



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

ENVIRONMENT & LAND COURT

ELC SUIT NO. 2 OF 2014

SALOME NJERI CHIIRA

T/A RADIANT PANGANI HOSPITAL.....PLAINTIFF

=VERSUS=

FLORENCE MUMBI MACHARIA.....1ST DEFENDANT

F.M KAMANGA MEDICAL INVESTMETNS LTD.....2ND DEFENDANT

RULING

1. The Plaintiff/Applicant filed a Notice of Motion dated 14th February, 2019 in which she sought stay of execution of the Court's orders given on 13th December, 2018 and for extension of orders to vacate by a period of five (5) months. The Applicant had a lease with the 2nd Defendant/Respondent in which the Applicant was operating a hospital in the Respondent's premises. Before the lease expired the Respondent intimated to the Applicant that the lease was not going to be renewed. The Applicant then moved to Court and filed this suit.
2. The Respondent filed an application seeking eviction of the Applicant. The Respondent was granted orders of eviction against the Applicant. The Court gave the Applicant 60 days within which to move out or she be evicted. These orders were given on 13th December, 2018. On the last day of the 60 days period given, the Applicant filed the present application in which she seeks stay of execution of the orders of 13th December, 2018 and for extension of the period by five (5) months.
3. The Applicant contends that she is putting up her own building in which she intends to move her business and that that building is almost complete. She requires to install equipments like ICU machines and that if she were to be evicted, the eviction would be disastrous to a point of even causing deaths especially of patients who are in ICU.
4. The Applicant's application is opposed by the Respondent through a Replying Affidavit sworn on 11th March, 2019. The Respondent contends that this application is meant to perpetuate the Applicant's stay in the demised premises when she is not paying rent to the detriment of the Respondent; that the Applicant is out to abuse the process of Court to further frustrate the Respondent who has been frustrated by the filing of this suit and that the Applicant has used this case to buy time to complete constructing her building which in any case she has not shown that she is associated with the same.
5. The Respondent further contends that it has a potential client who is willing to rent the demised premises at a monthly rent of Kshs.850,000/= and that the Respondent's directors have tried to negotiate granting a three month extension to the Applicant on condition that she clears outstanding rent and pays Kshs.850,000/= per month as rent but that the Applicant has declined to agree to the terms.
6. I have carefully considered the Applicant's application as well as the opposition to the same by the Respondent. I have also considered the oral submissions made by the parties during the hearing of the application. The only issue for determination is whether the Applicant should be granted extension for 5 months or not.
7. During the hearing, the Respondent's Counsel indicated that they were willing to give the Applicant up to 30th April, 2019. The Applicant's Counsel on the other hand indicated that they were pleading for two more months. As at the time of arguing the application, already the Applicant had been in the demised premises for more than one month from the time the 60 days granted expired. It therefore means that if they were to be granted two more months, they would have been granted an aggregate of three months extension. If the Respondent's offer was to be taken, it will mean that the Applicant would have been granted an extension by about two months.

8. The grant of extension of time is an exercise of the discretion of the Court. This discretion is however exercised based on the circumstances. The Respondent declined to receive rent after the expiry of the lease. It is not that the Applicant refused to pay rent. When the Applicant approached Court seeking that rent be deposited in Court, the Court declined to allow that but allowed the Respondent's application for eviction and gave the Applicant 60 days within which to move out.

9. The Applicant has now come to Court seeking extension of time. The reason for seeking extension is that the Applicant is putting up her own building to which she intends to move her business. The building is almost complete and that if she were evicted, the eviction would occasion disastrous consequences as she is operating a hospital with intensive care facilities in place. If patients were to be forcefully moved, those in ICU machines will be affected.

10. I do find that the grounds for seeking extension are valid. A hospital is not like a shop where one can move goods and keep them somewhere. A hospital has equipments like ICU machines which need to be installed with care. It is therefore important that the Applicants be granted an extension to enable her re-locate in an orderly manner as opposed to being evicted.

I therefore find that the Applicant's application is merited. I allow it with the result that stay of execution of the orders of 13th December, 2018 is granted on condition that the Applicant clears all the outstanding arrears of rent based at the rate which was prevailing before the determination of the lease within 14 days failing which execution to issue. If the Applicant complies with the conditions for stay, the period for her vacation from the premises is hereby extended until 31st May, 2019. The Applicant shall bear the costs of this application.

Dated, Signed and delivered at Nairobi on this 3rd day of April, 2019.

E.O.OBAGA

JUDGE

In the presence of M/s Gichoya for Mr. Gachie for Applicant and Mr. Gichamba for 2nd Defendant and M/s Makaba for 1st Defendant.

E.O.OBAGA

JUDGE

3.4.2019