Mr. Bildad Kisero.

The application was opposed.

The respondents filed an affidavit sworn by the 1st plaintiff Mr. David Mbuvi dated the 17th January 2014 and filed on the 17th January 2014.

In the supporting affidavit of Mr. Bildad Kisero the Principal Personnel Officer Administration and Welfare of the defendant, he gives a background of the relationship between the defendant and the plaintiffs at paragraphs 4 to 20. The applicant argues that the plaintiff got an order of injunction on the 24/7/06 and that since then the respondents have not been paying rent neither have they fixed the suit for hearing. That it is the defendant who has sought to have the matter fixed for hearing. That is now 7 years since they sought to settle the matter. That the respondents now seek to pay the rent in 2 installments. Counsel for the applicant relied on the provisions of order 40(6) of the Civil Procedure Rule 2010 that state that an order for injunction shall lapse after one year. He sought to have the injunction discharged.

In the respondents replying affidavit the 1st plaintiff admits that the injunctive order was granted in 2006

but claims that the defendant went quiet that it has refused to accept rent and that the defendant stopped issuing rent statements. That they have pursued the defendant for an out of court settlement but unfortunately this did not succeed. That their efforts have been in vain and that they are ready and willing to pay the rent arrears in 2 equal installments plus prosecute the case within the shortest time possible. He urged the court not to strike out the pleadings and not to vacate the injunctive orders.

I have considered all that has been deposed and submitted. The court record shows that on the 27/11/06 parties recorded consent before Justice Osiemo that *status quo be maintained*. In the chamber summons dated 24/7/06 the plaintiffs/respondents sought an order of injunction to restrain the defendant it's employees or agents from interfering in any way with the plaintiff quiet possession of the premises business known as KPA Belle- Vue Club House on L.R 209/10216 until the suit is heard and determined. The status quo order was taken as an order of injunction. It is evident that since the 27/11/06 the plaintiffs have done nothing to set down the suit for pretrial conference or even hearing.

It is stated that the plaintiff has not even been paying rent. He who seeks a remedy in equity must demonstrate good faith and commitment. This the respondents have not done at all in this case. They have sat and enjoyed a premise at the expense of the defendant. The defendant/applicant has now moved this court to discharge the injunctive order. I agree with the applicant that the plaintiff does not deserve the said interlocutory orders and that they should be vacated. I am not persuaded that the respondents have made any effort to settle the matter as nothing was attached to demonstrate that they even wrote or approached the defendant/applicant to pay rent or settle the matter. I therefore discharge the orders of status quo issued on the 27/11/06.

The applicant also seeks to have the plaint and pleadings and applications filed by the plaintiffs' struck out. Striking out of pleadings must be exercised in a cautious manner. I will give the respondents a chance to have the suit prosecuted. I decline to strike out the plaint and the application. The defendant/applicant is however granted costs of the application dated the 11/10/13.

Orders accordingly.

Dated, signed and delivered this 7th day of February 2014.

R. E OUGO

JUDGE

In the presence of;

.....For the Defendant/Applicant

.....For the Plaintiffs/ Respondents

.....Court Clerk