



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT (LAND DIVISION)**  
**AT MILIMANI LAW COURTS, NAIROBI**  
**ELCLC CASE NO. E165 OF 2025**

**WRENS** **ENTERPRISES**  
**LIMITED.....PLAINTIFF/APPLICANT**

**-VERSUS-**

**ADVENT VALUERS LIMITED.....1<sup>st</sup>**  
**DEFENDANT/RESPONDENT**  
**KENYATTA UNIVERSITY.....2<sup>nd</sup>**  
**DEFENDANT/RESPONDENT**

**RULING**

**The Application**

1. The Plaintiff/Applicant moved this Court by a Notice of Motion dated 3<sup>rd</sup> April 2025 brought under Order 40 Rules 1, 2 and 4 of the Civil Procedure Rules and Section 3A of the Civil Procedure Act, seeking a temporary injunction restraining the Defendants from attaching, interfering with, selling or disposing of the Plaintiff's goods and from interfering with its occupation of Office No. 17 on L.R. No. 11026/2 at Unicity Mall, Thika Road, pending the hearing and determination of the application and the suit.
2. The Application is supported by the Affidavit of Wilfred Mworira Thanja, the Plaintiff's Managing Director, who depones that the Plaintiff is a tenant in the said premises at a quarterly rent of Kshs. 185,692.80 under a lease running from 1<sup>st</sup> January 2022 to 31<sup>st</sup> December 2028. He avers that the Plaintiff has been operating a wines and spirits business from the premises and has been making payments in respect of rent, service charge and

VAT.

3. The Applicant further states that the Defendants have not been issuing statements of account and withholding tax certificates, and that on 18<sup>th</sup> March 2025 auctioneers instructed by the Defendants proclaimed the Applicant's goods for alleged rent arrears of Kshs. 849,691, which the Applicant disputes. It is contended that the distress is unlawful and threatens the Applicant's quiet enjoyment of the premises and business operations.

### **The Response**

4. The Defendants oppose the Application through a Replying Affidavit sworn on 17<sup>th</sup> July 2025 by Timothy Saruni, a director of the 1<sup>st</sup> Defendant, who states that the 1st Defendant is the managing agent of Unicity Mall on behalf of the 2nd Defendant, the owner of the property. The Respondents contend that the Application is without merit and that the Applicant is in rent arrears together with outstanding service charge and electricity bills.
5. It is deponed that the rent arrears amount to Kshs. 1,080,376.08, while the service charge and electricity arrears stand at Kshs. 213,882, as reflected in the tenant statements of account annexed to the Replying Affidavit. The Respondents state that the Applicant has made irregular payments over time and has failed to clear the outstanding balances despite repeated demands.
6. The Respondents further aver that the instruction of auctioneers to levy distress for rent was a lawful recovery measure following the Applicant's default. They dispute the allegation regarding withholding tax certificates, explaining that such certificates are issued only by entities mandated to withhold tax. The Respondents contend that the Applicant is undeserving of equitable relief and pray that the Application be dismissed with costs.

## **Applicant's Submissions**

7. Vide submissions dated 13<sup>th</sup> October 2025 Applicant submits that the central issues for determination are whether the distress for rent levied by the Defendants is lawful, whether the rent accounts are accurate, and whether the Applicant has met the threshold for grant of a temporary injunction. Relying on the principles in **Giella v Cassman Brown & Co Ltd** and the definition of a prima facie case in **Mrao -Vs- First American Bank of Kenya Ltd & 2 Others**, the Applicant argues that it has demonstrated a landlord-tenant relationship and shown apparent infringement of its rights through unlawful proclamation of goods over disputed arrears.
8. It is submitted that the rent statements relied upon by the Defendants are inaccurate and include double charges for electricity which, under Clause 8 of the Letter of Offer, ought to be included within the service charge. The Applicant further contends that the Defendants failed to issue Electronic Tax Receipts for VAT from 2022 until July 2025, impairing the Applicant's statutory compliance and business operations.
9. The Applicant maintains that it is not in arrears, that there is need for reconciliation of accounts following surrender of part of the premises, and that unless restrained, the distress threatens irreparable harm to its business. The Court is urged to grant the injunction as damages would not be an adequate remedy and the balance of convenience favours preservation of the tenancy.

## **Respondents' Submissions**

9. In submissions dated **5<sup>th</sup> December 2025**, the Respondents identify the main issues as whether the Plaintiff is in rent arrears, whether the Plaintiff has met the threshold for grant of an injunction, and whether distress for rent is lawful in the circumstances. The Respondents submit that the Plaintiff is in substantial arrears amounting to **Kshs. 1,080,376.08** in rent and **Kshs. 213,882** in service charge and

electricity, as demonstrated by the rent statement annexed to the Replying Affidavit.

10. They argue that the Plaintiff failed to rebut the statement by producing receipts, bank records or M-Pesa statements and therefore remains in default. Reliance is placed on **Julius Mogalla Gellode t/a Esmart Technical College v Ouru Power Ltd & Another, Samuel Kipkori Ngeno & Another v Local Authorities Pension Trust**, and **Patrick Waweru Mwangi & Another v Housing Finance Co. of Kenya Ltd**, for the proposition that a tenant in arrears approaches equity with unclean hands and is undeserving of injunctive relief.
11. On the principles in **Giella v Cassman Brown & Co Ltd**, the Respondents submit that the Plaintiff has neither established a prima facie case nor demonstrated irreparable harm, contending that ordinary distress for rent does not constitute substantial loss. They rely on **Central Watch Company Ltd. -Vs- Embu Gatari Housing Co-operative Society Ltd** and **Andrew Wanjohi Kaburu v Kaburu Muteti & Co** to argue that substantial loss must be proved and not merely alleged.
12. The Respondents further submit that distress for rent is a lawful remedy once arrears exist, citing **Peter Nthenge v Daniel Itumo & Another** and section 3 of the Distress for Rent Act. They contend that restraining the landlord would unjustly deny it rental income and urge the Court to dismiss the Application with costs.

### **Issues for Determination**

13. I have considered the Notice of Motion dated 3<sup>rd</sup> April 2025, the affidavits filed in support and in opposition together with the annexures thereto. I have also considered the written submissions of counsel for the parties and the authorities cited, and the following are the issues for determination: —
  - a) Whether the Plaintiff/Applicant's application meets the threshold for the grant of a temporary injunction pending the hearing and

determination of the suit.

b) Who should bear the costs of the application.

### **Analysis and Determination**

14. It is now established in Kenya that the principles for consideration in determining whether a temporary injunction may be granted are well settled in **Giella v Cassman Brown & Co. Ltd (1973) EA 358**, where the Court held that: *“First, an applicant must show a prima facie case with a probability of success. Secondly, an interlocutory injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury, which would not adequately be compensated by an award of damages. Thirdly, if the court is in doubt, it will decide an application on the balance of convenience.”* Guided by the foregoing principles, I now proceed to examine, whether the Plaintiff has demonstrated a prima facie case with a probability of success.
15. In considering whether a prima facie case has been established, the Court is guided by the definition in **Mrao Ltd -Vs- First American Bank of Kenya Ltd & 2 Others [2003] KLR 125**, where a prima facie case was described as one in which, on the material presented, a tribunal properly directing itself would conclude that there exists a right which has apparently been infringed so as to call for an explanation or rebuttal from the opposite party.
16. From the material placed before me, it is not disputed that there exists a relationship between the parties founded on a written lease commencing on 1<sup>st</sup> January 2022. The Plaintiff contends that it has consistently paid rent and that the alleged arrears arise from unilateral charges, double billing of electricity contrary to the Letter of Offer, and failure by the Defendants to issue Electronic Tax Receipts for VAT.
17. On the other hand, the Defendants have produced a rent statement showing substantial arrears and contend that the Plaintiff has failed to rebut the same through proof of payment. While there appears to be a genuine dispute on the accuracy of accounts and the propriety of some

charges, the Plaintiff has not placed before the Court cogent evidence demonstrating full settlement of rent as alleged. In the circumstances, the Court is not persuaded that the Plaintiff has established a clear prima facie case showing an apparent infringement of a legal right warranting injunctive protection.

18. On the second limb of irreparable harm, the guiding authority remains **Nguruman Ltd v Jan Bonde Nielsen & Others [2014] eKLR**, which emphasizes that the injury apprehended must be actual, substantial, and incapable of adequate compensation by damages. The Applicant asserts that distress for rent would disrupt its business operations. However, distress for rent is a lawful remedy where arrears exist and any loss occasioned by wrongful distress is quantifiable and compensable in damages. The Plaintiff has not demonstrated any unique or exceptional loss that cannot be remedied through monetary compensation. I therefore find that the element of irreparable harm has not been satisfied.
19. On the final limb of balance of convenience, and consistent with **Giella v Cassman Brown**, this becomes relevant only where doubt exists. In this case, the Defendants stand to be deprived of rental income while the Plaintiff continues in occupation of the premises despite disputed arrears. The balance of convenience tilts in favour of allowing the landlord to exercise its lawful remedies, subject to reconciliation of accounts at trial, rather than restraining distress without clear proof of compliance by the tenant.

### **Final Orders**

20. Having considered the Application, the affidavits, submissions and the applicable law, the Court makes the following orders:
  - a) The Plaintiff's Notice of Motion dated 3<sup>rd</sup> April 2025 is hereby dismissed.
  - b) Costs of the application shall be in the cause.

It is so Ordered.

**DATED, SIGNED and DELIVERED** virtually in **NAIROBI** this **3<sup>RD</sup>** day of **FEBRUARY, 2026**.

**HON. JUSTICE MOHAMED N. KULLOW**

**JUDGE**

**Ruling delivered virtually in the presence of:**

**No appearance by the parties and the advocates**

**Ms. Philomena W.**..... Court Assistant