



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

MILIMANI LAW COURTS

ENVIRONMENT & LAND COURT

ELC CASE NO. 704 OF 2015

MOTORLINE LIMITED.....PLAINTIFF

- VERSUS -

ALEX MOTORS LIMITED & 2 OTHERS.....DEFENDANTS

RULING

1. The plaintiff/applicant filed a Notice of Motion dated 7th March in which it seeks a mandatory injunction compelling the 1st Defendant/Respondent to vacate from LR 209/12499. The applicant entered into a lease agreement with the 1st Respondent which lease was to run for six years with effect from 5th July 2014. The applicant contends that the 1st Respondent is in breach of the lease in that it has not paid rent since August 2017.

2. The respondents have opposed the applicant's application based on grounds of opposition filed in court on 28th May 2018. The 1st Respondent contends that this application is res-judicata in that the applicant had sought similar prayers which were dismissed on 28th February 2017. The 1st respondent further contends that the applicant is abusing the process of the court by filing numerous applications instead of having its suit fixed for hearing. The 1st respondent further states that there are alternative remedies available to the applicant if there are any rent arrears being claimed.

3. I have considered the applicant's application as well as the opposition to the same by the respondents. I have also considered the oral submissions by the parties herein. The only issue for determination is whether a mandatory injunction should issue compelling the 1st respondent to move out of the suit property.

4. The principles for grant of a mandatory injunction are very clear. The dispute in issue has to be a simple one which can be remedied in a summary manner without having to wait for the main hearing. In the case of **Kenya Breweries Limited Vs Okeyo EALR (2002) 1 EA page 110**, the Court of Appeal held as follows:-

“ A mandatory injunction ought not to be granted on an interlocutory application in the absence of special circumstances and then only in clear cases either where the court thought that the matter ought to be decided at once or where the injunction was directed at a simple and summary act which could be remedied or where the defendant had attempted to steal a match on the plaintiff”.

5. In the instant case, the applicant has simply stated that the 1st respondent has not paid rent since August 2017. There is no evidence of non-payment of rent. The applicant herein had brought an application for summary judgement which was dismissed. The applicant is coming back to seek a similar relief which had been rejected. I find that the applicant has not demonstrated a case which can call for grant of a mandatory injunction. I do not find merit in this application which is hereby dismissed with costs to the Respondents.

It is so ordered.

Dated, Signed and delivered at Nairobi on this 7th day of March 2019.

E.O.OBAGA

JUDGE

In the presence of;-

Mr Migere for Mr Ataka for Plaintiff/Applicant

Mr Waweru for Mr Thuita for Defendant/Respondent

Court Assistant: Hilda

E.O.OBAGA

JUDGE