

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT ELDORET

ELCLC CASE No. E039 OF 2024

SAMUEL NGUGI NJOROGE
PLAINTIFF

VERSUS

HASHAM LALJI PROPERTIES LIMITED **1ST**
DEFENDANT

SEDCO CONSULTANTS LIMITED **2ND**
DEFENDANT

RULING:

1. The Plaintiff's Notice of Motion Applications dated 22nd June, 2024 and 1st July, 2024 are for determination herein.

Notice of Motion dated 22nd June, 2024;

2. In this Application, the Plaintiff seeks the following orders:
 - (i) Spent
 - (ii) THAT an interlocutory injunction do issue to restrain the defendant by itself, its servants and or agents from interfering with the Plaintiff's leasing interests, denying him access, or in whatsoever manner evicting him or placing into occupation any new tenant or entering into any leasing arrangement with any third party or taking possession of the premises situated on the land parcel known as ELDORET MUNICIPALITY/BLOCK 6/58 pending hearing and determination of this Application in the first instance and

thereafter pending the hearing and determination of the suit.

(iii) THAT the costs of this application be provided for.

3. The facts pleaded in support of the above prayers are set out in the Plaintiff's Affidavit of even date. The Plaintiff deponed that he entered into a lease agreement with the Defendant as landlord in 1993 over business premises situated on Eldoret Municipality/Block 6/58 (hereinafter the suit premises). With the Defendant's permission and at his cost, he partitioned the premises into a hotel, bar, 3 shops, 2 stores, office a caretaker room, toilets and bathrooms which he operated under the name Zamzam Restaurant, while he sublet the stores and shops.
4. The Plaintiff claims that he fulfilled his obligations under the lease by paying rent through the Landlord's bank account. That from the year 2007 to date they have signed 3 lease agreements thereon all of which permitted him to sublet. That the condition of the premises deteriorated through natural wear and tear and with the Defendant's permission, he carried out major renovations on the premises in 2016 for 7 months to the tune of KShs. 3,500,000/-, which renovations he paid for himself. That after the renovations he once again sublet the premises and continued paying rent.
5. The Plaintiff deponed that he has been on the property for 31 years with his lease continuously being renewed. However, the Defendant purported to issue him a letter to the effect that the subsisting lease would not be renewed and he was required to yield possession to the Agent on 30th June, 2024. He termed the

Defendants action irrational, lacking plausible and unjustifiable reason since he is upto date on rent payment. He alleged that the Defendant created a promise, expectation and/or encouragement to renew and extend the lease and the court ought to give effect to the said promise/expectation.

6. The Plaintiff accused the Defendant of attempting to obscure his option to renew the lease. That the Defendant through a communication of 13th March, 2024 stated that it would evict him if he failed to yield the premises to its agent, Sedco Consultants Limited, which is against the law as he is not a trespasser. He further claimed that the Defendant had through the course of dealings created a promise of renewal in his favour and the intimation of non-extension offends the doctrine of proprietary estoppel. He confirmed that he submitted his expression of interest to renew the lease but is yet to receive any response thereto.
7. The Plaintiff deponed that having spent millions in renovation, it is only fair that the lease be renewed to enable him recoup his investments and earn rental income from his sub-tenants. He explained that he is old and needs the income to cater for his medication and livelihood. He claimed that he stands to suffer loss, immense injury and gross prejudice if his lease is not renewed. He sked the court to issue an order of status quo if it is in doubt and that he is willing to continue paying rent.

Notice of Motion dated 1st July, 2024;

8. In his second Application dated 1st July, 2024 the Plaintiff seeks the following orders:-
- (i) Spent
 - (ii) THAT the court be pleased to review the order made on 27th June, 2024 declining to certify the Plaintiff's Motion for injunction as urgent and reconsiders the same by granting interim orders.
 - (iv) THAT an interlocutory injunction do issue to restrain the defendants by themselves, servants and or agents from interfering with the Plaintiff's leasing interests, denying him access, or in whatsoever manner evicting the Plaintiff or placing into occupation any new tenant or entering into any leasing arrangement with any third party or taking possession of the premises situated on the land parcel known as ELDORET MUNICIPALITY/ BLOCK 6/58 pending hearing and determination of this Application in the first instance and thereafter pending the hearing and determination of the suit.
 - (iii) THAT the Officer Commanding Station Eldoret Central Police Station do assist in compliance of the orders and ensure peace prevails.
 - (iv) THAT the costs of this application be provided for.
9. The Application is equally supported by the Plaintiff' Affidavit in which he claims that on 27th June, 2024 the court declined to certify his application for interlocutory injunction urgent. He deponed that in the intervening period, the Defendants have caused to be issued a letter dated 26th June, 2024 indicating that they will forcibly eject him from occupation of the suit

premises. The Plaintiff averred that he received the letter on 29th June, 2024. He asked the court to reconsider the matter in light of the prevailing new circumstance's and grant the interim orders to prevent harm and damage.

The Defendants' Reply:

10. The Defendants opposed the two Applications through a Replying Affidavit sworn by Paul Rutto, the 2nd Defendant's Director. He pleaded that the Application dated 1st July, 2024 had been overtaken by events since it merely sought to certify the application for injunction urgent. He deponed that the 1st Defendant has been placed under receivership, and the 2nd Defendant appointed as Estate Agents to manage, maintain and collect rent from its properties. That the manager through its Advocates wrote to the Plaintiff, whose lease was expiring on 30th June, 2024 directing him to handover the premises to the 2nd Defendant.
11. Mr. Rutto deponed that the Plaintiff's request to renew the lease was declined and he was further reminded to hand over the premises. He averred that the landlord is within its rights to take possession of the premises upon expiry of the lease and upon also communication of its intention to not renew it. He explained that the Defendant informed the Plaintiff that it intended to occupy the premises and run a business as by law allowed of the manager. He further contended that the Plaintiff was aware that the renewal of the lease was subject to approval by the 2nd Defendant.

12. Mr. Rutto also deponed that denying the Defendant an opportunity to occupy the premises or let it out to new tenants with better rates would mean denying them the opportunity to reap the greatest benefits from their investments and raise enough profit to settle their creditors. Further that this would mean the 1st Defendant would remain in receivership for a longer period. He claimed that the Plaintiff has the opportunity to set up shop at a different place, and that the Defendants should not be expected to give up their right of re-entry because the Plaintiff does not feel like moving out.
13. Mr. Rutto further deponed that the only alternative for a tenant whose lease has expired is to render vacant possession. He pointed out that there was no evidence to show that the Plaintiff remained in possession with the Defendants' consent after the notice to vacate was issued. He accused the Plaintiff of using the court process to avoid relinquishing the premises. He further averred that the renovations carried out by the Plaintiff were as a result of his continued use/misuse of the premises. He added that the renovations only benefitted the Plaintiff as the Defendant will be forced to restore the premises for its use upon re-entry.
14. Mr. Rutto explained that the eviction would only arise if the Plaintiff did not willingly vacate, and that it is not illegal since without an active lease, the Plaintiff will have no right to be on the premises. He also pointed out that since the Plaintiff's lease had not expired at the time of issuance of the notice, there was no need to serve it on the Deputy County Commissioner and

the Officer Commanding Station. Lastly, that the fact that the lease was renewed severally did not create a lifetime tenancy, thus it was to be expected that the landlord would at some point require the premises to be yielded back to them. He asked the court to disallow the application and allow the 2nd Defendant re-enter the premises to conduct business.

Submissions:

15. The Application was canvassed by way of written submissions and the court directed the parties to file their written submissions on the two applications. The Parties herein have complied with the Plaintiff filing his submissions dated 21st October, 2025. The Defendants filed their submissions dated 21st October, 2025.

Plaintiff/Applicant's Submissions:

16. Counsel for the Plaintiff clarified that the Application dated 22nd June, 2024 was for injunctive orders and made under certificate of urgency, but on 27th June, 2024 the court found that the application was not urgent. Counsel submitted that the Plaintiff filed the second application under Order 45 Rule 1 seeking a review of the decision of the court made on 27th June, 2024 that the application was not urgent. Counsel for the Plaintiff explained that the application for review is premised on the letter dated 26th June, 2024 and received by the Plaintiff on 29th June, 2024 intimating the Defendants' intention to forcefully evict him from the premises.

17. With regards to the prayer for interlocutory injunction, Counsel submitted that the Plaintiff had been on the premises for more than 30 years under a lease with the 1st Defendant. Counsel submitted that the lease has been renewed thrice, with the last being 1st April, 2019. Counsel confirmed that the Plaintiff had by his letter dated 1st May, 2024 expressed his intention to renew the lease, to which he is yet to receive a response. Counsel reiterated that the Plaintiff had carried out renovations on the premises, during which he did not earn any rent as his sub-tenants were not in occupation.
18. Counsel argued that in the circumstances, the Plaintiff had presented a prima facie case warranting a hearing and determination without affecting the status quo. Counsel argued that the Plaintiff stands to suffer irreparable damage as he engages in a business which relies on occupancy of the said premises. He reiterated that the income from the said business is the Plaintiff's source of livelihood as well as carters for his medical expenses being a man of 79 years. Counsel further argued that the balance of convenience tilts in favour of the Plaintiff and asked the court to allow the application with costs. Counsel relied on **Mrao vs First American Bank of Kenya & 2 Others (2003) eKLR** and **Nguruman Limited vs Jan Bonde Nielsen & 2 Others (2014) eKLR**.

Defendants'/Respondents' Submissions;

19. Counsel for the Defendants relied on the principles for grant of an injunction laid out in the case of **Giella vs Cassman Brown & Co. Ltd (1973) EA 358** and **Nguruman Limited vs Jan**

Bonde Nielsen & 2 others (2014) eKLR. Counsel conceded that there was a lease between the Plaintiff and the 1st Defendant which expired on 30th June, 2024, prior to which the 1st Defendant expressed that it would not be renewing the lease. Counsel accused the Plaintiff of instituting this suit in a subtle attempt to force the 1st Defendant to renew the lease. Counsel asserted that the Plaintiff had remained on the premises without the consent of the Defendants, and neither had he been remitting rent.

20. Counsel submitted that under Section 56 of the Land Act, an owner of private land can enter into a lease agreement and also has powers to terminate the lease once it expires. Further that upon expiry of the lease, the Lessee has no identifiable stake capable of protection and is obligated to deliver vacant possession to the Lessor. Counsel relied on **Velji Shamji Construction Ltd vs Westmall Supermarket Ltd (2007) KEHC 51 (KLR)** and **R&K Investments vs Evanson Gitau (1998) KEHC 228 (KLR)**.

21. Counsel argued that the Plaintiff was always aware that the lease had a sunset clause and cannot rely on the alleged improvements to perpetuate his occupation. Counsel urged that the Plaintiff had failed to establish a prima facie case. Counsel further relied on **Wakf Commissioners of Kenya v Kabundu Holdings Limited (Environment and Land Court Case E034 of 2023) [2024] KEELC 13887 (KLR)**, **Dr. Simano Waiharo Chege vs Paramount Bank of Kenya Ltd, Nairobi**

(Milimani) HCCC No. 360 of 2001 and **Katsuri Limited vs Nyeri Wholesalers Limited (2014) eKLR.**

22. Counsel submitted that the Plaintiff failed to demonstrate that he stands to suffer irreparable harm since the lease expired by effluxion of time and he stands to lose no legal or equitable right. Counsel highlighted that any improvements were done with the knowledge that tenancy was for a fixed term. Counsel further argued that a period of 31 years was sufficient to have recouped the investments on the renovations. Counsel indicated that any loss allegedly suffered is quantifiable and can be compensated by damages, hence not irreparable.
23. On the balance of convenience, Counsel submitted that granting the injunction would cause undue prejudice by allowing the Plaintiff to remain in possession at a rent far below the prevailing market price depriving the 1st Defendant an opportunity to earn a fair return. Counsel submitted that the balance of convenience tilts in the Defendants' favour, and cited the case of **Pius Kipchirchir Kogo vs Frank Kimeli Tenai (2018) eKLR.**

Analysis and Determination:

24. I have considered the two Applications and the response filed by the Defendants. I have also considered the submissions by counsels for the respective parties, and the issues for determination are:-
- (i) *Whether the Plaintiff has met all the requirements for grant of an order of interim injunction*

(ii) *Whether the prayer for review is merited*

(a) **Whether the Plaintiff has met all the requirements for grant of an order of interim injunction**

25. The threshold for grant of an interlocutory injunction is found in the case of **Giella vs Cassman Brown & Company Limited (1973) EA 358**. The Court set out the principles for interlocutory injunctions, which are as follows:-

i. The Applicant must establish that he has a prima facie case with high chances of success.

ii. That the Applicant must demonstrate that the stand to suffer irreparable loss that cannot be compensated by an award of damages.

iii. If the court is in doubt, it will decide on a balance of convenience.

26. The first step therefore is to determine whether the Plaintiff herein has a prima facie case with a probability of success. In determining whether the Plaintiff herein has established a prima facie case, I will refer to the Court of Appeal decision in the case of **Mrao Ltd vs First American Bank of Kenya and 2 others (Supra)** where it was held that:-

“A Prima facie case in a civil application includes but not confined to a genuine and arguable case. It is a case which on the material presented to the court, a tribunal properly directing itself will conclude there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the later.”

27. The Plaintiff seeks a temporary injunction to restrain the Defendants from removing him from the suit property which he entered pursuant to a lease agreement between himself and the 1st Defendant as the landlord. The Plaintiff's claims that the said lease has been renewed severally, thereby creating an expectation and/or promise that the lease ending on 30th June, 2024 would also be renewed, especially since he was up to date on paying rent.
28. The Plaintiff has annexed a lease agreement between himself and the 1st Defendant (SNN-2) that appears to have been made in 2007 under which he was granted a tenancy of the premises for a term of 5 years, 3 months commencing 1st January, 2008. The said lease allowed either party to terminate it prematurely or pay 3 months' rent in lieu of notice.
29. The annexure marked as SNN3 was another lease agreement between the Plaintiff and the 1st Defendant. This lease was also for a term of 5 years 3 months commencing on 1st April, 2013. At Clause 1(xiv) the Lessee undertook that 3 months immediately preceding the determination of the tenancy, he would permit the landlord to place notices for re-letting the premises on any part thereof and allow persons authorised by the landlord or its agents to view the premises.
30. The final lease between the parties herein commenced on 1st April, 2019 which document is also annexed to the Plaintiff's Application. I note that the document as annexed is not

complete and some pages are missing, however, the said lease was clear that it was equally to run for a term of 5 years 3 months.

31. The principle behind a fixed-term tenancy and/or lease is that it comes to an end when the term agreed ends or if terminated by either of the parties thereto under the agreement. The three leases shown to this court were all fixed-term leases for a term of 5 years and 3 months. None of the leases created any equitable right in favour of the Plaintiff to the extent that he would remain on the premises for life, or that the leases would always be renewed as he claims. As shown at SNN3, the Plaintiff had in one of the leases acknowledged that the premises could be taken back by the landlord and leased to another tenant.
32. With regard to the alleged renovations done by the Plaintiff on the suit property, they were clearly undertaken with the Plaintiff's full knowledge that the lease would at some point the lease had an expiry date. So far, the Plaintiff has not tabled anything to show that the lease was meant to continue in perpetuity due to the repeated renewals, nor evidence that the Defendant made a promise to renew the lease thus giving rise to the claim for proprietary estoppel. The Plaintiff has therefore failed to establish that he has a prima facie case.
33. The second requirement is for the Plaintiff to demonstrate that he will suffer irreparable loss if the injunction is not granted. To establish irreparable harm, the applicant must demonstrate that it is a harm that cannot be quantified in monetary terms or

which cannot be cured. Irreparable harm was discussed in **Nguruman Limited vs Jan Bonde Nielsen & 2 others (2014) KECA 606 (KLR)**, where the court explained that:-

“On the second factor, that the applicant must establish that he “might otherwise” suffer irreparable injury which cannot be adequately remedied by damages in the absence of an injunction, is a threshold requirement and the burden is on the applicant to demonstrate, prima face, the nature and extent of the injury. Speculative injury will not do; there must be more than an unfounded fear or apprehension on the part of the applicant. The equitable remedy of temporary injunction is issued solely to prevent grave and irreparable injury; that is injury that is actual, substantial and demonstrable; injury that cannot “adequately” be compensated by an award of damages. An injury is irreparable where there is no standard by which their amount can be measured with reasonable accuracy or the injury or harm is such a nature that monetary compensation, of whatever amount, will never be adequate remedy.”

34. On this limb, the Plaintiff claimed that he stands to suffer immense injury, gross prejudice, loss and damage in the event the lease is not renewed. He explained that he is an old man of 79 years who is currently ailing, and that he requires the rental income from the sub-lessees to cater for his medication and livelihood. The Plaintiff has also claimed that he runs a business that relies on his occupation of the suit premises.

35. On the issue of occupation of the suit premises, the Plaintiff has not explained why his business cannot be run from any other premises save for the suit premises herein. In any event, he had almost 3 months within which to seek alternative premises to run his business, but he did not demonstrate that he even attempted to do so but could not source a location for one reason or the other. As to the fact that he is of advanced age, old age alone cannot be the reason by which an opposing party is denied their proprietary rights.

36. Where the court is in doubt, it is to determine the application on a balance of convenience. I do not believe that the same tilts in favour of the Plaintiff herein. In **Kenleb Cons Ltd vs New Gatitu Service Station Ltd & Another (1990) K.L.R 557**, Bosire J. held that to succeed in an application for injunction, an applicant must also show he has a legal or equitable right which requires protection by injunction. As we speak, it remains a fact that the lease expired on 30th June, 2024 and the same has not been renewed. The 1st Defendant no longer wishes to renew that same and it issued the Plaintiff with a notice to vacate of almost three months, even though nothing in the tenancy agreement required them to do so.

37. The lease has since expired, and the Plaintiff has not demonstrated that he has any right capable of being protected under the law. In absence of evidence to show that the Plaintiff has any rights over the property in dispute I am not satisfied that an injunction should be issued as prayed. Having failed to

establish meet the threshold for grant of an injunction, it follows that the said relief cannot be granted.

(b) Whether the prayer for review is merited;

38. In the second application, the Plaintiff added a prayer for review of the order made on 27th June, 2024 declining to certify the Plaintiff's Motion for injunction as urgent. Under that prayer, the Plaintiff asked the court to reconsider the same by granting interim orders. From the nature of this order, it is clear that the same has been overtaken by events since the Application for an order of injunction has now been determined on merit.

39. In any event, the prayer for review was based on the fact that the Defendants wrote to the Plaintiff on 26th June, 2024 indicating that he would be forcefully evicted if he did not vacate the suit premises. I have seen the letter dated 26th June, 2024 which the Plaintiff claims was served on him on 29th June, 2024 after the court declined to certify his initial application as urgent. In the said letter, the Defendants informed the Plaintiff that they had by a letter dated 14th June, 2024 responded to his letter dated 1st May, 2024 seeking a renewal of the lease. The Defendants reiterated that the 1st Defendant had no intention of renewing the lease. The Plaintiff was then informed that if he did not vacate the premises immediately upon expiry of the lease, he would be evicted without further notice.

40. This information however was not new. The same had already been communicated to the Plaintiff vide the first letter of 13th March, 2024 informing him that the tenancy agreement would

expire on 30th June, 2024. Vide the same letter, the Defendant also informed the Plaintiff that the lease would not be renewed or extended, thus he was required to vacate the premises, failure to which he would be forcefully evicted without further notice. I do not see any justification for review of the orders therefore, since first the application does not meet any of the requirements set out at Order 45 Rule 1, and secondly, as already stated the same has been overtaken by events.

Orders:-

41. Flowing from the above, it is evident that the Plaintiff failed to demonstrate that he is entitled to the orders sought. Consequently, the court determines that:
- (a) The two applications dated 22nd June, 2024 and 1st July, 2024 lack merit and are hereby dismissed.
 - (b) On the issue of costs, since this is a fresh matter that is yet to be heard, the costs of the two applications shall be in the cause.
42. Orders accordingly.

DATED, SIGNED and DELIVERED virtually at **ELDORET** on this **27TH** day of **NOVEMBER, 2025** vide Microsoft Teams.

HON. C. K. YANO
ELC, JUDGE

In the presence of;

Mr. Mwangi holding brief for Mr. Otwal for Defendants.

Mr. Kiprop for Plaintiff.

Court Assistant - Laban.

ORIGINAL