

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT KAKAMEGA

ELC CASE NO. 11 OF 2020

MIDLAND PROPERTIES INVESTMENTS LTD.....PLAINTIFF/APPLICANT

VERSUS

MASINDE MULIRO UNIVERSITY OF SCIENCE & TECHNOLOGY.....DEFENDANT/RESPONDENT

RULING

The application is dated 17th August 2020 and is brought under Order 40 Rules 1, 2, 3 & 10 of the Civil Procedure Rules 2010 Section 1A, 1B & 3A of the Civil Procedure Act Cap 21 seeking the following orders;

1. That this application be certified urgent and heard on priority basis.
2. That pending hearing and determination of this suit this honourable court do issue an order compelling the defendant and the plaintiff to jointly access the premises known as Kotecha New Plaza and Kotecha flats situated on Land Parcel No. Kakamega/Municipality/Block 11/254 & Kakamega/Municipality/Block 11/158 for purposes of inspection assessment of its condition and take inventory and prepare a joint report accordingly.
3. That in the alternative the court do make an interlocutory orders as regards access, status or use and take over/possession of the premises pending the hearing and determination of this suit.
4. The cost of this application be provided for.

It is grounded on the affidavit of Divyesh Ramesh Kotecha and the grounds that the plaintiff/applicant and the defendant/respondent entered into a tenancy/lease agreement on 30th November, 2013 and 25th May, 2014. That either party was to terminate the tenancy agreement before expiry term by giving the other party 3 months' notice. That joint inspection and assessment of the premises was to be done upon expiry or termination of tenancy. That the defendant was to keep the structure of the leased premises in good state of repair and plaint upon exit from the premises. The defendant was to make good any damages that may be occasioned by its agents, servants, staff, other occupants under their authority including to the leased premises on any part of the building. The defendant is yet to handover the premises. That it is difficult to assess the state of the building without inspection being done by qualified experts/professionals and in the absence of the defendant/respondent. That suit property lies in a deplorable state from 2013 to date and the plaintiff/applicant continues to suffer great loss. That the building/premises pose a great danger to members of the public as they are unmaintained. That if the joint inspection and assessment is done and a report filed the plaintiff/applicant can undertake to do the repairs and be able to utilize the suit property. That after inspection and assessment of the premises, the report and period shall be considered at the conclusion of this case.

The respondent submitted that they entered into two lease agreements with the applicant. The lease agreement dated 1st November, 2013 for property known as Kotecha New Plaza was for a fixed period of time running from 1st November, 2013 to 1st October, 2015. If the University wished to renew the tenancy, it was required to intimate such intention of renewing the lease in writing by issuing a notice of intention to renew at least three months before the lease expired (see clause (e) of the lease at page 3 of the defendant's list of documents). The lease agreement dated 21st May, 2014 for Kotecha Flats was also for a fixed period of time and commenced on 1st May, 2014 to 30th April, 2015, with an option of renewal. The defendant did not intimate renewal of the lease with respect to the classrooms and neither did it renew the lease with respect to the hostels. The leases therefore terminated.

The lease dated 1st November, 2013 provided under Clause 2 (iii) that the defendant would keep the leased premises in good state of repair and paint. The defendant was also required to make good any damages that might have been occasioned to the premises by either its agents or students. The lease dated 21st May, 2014 provided that the defendant would make good any damages or repairs upon vacating. The plaintiff vide its letter of 23rd June, 2015 requested the University to surrender the keys and send a University Engineer to assess the repairs and ascertain the cost as the leases were coming to an end. The University wrote a letter dated 19th October, 2015 informing the plaintiff that it was formally handing over the keys since it had cleared from the rented premises and had no immediate use of the properties. Once the letter was ready for dispatch, they called the plaintiff's Director Mr. Divyesh Kotecha to notify him of the intended hand over. He indicated that he was out of town and that hand over of keys must wait for him to return. In terms of the lease provisions, the defendant maintained the leases premises in good state of repair. On 30th October, 2015, the University finalized the assessment of repair costs as had been requested by the plaintiff's Director Ramesh Kotecha. The assessment was contained in a letter of even date. On 2nd November, 2015, after the plaintiff had received their letter of 30th October, 2015 the University received a letter from the defendant in which the plaintiff strangely claimed that the defendant was still in occupation. This was not true at all since the defendant has cleared from the premises. On 4th November, 2015 and vide a letter of even date, the University wrote back to the plaintiff expressing its surprise that the plaintiff could still thrive on assumption that it was still in occupation of the demise premises. They also forwarded a copy of renovations reports of 30th

October, 2015. They took the letters, keys for the hostels and the payment receipts for water and electricity to the plaintiff's director but he declined to accept receipt of the keys. On 11th January, 2016, and vide a letter of even date, the plaintiff wrote to the University another letter alleging that the University had not handed over or made good the premises and they have not vacated or handed over the two buildings. The plaintiff insisted that the defendant undertakes the repairs by itself as opposed to making good the damages by paying for them as proposed by the University. This condition imposed unilaterally by the plaintiff was not in accordance to the leases. Under the leases, the University would have made good any damages by paying the assessed amounts as had earlier been directed by the plaintiff's director Ramesh Kotecha in his letter of 23rd June, 2015. On 16th March, 2016 and vide a letter of even date, the University wrote back to the plaintiff indicating that it had finalized repairs but was unable to hand over as the plaintiff through its directors kept on dodging a meeting for the same. They therefore indicated that they would courier the keys to them. The plaintiff maintained that he would not accept the handover.

This court has considered the application and the submissions therein. The grounds of the application are that the plaintiff/applicant and the defendant/respondent entered into a tenancy/lease agreement on 30th November, 2013 and 25th May, 2014. That either party was to terminate the tenancy agreement before expiry term by giving the other party 3 months' notice. That joint inspection and assessment of the premises was to be done upon expiry or termination of tenancy. The respondent submit that they wrote a letter dated 19th October, 2015 informing the plaintiff that it was formally handing over the keys since it had cleared from the rented premises and had no immediate use of the properties. Once the letter was ready for dispatch, they called the plaintiff's Director Mr. Divyesh Kotecha to notify him of the intended hand over. The said Director refused to accept the keys. I find that the issue as to whether or not the respondent handed over the premises as per their mutual lease agreement is a matter of evidence which cannot be determined at this stage. That the issue as to whether or not the University made good any damages caused to the suit premises is also a matter of evidence. I find this application is premature and the matter should proceed to full hearing for the same to be determined. I find that this application lacks merit and is dismissed. Costs to be in the cause.

It is so ordered.

DELIVERED, DATED AND SIGNED AT KAKAMEGA THIS 25TH NOVEMBER 2020.

N.A. MATHEKA

JUDGE