



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT MILIMANI LAW COURTS, NAIROBI
ELC CASE NO E304 OF 2025

MT KENYA SUN LIMITED..... 1ST
PLAINTIFF/RESPONDENT

-VERSUS-

THE REGISTERED TRUSTEES OF THE AGRICULTURAL
SOCIETY OF KENYA (NAIROBI BRANCH)
.....DEFENDANT/APPLICANT

RULING

Background

1. The applicant has filed a notice of motion application dated 7th April 2025 seeking for the following orders
 - a) Spent
 - b) That this honourable court be pleased to set aside the status quo orders issued on 21st March 2025
 - c) That this honourable court be pleased to grant leave to the defendant Applicant to levy distress for rent arrears against the plaintiff /respondent amounting to Ksh 4,555,500.00 as at 20th March 2025.
 - d) That this honourable court be pleased to issue express orders to OCS in charge of Nanyuki Police station to enforce compliance of the Ruling delivered on 5th December 2025
 - e) Any other order that the court may deem feet to grant

- f) Costs of the application
2. The application is supported by grounds as laid down in the affidavit of Amos Kirui where he deponed that vis the court's ruling on the 21st of March gave orders for status quo contradicting its ruling dated 5th March 2025 which ruling of 5th March 2025 found the respondent to be in arrears and hence the applicant was entitled to levy for distress of rent
 3. That the ruling of 5th March 2025 was still in effect as it had not been appealed against neither had it been stayed or set aside and as such the applicant warranted to execute the terms of it. He deponed that the status quo orders of 21st March 2025 had been obtained by the respondent misleading the court in its application dated 20th March 2025
 4. He deponed that it was imperative for the status quo orders to be vacated as the ruling of 5th March was still in place and there being orders as to stay the same, would embarrass the court for issuing contradicting orders hence this application.

Respondents reply

5. The application was opposed via the replying affidavit sworn by Isaac J.N Githinji on the 11th July 2025. He deponed that the applicant being aggrieved by the order of 5th March 2025 sought for review of the said ruling in the application dated 25th March 2025 hence the status quo orders.

Applicant 'submissions

6. The applicant submitted on two major issues being;

- i. Whether the status quo orders issued on 21st March 2205 ought to be stayed.

It was submitted that the orders of status quo were issued on misrepresentation of facts being that the respondent had filed an application prior seeking injunctive orders and in the alternative status quo orders which application was heard and dismissed on both prayers in the ruling of 5th March 2025. The applicant submitted that the application of 20th March was one and the same as the dismissed application seeking for status quo only that it had been drafted in different language to mislead the court. That further the respondent had failed to honour its commitment of paying monthly rents of Ksh 350,000/= that they had committed to by themselves and misled the court to think otherwise in its supporting affidavit sworn by Isaac J.N Githinji which led to grant of the status quo orders.

That the status quo orders are not meant to level hardship and not prejudice any party which in not the case here as the respondent is occupying the premises in rental arrears. Counsel relied on the case of **Thugi River limited & Another Vs National Bank of Kenya Limited & 3 others**

Counsel further submitted that the ruling was contradicting the earlier ruling of the 5th March 2025.

Counsel further reiterate that the ruling of 5th, March was still active and issuance of the orders of 21st March was contradictory the earlier ruling risking embarrassing the court. Counsel relied on the

case of **Nairobi Business Park Limited Vs Another Vs Kenya Forestry service (2013)KEHC 3064 (KLR)**

- ii. Whether the applicant should be granted leave to levy for distress.

On this counsel submitted that it is the right of a landlord under section 3(1) of the Distress for Rent Act to recover monies where a tenant owes under a tenancy agreement

Respondent's submissions

The respondent submitted that the status quo orders were issued after an application for review to preserve subject matter pending the determination of the suit and relied on the case of **Fatuma Abdi Jillo Vs Kuro Lengesen & another (2021) eKLR**

He further submitted that setting aside the status quo order would mean that the applicant can evict the respondent deciding on substantive issue at an interlocutory stage which will be prejudicial to the applicant relying on the case of **Lucy Ougo 7 3 others Vs County Government of Nairobi & another (2021) KEELC 2580**

On whether the applicant should be granted leave to evict the respondent counsel submitted that orders for eviction would be premature at this stage as it is an issue to be considered at the main hearing.

That further any eviction orders would not only affect the respondents but other third parties conducting businesses at the premises.

The respondent further submitted the plaintiff should not be allowed leave to levy distress for rent as the issue of rent is what is yet to be determined in the main suit and as such any order would be prejudicial to the respondent relying on in **Civil suit 300 of 2012 of flex construction solutions ltd versus Verandel court Limited**

7. Analysis and Determination

Having looked at the application, the rebuttal from the respondents and the submissions the issues for determination are as follows

- iii. Whether the status quo orders of 21st March 2205 should be set aside

The applicant has indicated that the respondent concealed facts which led to the court issuing contradicting orders in the ruling dated 21st March 2025.

I have perused the ruling of 5th March 2025 and the court addressed itself on the issue of status quo orders and declined to grant the respondent the said order indicating that the respondent the applicant herein had proved her case and was entitled to enjoy her proprietary rights being that the respondent had not been paying rent to the suit property.

The respondent then filed the application dated 21st March 2025 which he sought for orders to have the ruling of 5th March 2025 reviewed and for orders for preservation of the suit to be issued which in this case are still status quo orders.

8. A perusal through the said application did not point out to discovery of new or important evidence, neither was there proof of an error apparent on the face of record as in order 45 rule 1 of the civil procedure rules. This leaves the limb of any other sufficient cause which the respondent could ride on being that he sought for preservation of the suit property. This would have been the case had the ruling of 5th March 2025 not been in place. The court would clearly not have given the orders for status quo had it been made known that there was an active ruling that had not been set aside that denied the very same orders of status quo. This in my view was a case of concealment of facts by the respondent. The applicant avers that the orders were issued on concealment of facts, which if the court knew, would not have granted the orders which have been listed in the application. This court therefore has the discretion to vary or vacate the orders in light of the new fact. In the case of **Atlas Copco Customer Finance AB vs Polarize Enterprises (2016) eKLR**, the court distilled the factors that may be considered when faced with a question of discharge, varying or setting aside of an injunctive order. The court held as follows: “ it is now trite that some of the factors that guide the exercise of the courts' discretion in this area of law are, but not limited to:
- a) proof that the injunction was obtained by concealment of facts which if presented would have worked against the granting of the injunction;

- b) a radical change in the circumstances of the suit, such that it is no longer necessary to have the injunction;
- c) proof that the general conduct of the holder of injunction is such that the court is impelled to discharge the injunction, for instance, where the injunction is being used to intimidate the Defendant or achieve an ulterior purpose;
- d) proof that the sustenance of the injunction would cause an injustice.”

In the present case, the above case can apply as well in seeking to vacate the status quo orders especially if the orders would cause an injustice to the applicant.

ii. Whether the applicant is entitled to leave to evict the respondent

Having submitted that the status quo orders are not in place as above and the issue of arrears not being in dispute, the respondent having admitted to the same in his supporting affidavit to the application dated 20th March, 2025, it follows therefore that the respondent is in fact benefitting from continued occupation in the suit premises at the detriment of the applicant whom is entitled to enjoy the rights to his property. The applicant has attached a schedule of rental arrears which point to arrears from the December of 2023 up to until the month of June 2025. The respondent has only paid rent of the month of April 2025 as evidenced in the receipts attached to his replying affidavit. Having sworn on oath to settle the arrears and has not till date is not an indicator of lack of good faith and as such is not entitled to keep enjoying being in the suit

premises at the expense of the applicant. The applicant is therefore entitled for leave to effect eviction as the termination notice dated 3rd December 2025 and levy for distress for rent.

However, in this case the respondent has pointed out that there are 3rd parties who will be prejudiced should eviction orders issue. The applicant in paragraph 8 of its notice of motion application has given an alternative that he is willing to allow for status quo orders to subsist and in the alternative the applicant do pay the rental arrear accumulating to Ksh 4,555,500 /=^{as} at 20th March 2025.

In the interest of justice since there is an available remedy that would occasion less injustice to both parties, the court would be inclined to allow for the subsistence of the status quo orders conditional on the respondent settling the arrears. The respondent should produce a schedule before this court on how he intends to settle the arrears that would be binding for a period of time and in default, the court would grant leave for eviction orders and levy distress for rent.

Final disposition

For the foregoing reasons, I order as follows

- i. That the applicant and the respondent should agree on the time frame on which the arrears in the sum of Ksh 4,555,500 /=^{as} at 20th March 2025 are to be cleared up by the respondent
- ii. That the respondent should produce a schedule based on the agreement as above on how they will clear the arrears

- iii. Failure to act on (i) and (ii) above the applicant shall be at liberty to recover the same by levying distress for rent
- iv. Failure to act on (i) and (ii) above the applicant shall be entitled to commence the eviction process pursuant to the termination notice dated 3rd December 2025.
- v. Cost of the application be borne by the respondent.

It is so ordered.

DATED, SIGNED and DELIVERED virtually at **NAIROBI** on this **23rd** day of **March, 2026.**

MOHAMMED N. KULLOW
JUDGE

Ruling delivered in the presence of: -

Mr. Jilto..... for the Defendant/Applicant

Mr. Ireri..... for the Plaintiff/Respondent

Philomena W...... Court Assistant