

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA AT ELDORET

PETITION NO. 18 OF 2016

SIOKWEI TARITA LIMITED.....PETITIONER

VERSUS

THE COMMISSION FOR

UNIVERSITY EDUCATION.....1ST RESPONDENT

KISHI UNIVERSITY.....2ND RESPONDENT

RULING

Application before court is dated 13.12.2018 wherein the applicant, Siokwei Tarita Limited seeks orders that the ruling and order of the honourable court of 10th August, 2018 be reviewed to the limited extent that the 2nd respondent be ordered to restore the pre-tenancy condition and deliver up to the petitioner Tarita Centre on L. R. No. Eldoret Municipality Block 7/162 within 30 days of service upon them through their advocates on record, of this order of the court that the 2nd respondent to forthwith and in any event within 30 days of service upon them, through their advocates on record, of this court order pay up the petitioner outstanding rent over its tenancy due and owing at the rate of lease until the date of delivery of previous and the petitioner's further claims for rent for the remainder of the term of the lease, to await the determination of the petition.

The application is based on grounds that the court did by Order of 10th August 2018, order a stay of proceedings herein pending appeal but also ordered the 2nd respondent to do repairs on the suit premises, Tarita Centre to pre-tenancy condition.

The 2nd respondent has not done the repairs even as ordered by the court and given the antecedent behavior of the 2nd respondent, such repairs shall not be done anytime soon, unless compelled to conclude within a specific time; the 2nd respondent, a tenant, has since December, 2016 neglected to restore the Petitioner's premises (Tarita Centre) to pre-tenancy condition and yet the 2nd respondent continues to have possession thereof.

Additionally, for the period that the 2nd respondent has failed to deliver up the premises to the Petitioner, the 2nd respondent has failed to pay even the contractual rent, as borne in the Lease Agreement. In accordance with section 66(1) of the Land Act, 2012, the 1st respondent is enjoined to pay rent per lease until delivery of premises back to the Petitioner, the rent claimed to be payable for remainder of the term of the lease can await determination of the Petition. The delay and or failure to restore the premises on time, even despite the order of the Honourable Court is grossly prejudicial to the Petitioner, the consequence is that the Petitioner has been robbed of rental income and cannot in turn service its mortgages with the bank. The Petitioner's right to protection of property is grossly imperiled, as the bank which has been lenient with the Petitioner now seeks to enforce its Statutory Power of Sale and has expressed as much to the Petitioner's director and even sent valuers to value the property.

It is critical that the 2nd respondent is given a capped time within which to deliver up to the Petitioner the restored premises and to pay rent at the least until the time of surrendering the premises since that duty is an express duty of a tenant.

Part of the orders to achieve the foregoing ends of justice can only be attained by revising the Order of court of 10th August, 2018. It is in the interests of the fair administration of justice that the application is granted to protect against the otherwise devastating violation of fundamental rights of the Petitioner guaranteed by the Constitution of Kenya, 2010.

The application is based on the affidavit of Barnabas Bargarora who states that the court on 10.8.2018 ordered the 2nd respondent to do repairs on the suit land to pre-tenancy condition. The 2nd respondent has not done repairs as ordered. The 2nd respondent has failed to deliver up the premises and pay the outstanding rent. The applicant states that he has been robbed of his rental income.

In the replying affidavit of Prof. John S. Akama, he states that there is an order of stay of proceedings pending the hearing and determination of the appeal. The application goes against the orders of stay of proceedings. That the court is functus officio. He states that there are no new facts, no error apparent on the face of record and that there are no sufficient reasons for review. The deponent states that granting an order for payment of rent will amount to granting a final order.

I have considered the application, replying affidavit and rival submissions and do find that on the 10th of August, 2018, the court ordered for stay of proceedings pending hearing and determination of the intending appeal. The court further ordered that the respondents do repair the premises, Tarita Centre to the pre-tenancy condition. The issue of rent payable was to be determined in the petition.

The application is made under Order 45, rule 1(a) of the Civil Procedure Rules. I do find no new facts that are important to cause the court to

review the order. There is no error on the face of record. The court ordered that the issue of rent to await the determination of the petition.

However, I do find that there are sufficient reasons to give a period within which the 2nd respondent should do the repairs. I do give the 2nd respondent to restore the premises to its pre-tenancy period within 45 days of the Order of the court. The issue of rent to amount to the determination of the petition. Orders accordingly.

Dated and delivered at Eldoret this 11th day of April, 2019.

A. OMBWAYO

JUDGE