



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

MILIMANI LAW COURTS

ELC 653 OF 2017

DIRIRSA KEJELE & 3 OTHERS

(Together with the annexed list containing

41 other names on their behalf and on

behalf of the affected tenants of HARIAN FLAT.....PLAINTIFFS

=VERSUS=

S.M MBUGUA & 2 OTHERS.....DEFENDANTS

RULING

1. The plaintiffs/applicants are tenants in premises known as Harian Flats on plot **No.209/12410**, along Agoi Road in Nairobi. The premises is owned by the first respondent which premises are managed by the second respondent while the third respondent is a caretaker at the premises.
2. The applicants moved to the Rent Restriction Tribunal where they filed a case against the first respondent & others after the first respondent through his agents indicated his intention to increase rent. The first respondent applied for assessment of rent which rent was assessed. The assessed rent ousted the jurisdiction of the Tribunal.
3. The applicants now have moved to this court claiming that there were other grievances which they had like sexual harassment, threats of forceful eviction among others which are still outstanding which they wish the court to address. The applicants contend that after the Tribunal case, the respondents are threatening them with the eviction for non-payment of rent; their women are being sexually harassed and that the respondents have turned the compound of the premises into a storage yard of construction materials, lorries ,excavators and other heavy machineries as well as metals. They contend that this is dangerous to their children.
4. The applicants further state that there is a lot of noise during the loading and offloading of metals; that the machinery are hazardous to the children. The applicants also complain that they used to pay rent by the 10th of every month but they are now being asked to pay by every 3rd day of each month. It is on this ground that the applicants moved to court seeking orders of injunction and an order compelling the respondents to remove the construction machinery from the compound.
5. The respondents have opposed the applicants' application based on a replying affidavit sworn on 30th November 2017. The respondents deny the claims of the applicants particularly that the applicants have been threatened with eviction. The respondents contend that the applicants had entered into a two year tenancy agreement with the applicants which has expired. Despite the expiry of the tenancy period, the respondents continued to receive rent from the applicants.
6. The respondents state that the act of allowing the applicants to be paying rent by the 10th of each month was a gracious act on their part as the tenancy agreement provided that rent was to be paid by the 3rd day of each month. They deny the allegations of sexual harassment which they contend that if it existed, then that is a matter which should have been a subject of a criminal complaint.
7. On the issue of the construction machinery being in the compound of the premises, the respondents contend that the compound is not part of the house leased to the applicants and that they cannot be ordered to remove the machinery without an alternative place being identified. The respondents state that the problem with the applicants is that they have sub-let their houses where you find that there are more than seven people living in one house thus stretching facilities such as water and electricity and this leads to destruction of the premises.
8. The respondents further contend that the applicants had agreed to vacate the houses but they later changed their minds. The applicants

have refused to move out despite being served with notice to terminate their tenancy which is now a periodic tenancy the initial tenancy period in the lease having expired.

9. I have considered the applicants' application as well as the opposition to the same by the respondents. I have also considered the submissions filed by the parties herein. The applicants are seeking both temporary and mandatory injunctive orders. The grounds for grant of both injunctions are clear. For a temporary injunction, an applicant has to demonstrate that he has a prima facie case with probability of success. An injunction will not normally be issued unless otherwise the applicant will suffer injury which will not be compensated in damages and where the court is in doubt, it will decide the application on a balance of convenience.

10. As for a mandatory injunction, it can only be granted at interlocutory stage only in clear cases where the court feels that it is a case which can be dealt with in a summary manner and where at the end of the trial, the court will feel that it was justifiable to have given the mandatory injunction at interlocutory stage.

11. A look at the application by the applicants is that they sought for temporary injunction pending the hearing and determination of the application inter partes. They never sought any injunction pending hearing and determination of the suit. There was no injunction granted when the applicants came under certificate of urgency. There is therefore no basis for grant of injunction pending hearing and determination even if the court were to find that there were grounds for its grant.

12. The applicants have made general allegations of sexual harassment. There is no single woman who has sworn an affidavit pointing out who or in which manner she has been sexually harassed. There are general allegations that the third respondent knock on the applicants' doors early in the morning and harasses their women.

13. I have looked at some tenancy agreements annexed to the respondents' replying affidavit. Rent is supposed to be paid by every 3rd day of each month. If the tenants had been allowed to pay by 10th of each month then that was a gracious act on the part of the respondents which cannot form a basis of complaint by the applicants.

14. The applicants have not demonstrated in which manner the storage of the machinery in the compound is inconveniencing them. The size of the compound is not given so that the court can appreciate whether the machinery is inconveniencing the applicants. In the absence of even a photograph of those machineries, I do not find that it will be appropriate to make an order that the respondents remove those machineries and metals from the compound. I therefore find that the applicants' application lacks merit. The same is hereby dismissed with costs to the respondents.

It is so ordered

Dated, Signed and delivered at Nairobi on this 28th day of May 2018.

E.O.OBAGA

JUDGE

In the absence of:-

Mr Bosire for Mr Makumi for 2nd and 3rd defendants

Court Assistant: Hilda

E.O.OBAGA

JUDGE