



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**CIVIL DIVISION**

**ELC SUIT NO. 586 OF 2012**

**PROMOHOUSE INVESTMENT LTD.....PLAINTIFF**

**VERSUS**

**1. DEVELOPING AFRIKA LTD  
2. PRIMEROSE PROPERTIES LTD .....DEFENDANTS**

**R U L I N G**

1. The Plaintiff is the 2<sup>nd</sup> Defendant's tenant in business premises situated in **Industrial Area, Nairobi**. The 1<sup>st</sup> Defendant is apparently the 2<sup>nd</sup> Defendant's management agent for the premises.
2. The Plaintiff's case as pleaded in the plaint is that due to the Defendants' misrepresentation regarding the size of the floor area occupied by the Plaintiff, the Plaintiff has been paying rent that is higher than it ought to have been paying, as a result of which it has overpaid rent by KShs 412,993/90. The Plaintiff claims this sum.
3. The Plaintiff's further case is that when it raised the said claim with the Defendants, they in turn manufactured a false claim against it for alleged unpaid rent amounting to KShs 473,818/00 purely to defeat the Plaintiff's claim. They also threatened to evict the Plaintiff from the premises on account of the same. The Plaintiff therefore seeks in addition to the KShs 412,993/90 an appropriate permanent injunction to protect its tenancy.
4. Together with the plaint the Plaintiff filed **notice of motion dated 10<sup>th</sup> December 2012** seeking a temporary injunction to protect it pending disposal of the suit. That application is the subject of this ruling. The Plaintiff also seeks in the application an order "for a re-measurement of the premises the Plaintiff occupies on the 3<sup>rd</sup> floor of **LR No. 209/8670 known as ABC Bank Building – Industrial Area** in terms of its square feet". This is clearly not an order that can be granted in this interlocutory application. It begs an issue between the parties that is best left to trial of the action.
5. The application is brought under **Order 40, Rules 1, 2 and 4** of the **Civil Procedure Rules, 2010** (the **Rules**). It is supported by an affidavit sworn by one ELIJAH M KILONZI, the managing director of the Plaintiff.
6. The Defendants opposed the application by replying affidavit belatedly filed on 21<sup>st</sup> May 2013 – belatedly because it was filed after expiration of various extensions granted to them. But I will consider it since it is now on record.

7. The application was canvassed by way of written submissions. Those of the Plaintiff were filed on 12<sup>th</sup> of March 2013. The Defendants' submissions were also belatedly filed on 21<sup>st</sup> May 2013. They are now on record and I must consider them.

8. I have considered the submissions of the parties including the cases cited.

9. It seems to me that this application will be best decided upon a balance of convenience. It will not be possible to decide it upon the grounds of ***prima facie* case with a probability of success or irreparable loss.**

10. From the material now before the court it appears that the Plaintiff has been paying its rent regularly. It must continue to pay that rent that it has been paying pending determination of its claim that the rent has been overstated on account of the actual floor space it occupies. While it continues to pay its current rent it must be accorded the protection it seeks against eviction or harassment or other action that might interfere with its enjoyment of the demised premises.

11. In the circumstances I will grant temporary injunction as sought in prayer 3 of the application upon the condition that the Plaintiff continues to pay the rent it has been paying as and when it falls due. Costs of the application shall be in the cause. Those will be the orders of the court.

**DATED AND SIGNED AT NAIROBI THIS 4<sup>TH</sup> DAY OF JULY 2013**

**H. P. G. WAWERU**

**JUDGE**

**DELIVERED AT NAIROBI THIS 5<sup>TH</sup> DAY OF JULY 2013**