



Bin Daud Limited v Mitoko & another (Environment and Land Case E227 of 2023) [2025] KEELC 7128 (KLR) (20 October 2025) (Ruling)

Neutral citation: [2025] KEELC 7128 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND CASE E227 OF 2023
CG MBOGO, J
OCTOBER 20, 2025**

BETWEEN

BIN DAUD LIMITED APPLICANT

AND

MICAH HAYDN MITOKO 1ST RESPONDENT

GRACE JANE OHAYO 2ND RESPONDENT

RULING

1. Before me is the notice of motion dated 15th May, 2025 filed by the applicant and expressed to be brought under Sections 1A, 1B, 3 and 3A of the *Civil Procedure Act*, Section 13 of the Environment and Land Court, Order 40 Rule 2 and Order 50 Rule 1 of the Civil Procedure Rules as well as Section 7 of the *Arbitration Act* seeking the following orders:-
 1. Spent.
 2. That pending inter partes hearing and determination of this application, the proclamation notice dated 9th May, 2025 from Vintage Auctioneers instructed by the respondents and notice of repossession dated 15th May, 2025 be temporarily suspended.
 3. That pending hearing and determination of arbitration proceedings, the proclamation notice dated 9th May, 2025 from Vintage Auctioneers instructed by the respondents and notice of repossession dated 15th May, 2025 be temporarily suspended.
 4. That this court be pleased to extend time for the applicant to pay rent by a period of 45 days from the date of delivery of this ruling.
 5. That costs of this application be provided for.



2. The application is premised on the grounds on its face. The application is further supported by the affidavit of Ali Daud Ali, the director of the plaintiff/applicant sworn on even date. The plaintiff/applicant deposed that the defendants/respondents are the registered owners of the property known as LR. No. 12553/6, and that through a registered lease dated 22nd April, 2020, the plaintiff/applicant leased the same for a term of 25 years. The plaintiff/applicant deposed that it has spent money to develop the suit property, including branding the same by Rubis Energy Kenya Limited. Further, that it has approached the court for protection from eviction pending arbitration proceedings and due to the current economic times, it has not been able to pay 6 months advance rent in the sum of Kshs. 4,020,000/- by 1st April, 2025.
3. As a result, the plaintiff/applicant deposed that the said amount is due for a period between 1st April, 2025 and 30th September, 2025 hence the defendants/respondents will not be prejudiced, as they continue to hold the deposit security amount of Kshs.3,000,000/-. The plaintiff/applicant deposed that the defendants/respondents have issued a proclamation notice dated 9th May, 2025 to repossess the goods by 17th May, 2025, and a notice of repossession and re-entry into the suit property dated 15th May, 2025.
4. The plaintiff/applicant deposed that the notice violates Section 152 E of the *Land Act*, and that unless the court intervenes, it will suffer loss and livelihood. They urged the court to grant them 45 days from the date of the ruling to pay the said sums.
5. The application was opposed vide the replying of the 1st defendant/respondent sworn on 13th June, 2025. The 1st defendant/respondent deposed that the plaintiff/applicant seeks to relitigate issues that have been heard and determined by the court as it was in the chamber summons dated 22nd December, 2023 where a ruling was delivered on 3rd October, 2024. Further, that the plaintiff/applicant was bound to the terms of the lease, which despite the terms and the orders of the court arising from the ruling, has failed to pay rent.
6. The 1st defendant/respondent deposed that the plaintiff/applicant sought indulgence through its advocates when the rent fell due, and that they still failed to pay the same and they were constrained to engage Vintage Auctioneers to levy distress who issued a 14 days' notice. Further, it was deposed that the auctioneers notice dated 9th May, 2025 is proper and lawful as the plaintiff/ applicant was granted adequate time to clear outstanding rent. Further, that the court is now functus officio on the issue of rent having already made a determination, and the matter referred to arbitration.
7. The 1st defendant/respondent deposed that the plaintiff/applicant is seeking a review of the ruling and orders of the court issued on 3rd October, 2024, and cannot rely on its purported investments to justify its refusal to meet its lawful obligations. The 1st defendant/respondent filed a supplementary affidavit sworn on 17th July, 2025. He deposed that on 9th July, 2025, Vintage Auctioneers proceeded to attach the properties at the suit property where it has emerged that the plaintiff/applicant leased out the premises to a third party, and thus the prayer for stay of proclamation notice dated 9th May, 2025 is overtaken by events.
8. The application was canvassed by way of written submissions. The plaintiff/applicant filed its written submissions dated 1st July, 2025 where it raised two issues for determination listed below:-
 - a. Whether the applicant should be granted the orders sought herein.
 - b. Who shall bear the costs.



9. On the first issue, the plaintiff/applicant submitted that it has sufficient interest over the suit properties, and that unless the court intervenes, its savings and livelihood will be lost. The plaintiff/applicant relied on the case of *Kenneth Kinoti Muriuki & 4 others v Dinara Developers Limited & Another* [2020] eKLR. On the second issue, the plaintiff/applicant submitted that since this is a landlord/tenant dispute, each party shall bear their own costs.
10. The defendants/respondents filed their written submissions dated 21st July, 2025 where they raised four issues for determination as follows:-
 - i. Whether the applicant is entitled to the grant of an order for temporary suspension of the proclamation notice dated 9th May, 2025.
 - ii. Whether the applicant is entitled to the grant of an order for temporary suspension of the notice of repossession dated 15th May 2025 pending arbitration proceedings.
 - iii. Whether the applicant is entitled to the grant of an order for extension of time to pay rent by a period of 45 days from the date of delivery of the ruling herein.
 - iv. Who should bear the costs of the application dated 15th May, 2025.
11. On the first issue, the defendants/respondents submitted that a valid and lawful proclamation process can only be suspended or set aside by a court on grounds such as procedural irregularities. Reference was made to the case of *Hudson Kariuki Njiru t/a Vision Auctioneers v Kanyi* (Civil Appeal E877 of 2022) [2024] KEHC 11847 (KLR) (Civ) (30 September 2024) (Judgment). They submitted that pursuant to Section 3 of the *Distress for Rent Act*, they have right to levy distress.
12. On the second issue, the defendants/respondents submitted that the plaintiff/ applicant failed to abide by the terms of the lease agreement and remedy the breach. They relied on the case of *Huma v Association & another; Nairobi City County & 2 others* (Respondent) (Environment & Land Case E318 of 2021) [2024] KEELC 870 (KLR) (15 February 2024) (Ruling).
13. On the third issue, the defendants/respondents submitted that in seeking the court to extend the time to pay rent, the court would be re writing the lease agreement for the parties. They submitted that the plaintiff/applicant has not presented any material to demonstrate that the lease agreement was entered through coercion, fraud or undue influence. To buttress on this issue, they relied on the cases of *National Bank of Kenya Ltd v Pipeplastic Samkolit (K) Ltd & another* [2001] KLR 112, *Pius Kimaiyo Langat v Co-operative Bank of Kenya Ltd* [2017] eKLR and *Joseph Kangethe Irungu v Peter Ng'ang'a Muchoki* [2018] eKLR.
14. On the fourth and final issue, the defendants/respondents submitted that the instant application lacks merit and the same is an abuse of the court process. They urged the court to dismiss the same with costs.
15. I have carefully analyzed and considered the application, the replies thereof and the written submissions filed by both parties. From the prayers sought in the application, prayers 2 and 3 are overtaken by events. As such, the issue for determination is whether the plaintiff/applicant ought to be given an extension of 45 days to pay rent.
16. It is not in dispute that the parties entered into the lease agreement dated 22nd April, 2020 for a term of 25 years. The plaintiff/applicant has admitted that due to the current economic situation, it has been unable to pay rent which was due on 1st April, 2025. For this reason, they seek the court's intervention to prevent eviction. On the other hand, the defendants/respondents contend that the court is functus officio as a result of the ruling delivered by the court on 3rd October, 2024. Further, they maintained



that the orders are overtaken by events, and in fact, the plaintiff/applicant leased out the premises to a third party, received rental income and refused to pay the same.

17. I have perused the ruling delivered by the court on 3rd October, 2024. The ruling was a determination of the chamber summons dated 22nd December, 2023 filed by the plaintiff/applicant seeking orders of injunction against the defendants/respondents. While the matter was referred to arbitration, the court directed the plaintiff/applicant to continue to pay the agreed rent. As I have understood from the said ruling, any issue arising with respect to the subject matter ought to be raised before the arbitrator. There is no reason that has been shown that any extension of rent payment could not be sought and obtained before the arbitrator who is already appointed.
18. I am constrained not to comment any further as the terms of the lease including any payment whatsoever are the subject of arbitration proceedings. For this reason, the notice of motion dated 15th May, 2025 lacks merit, and it is hereby dismissed with costs to the defendants/respondents. Orders accordingly.

DATED, SIGNED & DELIVERED VIRTUALLY THIS 21st DAY OF OCTOBER, 2025.

HON. MBOGO C.G.

JUDGE

21/10/2025.

In the presence of:

Mr. Benson Agunga - Court assistant

Mr. Mwenda for the Respondents

Ms. Olaki for the Applicant

