



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MILIMANI

ELC CASE NUMBER E 122 OF 2020

JACOB MWANGLI.....PLAINTIFF

=VERSUS=

MUNGAI MAHIA GICUHL.....DEFENDANT

RULING

1. The Plaintiff/ Applicant filed a notice of motion dated 9th September 2020 in which he sought the following orders: -

1) Spent

2) That the Honourable Court be pleased to issue a temporary injunction restraining the Defendant by himself, employees, agents in any manner whatsoever from evicting the Plaintiff from the suit premises LR No. Nairobi Block 110 / 11 Thome Estate –Thome Business Centre shop number 1 or in any manner whatsoever interfering with the Plaintiff's quiet enjoyment and use of the suit premises pending the interpartes hearing and determination of this application and suit herein.

3) Such other orders as the court may deem fit to grant in the circumstances of the case.

4) That costs of this suit be borne by the Defendant.

2. The Applicant was a tenant of the Respondent in shop No.1 on LR Nairobi Block 110/11 at premises known as Thome Business Centre. The Applicant had a lease running for 5 years and 3 months with effect from 1st July 2015. The Applicant contends that the Respondent has issued a notice to terminate the lease by 30th September 2019 (now past) and that if an injunction is not granted, he will be evicted from the premises despite the fact that he had submitted his application for re-newal of the lease to the Respondent's agent M/s Adroit Commercial Agencies.

3. The Applicant further contends that he has overpaid rent to the Respondent and that his business was seriously affected by Covid 19 Pandemic and that if he were to be evicted, he cannot find an alternative business premises in the same locality where he can operate his supermarket business. He contends that the Respondent's notice to vacate was maliciously given and is not justified as he had a legitimate expectation that his lease was going to be renewed.

4. The Applicant further argues that the notice given is incurable and that he has furniture, fittings and machinery which are not easily disposable or movable and that in the event he is kicked out, he would not get storage space for the items in the supermarket.

5. The Respondent opposed the Applicant's application based on a replying affidavit sworn on 21st September 2020. The Respondent denies that he has terminated the Applicant lease as claimed. He states that he instructed his Advocates to issue a notice to all his tenants reminding them that their leases were to expire on 30th September 2020. This notice was issued on 24th June 2020. This notice was served upon the Applicant on 26th June 2020.

6. The Respondent shortly thereafter instructed his agent to circulate an application for renewal of lease to all tenants who wished to renew their leases. The Applicant did not apply for renewal and what he has annexed to his application is a fabrication. On 18th August 2020, the Respondent's Advocates issued a notice of vacation which notice the Applicant received.

7. On 7th August 2020, the Respondent received a letter addressed from the Applicant's lawyer protesting the second notification and enclosing the Applicant's application for a new lease. The Respondent after considering the issues raised in the Applicant's letter of 27th August 2020, declined the Applicant's application for renewal of the lease. The rejection was delivered to the Applicant's premises on 2nd

September 2020.

8. The Respondent argues that he informed the Applicant in good time and that the application by the Applicant is only meant to perpetuate the Applicant's stay in the premises without any reason. The Respondent states that the amount the Applicant claims to have overpaid is money he paid on behalf of the tenant in shop 5 as confirmed by an application for renewal of lease for shop No.5 annexed to the Applicant's affidavit.

9. In a supplementary affidavit sworn on 30th September 2020, the Applicant denies the contents of the Respondent's affidavit and contends that he is not bound to pay any good will which was not contained in the lease agreement.

10. I have considered the Applicant's application as well as the opposition thereto by the Respondent. The only issue for determination is whether an injunction can be granted in favour of the Applicant. It is clear from the replying affidavit by the Respondent that he reminded all the tenants on his property about the impending expiry of their leases. This was communicated on 24th June 2020. The Applicant received this notice on 26th June 2020.

11. The Respondent then instructed his agent who circulated an application of renewal of lease. The Applicant instead of applying for renewal raised issues through his lawyer. The Applicant then communicated his intention to reject any application for renewal from the Applicant. This being the case, the Applicant cannot complain of being treated unfairly. The lease has already expired and the Respondent has already indicated his intention not to renew the lease.

12. The relationship between the Applicant and the Respondent was contractual. It is trite law that a court cannot force an unwilling party to enter into a contract which he does not want. It is also clear that a court cannot re-write a contract for the parties. The contract between the Applicant and the Respondent having come to an end on 30th September 2020, there is no basis upon which this court can grant an injunction as to do so will be allowing the Applicant to remain in the Respondent's premises without signing a lease. I therefore find that the Applicant's Application is without merit. I dismiss the same with costs to the Respondent.

It is so ordered.

Dated, Signed and Delivered at Nairobi on this 12th day of October 2020.

E.O.OBAGA

JUDGE

In the Virtual Presence of :-

Mr Muchiri for Applicant

Mr Ranja for the Respondent

Court Assistant: Hilda

E.O.OBAGA

JUDGE