

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ELC APPEAL NO. 13 OF 2019

TRELLBORG K. LIMITED.....APPELLANT

VERSUS

CAR FOR CARE LIMITED.....RESPONDENT

(Being an Appeal from the Ruling and Order of the Honourable Mr. I. Orege, Senior Resident Magistrate dated 28th January, 2019 in Milimani CMCC No.4767 of 2015)

RULING

The Appellant filed the application dated 11/02/2019 seeking an order a mandatory injunction to compel the Respondent by itself or through its agents to release the Applicant's goods being 10000 litres Roto Tank, 2 pacwell car wash electric machines, 1 pacwell petrol carwash machine, each with a pipe and a gun, compressor 150 litres, CCTV camera and the DVR, small generator 12kva, hoiving machine, a tent for car wash shed, 4mts hollow tubes 2 by 2 feet, 10 pcs 4mts hollow tubes 1 by 1 feet, 20 pcs all within L.R No. 209/6849- Dakar Road, Industrial Area, Nairobi. The Appellant also seeks an order to deposit the sum of Kshs. 21,713/= as security, which it stated the Respondent was claiming in court.

The application was made on grounds that the Appellant was until recently a tenant operating a car wash and office No. C2 within L.R No.209/6849- Dakar Road, Industrial Area, Nairobi vide a lease dated 01/07/2015 but has since been evicted and denied access to the premises by the Respondent, who it claimed destroyed its carwash shed and other fixtures in the suit premises and detained its goods. The Appellant claimed the Respondent had threatened to sell its seized goods, which prompted it to file the application which was dismissed by the Learned Magistrate, and which is the basis of this appeal.

The application was supported by the affidavit of Wallace Muchami Muturi, the Appellant's Managing Director sworn on 11/02/2019. He deponed that instead of the Respondent allowing the Appellant quiet enjoyment of its leased suit premises, it disconnected electricity to the premises, blocked the entrance, and went ahead to threaten the Appellant's employees and clients and thus hampered the Appellant from operating its car wash business. He averred that the Appellant had always paid the Respondent rent as and when due and contended that the Respondent could have deducted whatever amounts it was claiming from the deposit of Kshs. 45,000/= but it declined to do. He stated that the Respondent claimed a sum of Kshs. 21,713/= as rent arrears, which the Appellant contested, and annexed a copy of the letter dated 19/07/2018 sent by the Respondent's advocates demanding the rent arrears. He deponed that as much as the Respondent was claiming fictitious arrears to enable it retain the goods, the Appellant was ready and willing to deposit the sum in court so as to secure its goods. It contended that once the amount was secure in court, the Respondent would not have suffered any prejudice but the Learned Magistrate nonetheless dismissed its application on frivolous grounds that the arrears had been admitted. He annexed a copy of the application that was filed in the magistrates' court. He urged that the Respondent should be restrained from disposing of its goods and that the goods should be released forthwith to the Appellant to obviate any further losses since the Appellant's business had collapsed and it needed to start all over again.

The application was opposed by the Respondent through the affidavit of its managing director, Joseph Maina Kimani, sworn on 20/03/2019. He deponed that the application was frivolous as the order or ruling appealed against had not been exhibited. He further deponed that similar applications were filed in the magistrates' court and were dismissed for lack of merit coupled with tardiness on the part of the Appellant who did not even tender its submissions as ordered by the court. He further stated that the Appellant's suit in the magistrate's court had abated for failure to take out summons to enter appearance but the court exercised its discretion and allowed the Appellant to revive the suit by extending the validity of the summons after a lapse of over 3 years. He deponed that the Appellant has previously admitted owing part of the Defendant's claim in the counterclaim and that the order sought would prejudice the Respondent's counterclaim for loss of rent for the months of May, June, July and August 2018 when the Appellant occupied the office without paying all totaling Kshs. 11, 713/=; loss of use of the premises during the period of litigation in court; and the repair costs for damage to the premises. He deponed that the Appellant should deposit a substantial amount that was sufficient to cover the Respondent's claim in the counterclaim should the court be inclined to grant the orders sought. He deponed that the Respondent was not notified of the appeal and that the court is not seized with the full record of the pleadings and proceedings. He urged the court to dismiss the application. The Respondent submitted that mandatory injunctions should not be granted on an interlocutory application in the absence of special circumstances.

The court has considered the application, replying affidavit and submissions made by counsel for the parties. The dispute herein arises from a dismissal of the Appellant's application dated 03/09/2018 through the ruling dated 28/01/2019 made in Milimani CMCC No. 4767 of 2015.

The court notes that a determination of the instant application in terms of the orders sought would amount to a determination of the appeal. The application makes reference to a ruling dated 28/01/2019 made in Milimani CMCC No. 4767 of 2015 but the Appellant failed to attach the ruling to assist the court arrive at a fair determination of the dispute.

The application dated 11/2/2019 lacks merit and is dismissed with costs to the Respondent.

Dated and delivered at Nairobi this 29th day of July 2019

K.BOR

JUDGE

In the presence of: -

Ms. Achieng Odero holding brief for Mr. Gachie for the Appellant

Ms. M. Nganga holding brief for Mr. Nduati for the Respondent

Mr. V. Owuor- Court Assistant