



**REPUBLIC OF KENYA**

**High Court at Eldoret**

**Civil Case 175 of 2007**

**ALICE YANO PRACTISING AS OR T/A**

**YANO & COMPANY ADVOCATES.....PLAINTIFF**

**VERSUS**

**KERIO VALLEY DEVELOPMENT AUTHORITY.....DEFENDANT**

**RULING**

I have before me an application for temporary injunction by the plaintiff against the defendants restraining them from closing down or distressing, taking possession of the plaintiffs office premises at **Eldoret Municipality/Block 4178 at Mezzanine Floor KVDA Plaza measuring 80089 ft** (hereinafter “the demised premises”) or in any way, interfering with the plaintiff's tenancy pending the hearing of this suit. The application is expressed to be made under order XXXIX Rules 1, 3 and 9 of the Civil Procedure Rules Section 3A of the Civil Procedure Act and all other enabling provisions of the law.

The gist of the plaintiff's case is that she is a tenant of the defendants in respect of the demised premises yet on 17th October, 2007, the defendants entered upon the said premises and closed it for about five (5) hours and further threatened to throw her out of the same contrary to the terms of lease executed between them on 22nd August, 2007.

The substance of the opposition is that the plaintiff is in breach of the terms of the said lease as she is in arrears of rent in the sum of Kshs. 378,000/-. the breach according to the defendant entitled them to re-enter upon the demised premises and take possession. The plaintiff and the defendants exhibited copies of the said lease as she is in arrears of rent in the sum of Kshs. 378,000/-. the breach according to the defendant entitled them to re-enter upon the demised premises and take possession. The plaintiff and the defendants exhibited copies of the said lease. In addition the defendants also exhibited copies of correspondence exchanged between them.

When the application came up for hearing on 27th July, 201, counsel agreed to file written submissions which were duly in place by 11th July, 2012. Those submissions reiterated the averments of the parties in their respective submissions.

I have considered the application and the affidavits filed both for the plaintiff and the defendants. I have further given due consideration to the submissions of counsel. Having done so, I take the following view of the matter. I must state, at the outset, that at this interlocutory stage, I should not make any definitive findings of fact or law. I also bear in mind the principles crystallized in the case of **Giella - Vs- Cassman Brown & Company Limited [1973] E.A. 358**. the principles are follows:

**“First an applicant must show a prima-facie case with a probability of success.....**

**Secondly an interlocutory injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury which would not adequately be compensated by an award of damages.**

**Thirdly, if the court is in doubt it will decide the application on the balance of convenience.”**

In the case at hand, the plaintiff's complaint is that as a tenant of the defendant she was entitled to adequate notice before repossession or eviction or distress but the defendant failed to serve her with such notice. The defendant's response is that as the plaintiff was in default of payment of rent they were entitled to re-enter the demised premises and take possession and also levy distress for rent.

One would have thought that the dispute between the plaintiff and the defendant is simple and straight forward. Yet this application has remained unheard since 22nd October, 2007. The record shows that an attempt to settle the dispute was made but nothing came out of the same. The result is that the interim injunction granted at the ex parte stage has, in reality, operated as a permanent injunction. If the parties had prepared this suit for hearing, I have no doubt that it would have been concluded by now. It is with that in mind that I will decide this application on the balance of convenience. That balance tilts in favour of confirming the injunction granted ex-parte on 22nd October, 2007. I have come to that conclusion because, the dispute between the plaintiff and the defendant, will involved the taking of accounts and the interpretation of the lease executed between them, which matters cannot be resolved on the affidavit evidence adduced before me. It is only just that as those matters are thrashed out by the parties, the status quo be maintained.

In the end, I exercise my discretion by granting a temporary injunction against the defendants. The plaintiff's application is accordingly allowed in terms of prayer 4 thereof. The plaintiff should file an undertaking as to damages within the next seven (7) days. Such undertaking to be under oath.

Costs shall be in the cause.

It is so ordered

**DATED AND DELIVERED AT ELDROET**

**THIS 5TH DAY OF SEPTEMBER, 2012**

**F. AZANGALALA**  
**JUDGE**

**Read in the presence of:-**

**Mr. Omusundi for the plaintiff and**

**Mr. Keter H/B for Mr. Kwambai for the defendant.**

**F. AZANGALALA**  
**JUDGE**

**5TH SEPTEMBER, 2012**