

iv. That a temporary injunction restraining the defendant/ respondent from terminating the lease dated 1st July, 2023 pending reference and resolution by arbitration pursuant to clause 7 of the lease.

v. That the costs of this application be provided for.

vi. That this honourable court be pleased to make such other order or orders in the interest of justice.

2. The application is premised on the grounds *inter alia* that the defendant/respondent purported to unlawfully terminate the lease dated 1st July, 2023 executed between the parties without any regard to the substantial improvements and developments made on the premises in excess of Kshs.9,700,000/=.

3. The application is further supported by the affidavit of Paul Kwacheria, the managing director of the plaintiff/applicant sworn on even date. The plaintiff/applicant deposed that by a lease dated 1st July, 2023, the defendant/respondent agreed to let his premises known as LR. No. 209/8406/25 situated along

Ngong road, for a period of 10 years and 6 months. According to the terms of the lease, the plaintiff/applicant was allowed to rebuild and renovate the suit premises, with additions or improvements, as agreed with the landlord. That it was upon this understanding and owing to the state of the premises that the defendant/respondent granted the plaintiff/applicant a 6 months (rent free) moratorium between 1st July and 31st December, 2023.

4. The plaintiff/applicant averred that it obtained approvals from the city county of Nairobi and undertook renovations at a cost of Kshs.9,700,000/=. As a result, the property fetched far better returns from the occupancy and rent compared to the period before the plaintiff/applicant took over the premises and attracted sixteen (16) sub-tenants. The plaintiff/applicant deposed that it largely complied with the terms of the lease as to payment of rent at the rate of Kshs.150,000/= per month as per schedule. However, by a letter dated 29th October, 2025, the defendant/respondent through his advocates purported to terminate the lease on account of outstanding rent in the sum of Kshs.65,000/=: which sum was paid on 6th November, 2025 through m-pesa.

5. The plaintiff/applicant deposed that the purported termination was done without regard to the improvements effected and the dispute resolution clauses in the lease which provided that disputes are to be resolved by an arbitrator or guidelines from the Law Society of Kenya. It was also deposed that the plaintiff/applicant has made several pleas orally, through calls and intermediaries to the defendant/respondent to reconsider his decision to terminate the lease or reconcile the costs of the improvements before taking any such drastic action but he has ignored.
6. Further, that the defendant/respondent has issued another letter dated 27th November, 2025, to the sub-tenants notifying them of the changes in the management of the property, demanding that rent be remitted directly to his m-pesa line of account. That unless restrained by this court, the defendant/respondent intends to persist in the breach of the terms of the lease.
7. The defendant/respondent filed the replying affidavit sworn on 21st January, 2026 in response thereto. He deposed that despite

the lease agreement being crystal clear on the rental terms and how the same shall be paid, the plaintiff/applicant has been adamant on breaching the said terms. Further, that the plaintiff/applicant only paid as per the agreement for the first two months i.e. January and February 2024 and breached thereafter.

- 8.** The defendant/respondent averred that the plaintiff/applicant is always late in remitting the rent and when he would pay the rent, he would pay the same in small, staggered amounts sometimes as low as Kenya Shillings Five Thousand(5,000/=) which is contrary to the lease. He admitted writing to the plaintiff/applicant raising the same issues on 21st December, 2024. However, up to date, he has not received any response from the plaintiff/applicant and neither was the breach rectified.
- 9.** Further, that the plaintiff/applicant has also defaulted in paying for the utilities including water and sewerage bills which he has resulted to paying the same to avoid accumulation of the said bills. Further, that the plaintiff/applicant has not reimbursed

the payments which he was forced to make on its behalf and this amounts to breach of clause 2 (ii) of the lease. He denied unlawful termination of the lease, and he is not convinced that the cost of the improvements and developments on the property is Kshs.9,700,000/=. He deposed that he had written to the plaintiff/applicant proposing that the additional structures and improvements be valued by a valuer acceptable to both parties after which a repayment plan can be agreed on.

- 10.** The defendant/respondent contends that by issuing the plaintiff/applicant with a termination notice of the lease agreement dated 29th October, 2025 he was exercising his right of repossession of the property after the plaintiff/ applicant had defaulted severally. Therefore, the said act cannot be deemed to be unlawful. He further averred that the developments made at the tenant's own cost does not create a right to remain in occupation and that the plaintiff/applicant cannot rely on its own voluntary expenditure to sanitize a breach and that such development does not override express termination clause.

- 11.** The plaintiff/applicant filed the supplementary affidavit sworn 2nd February, 2026 reiterating that it undertook renovations on the dilapidated suit premises and adhered to the terms of the agreement, even overpaying rent as per the rental statements. Further, that the sum of Kshs.5000/= as stated was only sent to bail the defendant/respondent out of a situation and was not part of rent payment. The plaintiff/applicant accused the defendant/respondent of intending to unjustly enrich himself, now that the suit premises are fetching more rent after renovations.
- 12.** The application was canvassed through written submissions. The plaintiff/applicant filed submissions dated 16th February, 2026. The defendant/respondent filed submissions dated 26th February, 2026. I have considered the application, the replies thereof, and the written submissions filed by both parties. The issue for determination is *whether the application has merit*.
- 13.** The plaintiff/applicant contends that the notice of termination of tenancy that was served upon them dated 29th October, 2025 is unlawful and prays that the dispute be referred to arbitration.

14. Clause 7 of the said lease agreement between the parties stipulates that:

“Disputes on interpretations of conditions, in this lease may either be by a mutually acceptable arbitrator or the rules and regulations and guidelines from the Law Society of Kenya.”

15. Section 6(1) of the Arbitration Act provides that:-

“A court before which proceedings are brought in a matter which is the subject of an arbitration agreement shall, if a party so applies not later than the time when that party enters appearance or files any pleadings or takes any other step in the proceedings, stay the proceedings and refer the parties to arbitration unless it finds—

- a. that the arbitration agreement is null and void, inoperative or incapable of being performed; or***
- b. that there is not in fact any dispute between the parties with regard to the matters agreed to be referred to arbitration.”***

- 16.** Having considered the rival arguments made by the parties, and as I understand it, the defendant/ respondent complied with the notice as per clause 6 and to the preceding terms of the lease as provided under clause 5. I see nothing wrong with the notice dated 29th October, 2025. More importantly, the plaintiff/applicant has not made a formal application for stay of proceedings, to allow time to explore alternative dispute resolution by way of arbitration. Instead, the plaintiff/applicant has sought injunction orders, which the court declines to issue to allow the arbitration to be the determinant of the same issues.
- 17.** Both parties having bound themselves to the terms of the lease and noting that the defendant/respondent does not dispute clause 7 of the lease agreement, there is nothing that prevents the plaintiff/applicant from seeking an arbitrator to determine the dispute.
- 18.** From the above, I find no merit in the notice of motion dated 5th December, 2025 and it is hereby dismissed. Costs of this application is awarded to the defendant/respondent.

It is so ordered.

**DATED, SIGNED & DELIVERED VIRTUALLY
THIS 4TH DAY OF MAY, 2026.**

**HON. MBOGO C.G.
JUDGE
04/05/2026.**

In the presence of:

Ms. Benson Agunga - Court assistant

Ms. Gichuhi for the Defendant/Respondent

Mr. Kulati holding brief for Mr. Onduso for the Plaintiff/Applicant