



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT BUSIA

ENVIRONMENT AND LAND COURT

ELC NO. 27 OF 2018

PRAMUKH CASH AND CARRY LIMITED.....PLAINTIFF/APPLICANT

= VERSUS =

MARTHA ADIDA MBINDAH.....1ST DEFENDANT/RESPONDENT

MATILDA MBINDAH.....2ND DEFENDANT/RESPONDENT

R U L I N G

1. The application before me for determination is a motion on notice dated 7/4/2018 and filed here on 10/4/2018. It is expressed to be brought under Order 51 Rule 1, Order 40 Rules 1, 2 and 4 of Civil Procedure Rules, and all other enabling provisions of law. It was filed contemporaneously with a suit of even date. The Applicant – **PRAMUKH CASH AND CARRY LIMITED** – is the Plaintiff in the suit while the Respondents – **MARTHA ADIDA MBINDA** and **MATILDAH MBINDAH** – are the Defendants.

2. The application came with six (6) prayers, two of which – prayers 1 and 2 – were dealt with at the *ex parte* stage. These two prayers are now moot and the prayers for consideration are now four (4) (prayers 3, 4, 5, and 6). The prayers are as follows:

Prayer 3: That pending the hearing of this suit, the honourable court does issue temporary orders of injunction directed at the Respondents, their servants, agents including auctioneers, employees and any other person or entity acting on their command and/or instructions from carting away any properties of the Plaintiff in a rented premise at a building on L.R. No. 7983/117/4118, or in any way interfering with the peaceful tenancy of the Plaintiff herein and/or in any manner attempting to evict the Plaintiff from the rented premises.

Prayer 4: That the honourable court does make a determination that the Notice of Proclamation and attachment dated 23/3/2018 lacks in form and therefore null and void as the same has not been directed to the Plaintiff herein who is the tenant.

Prayer 5: That pending hearing of the present suit, the honourable court does give direction that the rent payable on the rented premises known as L.R.7983/117/4118 being Kshs.140,000 is deposited in court or in the account number 0881071126 held at Barclays Bank – Busia Branch – as provided for in the lease agreement until further orders of this honourable court as to who among the Respondents is entitled to receive rent.

Prayer 6: That costs of this application be provided for.

3. The bone of contention between the disputants relate to tenancy, or more specifically rent arising therefrom, on Plot No. L.R. No. 7983/117/4118. The Applicant is a tenant on the plot and the tenancy agreement was between itself and the deceased father of the two Respondents, one GABRIEL P. MBINDAH. The 2nd Respondent approached the Applicant and asked that rent be paid to her. She received 420,000/=, which is rent for three months. The 1st Respondent felt cheated or short-changed and therefore decided to distrain for rent. This created a confused state of affairs and that is what impelled the Applicant to file this suit. Basically, the Applicant want to be protected from rent-related harassment and also to be told where, or to who, he should pay rent.

4. The 1st Respondent responded vide a replying affidavit filed here on 28/5/2018. She averred, *inter alia*, that she is entitled to rent by dint of a will left behind by her deceased father. She views the 2nd Respondent as a person hell-bent on taking away her entitlement.

5. The 2nd Respondent also made a response vide a replying affidavit filed here on the same day that the 1st Respondent filed her own

(28/5/2018). She didn't deny receiving rent. But she was clear that the agreement as to where to pay rent was reached after a family meeting at which she was one of those appointed to run the affairs of her deceased father's estate. She said further that the will referred to by the 1st Respondent is already contested vide application No. 115 of 2017 at the High Court, Nairobi. The rent she received, she further averred, was meant to cater for payment of salaries for deceased's workers and/or employees and also defray other expenses. She denied instructing any auctioneer to distrain for rent.

6. The application was canvassed by way of written submissions. The Applicant's submissions were filed on 28/6/2018. The substance of the submissions is generally a selective re-statement of what the application and the responses filed by the Respondents contain. The court was ultimately urged to grant the orders sought in order to protect the Applicant from sibling rivalry.

7. The 1st Respondent filed two sets of submissions, one on 28/6/2018 and another, styled "supplementary submissions", on 18/7/2018. The two sets of submissions are similar in content and one would wonder why they had to be two. The 1st Respondent reiterated her entitlement as willed to her by her late father. It appears clear that according to her, she is the one who should be receiving rent.

8. The 2nd Respondent's submissions were filed on 21/6/2018. According to her, it is the 1st Respondent who gave instructions to auctioneers to distrain for rent. But the 2nd Respondent seems to find this justified because the Applicant has allegedly defaulted in payment of rent.

9. Further, the 2nd Respondent wishes that the rent continues being paid as per the current arrangements. She submitted that the 1st Respondent is not the only one entitled to rent and she faulted the 1st Respondent further for peddling falsehoods in her response which included availing a misleading letter and purporting it to be a court order. Ultimately, the 2nd Respondent submitted that the application against her should be dismissed.

10. I have considered the application, responses availed, and rival submissions. I have had a look at the pleadings too. The Applicant is a mere tenant. It is clear that it has no claim over the estate of its deceased landlord. Its desire is to do business. It is willing to pay rent but it desires clarity and directions regarding where to pay or the person(s) to whom it should pay.

11. The Applicant is obviously entitled to protection from shenanigans arising from competing claims of the beneficiaries of the estate. It appears to me that the 2nd Respondent was well-meaning but since the 1st Respondent is opposed to the new arrangement put in place, it is only fair that directions be given regarding rent payment.

12. The Applicant would wish to pay it into the same account he was paying before the new arrangement or deposit it in court. If there was a Succession Case going on in Court here, I would have no problem ordering that the money be deposited in court pending determination of the Succession Case. But there seems to be no such case. The alternative left is to order the Applicant to be paying rent into the account where payment was made before the new arrangement. That account is said to be No. 08810771126 at Barclays Bank – Busia.

13. The circumstances prevailing also require that an injunctive order be granted as prayed. This would serve to protect the Applicant from wrangles related to management and/or distribution of the estate of the deceased. Bearing all this in mind, I grant prayer 3 as prayed. As regards prayer 5, the Applicant is ordered to be paying rent into the account whose number is given in that prayer. As regards prayer 4, I refuse to grant it. It should be considered when the court is considering prayer (b) in the plaint. It is premature to consider it now. Infact the prayer seems to me to be a slightly different variant of prayer (b) in the plaint. It should await the trial of the action. Costs (which is prayer 6) are awarded to the Applicant.

Dated, signed and delivered at Busia this 17th day of July, 2019.

A. K. KANIARU

JUDGE

In the Presence of:

Plaintiff/Applicant: Absent

1st Defendant/Respondent: Absent

2nd Defendant/Respondent: Absent

Counsel for the Plaintiffs/Applicants: Absent

Counsel for the Defendant/Respondents: Present

Court Assistant: Nelson Odame