



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT KITALE**

**LAND CASE NO. 7 OF 2019**

**(AS CONSOLIDATED WITH ELC NO. 8 OF 2019)**

**PANKAJ DODHIA T/A P.J. DODHIA HARWARD.....PLAINTIFF**

**VERSUS**

**NATIONAL CEREALS & PRODUCE BOARD.....DEFENDANT**

**RULING**

1. Two Notices of Motion both dated **28/1/2019** were filed by the plaintiff on **29/1/2019**. Save for the amounts in terms of value of goods likely to be destroyed during an alleged intended eviction the two application are otherwise similar in their prayers. The plaintiff in **Kitale ELC No. 8 of 2019** is **Karan Wholesalers Ltd.** The defendant is the **National Cereals and Produce Board** in both suits. Each of the application seeks an order of temporary injunction to restrain the respondent/defendant, its servants or agents or anyone claiming through it from evicting, denying access, leasing out, alienating or in any way interfering with the applicants' use of store No. **003 Kitale Depot and 004 Kitale Depot** respectively pending the hearing and determination of the respective suits or alternatively, this court be pleased to order that the status quo be maintained pending the hearing and determination of the suit. They also prays for costs.

2. The applications is founded on the grounds set out at their foot and in the respective supporting affidavits of the plaintiffs' agents **Pankaj Dodhia** and **Gudka Hiren Mulji** respectively, sworn on **28/1/2019**. These are that the respondent has in breach of the terms of a lease agreements purported to terminate the same without proper and valid notice and threatened to evict the applicant on **4/2/2019**; that the applicants have goods worth over **Kshs. 50 million** and **75 million** in the stores which included fragile merchandise which may go to waste in any attempted illegal eviction; that given the short notice the applicants cannot easily find alternative and suitable stores for their stock; that the applicants have religiously met their obligation to the respondent by paying rent and regularly and punctually and is ready to continue doing so; that the threatened eviction will subject them to hardship, inconvenience, embarrassment and irreparable loss; the respondent will not be prejudiced if the orders sought are granted; that the balance of convenience is in favour of the applicants; that the applicants have a prima facie case with chance of success and that the applicants have come to equity with clean hands.

3. The respondent through its acting **Senior Legal Officer, Veronicah Mapesa Shiundu**, filed sworn replying affidavits on **24/4/2019** in response to the two applications. She depones that the applicants have not demonstrated a prima facie case or threat of irreparable harm; that the lease agreements on which is suits are based provides for termination notice of 2 months in favour of either party and notice was, properly and within the defendant's rights, issued to the plaintiffs on **3/12/2018** to **4/2/2019** which is a duration of **2 months** as envisaged in the lease agreements; that it is more than **3 months** since the notices were served and the plaintiffs ought to have found alternative space; that there is no legal right the plaintiffs are seeking to enforce other than the appropriate length of the notice and a temporary injunction cannot issue in the circumstances; that nothing perishable is in the catalogue of the goods held by the plaintiffs in the premises and that no risk irreparable injury has been demonstrated. Further the respondent avers that there has been no threat of forceful eviction and intimate the possibility of following the law in seeking vacant possession of the premises.

4. As soon from the above the two application are similar in nature and involve the same issues and I hereby order that they are hereby consolidated for the purpose of issuance of one ruling.

5. This court ordered the parties to file submissions in this matter on **24/4/2019** and none of them filed any.

6. I have perused the applications and the replying affidavits and I find that the respondent's averment that the only issue in question is the duration of the notice after service and that there is no other legal right that the applicants seeks to protect.

7. On the first issue I do note that even if the notice was served on **17/12/2018** the effective period of notice would not run from the date of the notice, that is, **3/12/2018** but from the date of service thereof. It is therefore certain that the plaintiffs would have a legal remedy in the event the eviction was carried out before 2 months elapsed from **17/12/2018**. Each of the plaintiffs merely received a notice to vacate the stores leased to them by the defendant both dated **3/12/2018**. Each of the notices is set out in very amiable language as follows:

**“Kindly arrange of hand over the store to the board not later than 3/2/2019. We wish to take this opportunity to thank for the cordial relationship we had during the tenancy.”**

8. I do not find any threat of eviction in those notices. There is therefore no threat of irreparable injury to the plaintiffs. In the circumstance I find that the two applications dated **28/1/2019** have no merit and they are hereby dismissed with costs to the defendant. The orders of injunction earlier on issued in both suits on **31/1/2019** and extended from time to time are hereby vacate.

**Dated, signed and delivered at Kitale on this 30<sup>th</sup> day of July, 2019.**

**MWANGI NJOROGE**

**JUDGE**

**30/7/2019**

Coram:

Before - Hon. Mwangi Njoroge, Judge

Court Assistant - Collins

N/A for Applicants

N/A for the Respondents

**COURT**

Ruling read in open court.

**MWANGI NJOROGE**

**JUDGE**

**30/7/2019**