



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**MILIMANI LAW COURTS**

**ELC NO. 161 OF 2018**

**SAYANI INVESTMENT LIMITED.....PLAINTIFF**

**=VERSUS=**

**FEISAL SHARIFF MOHAMMEND & ANOTHER.....DEFENDANT**

**RULING**

1. The plaintiff/applicant filed a Notice of Motion dated 6<sup>th</sup> April 2018 in which it sought the following orders:-

***a. That this application be certified as urgent.***

***b. That summary judgment be entered against the 1<sup>st</sup> Defendant for an order of vacant possession requiring him to deliver to the plaintiff and/or its agents all that premises measuring 10,600 square feet located on first floor of all that property known as Old Nation House on L R Numbers 209/1142 and 209/1214 situate in the Nairobi City County within the Republic of Kenya.***

***c. That in default of (b) above the Honourable Court be pleased to issue an order of eviction against the 1<sup>st</sup> Defendant from premises measuring 10,600 square feet located on first floor of all that property known as Old Nation House on LR Numbers 209/1142 and 209/1214 situate in the Nairobi City County within the Republic of Kenya.***

***d. That the OCS Central Police Station does assist in enforcing compliance.***

***e. Summary judgement against the defendants for Kshs.1,718, 444.00 being accrued rent, service charge and VAT for the months of February & March 2018.***

***f. Summary judgement against the defendants for Kshs.4,787,694 being rent , service charge and VAT for the months of February and March 2018 for the quarter running from April – June 2018.***

***g. Costs of this application.***

2. The applicant had entered into a lease agreement with the first respondent in respect of part of premises erected on LR No.209/1142 and 209/1214. The first respondent leased a portion measuring 10,600 square feet on the first floor of the premises. The second respondent was guarantor of the first respondent. The applicant contends that the first respondent is a perennial defaulter of the agreed rent and that he is currently in rent arrears of **Kshs.4787,694** being rent service charge and VAT for the quarter beginning April to all through to June 2018. The first respondent is also in arrears of rent, service charge and VAT of **Kshs.1,718,444/=** for the months of February and March 2018.

3. The applicant contends that it wrote to the respondents on 5<sup>th</sup> March 2018 asking the respondents to pay arrears of rent to the tune of **Kshs.3,280,867** within 30 days but that the respondents did not pay as required. The respondents who were duly served never entered appearance or filed replying affidavit to the notice of motion.

4. I have considered the applicant's application which is brought under Order 36 Rule 1 of the Civil Procedure Rules. Under the said rule a plaintiff is at liberty to apply for summary judgement in a case where the defendant(s) have entered appearance but have not filed a defence . In the instant case, the defendants/respondents have not filed a defence. It is therefore not open for the applicant to apply for summary judgement.

5. From the pleadings in this case, this is the third case to be filed touching on the same parties. There is ELC No. 61 of 2015 and ELC 212 of 2016. Even if the respondents had entered appearance, the application for summary judgement and eviction would not have succeeded.

This is because it is not clear on how the alleged amounts have arisen. I do not find any merit in this application which is hereby dismissed with no order as to costs.

It is so ordered.

**Dated, Signed and delivered at Nairobi on this 28<sup>th</sup> day of June 2018.**

**E.O.OBAGA**

**JUDGE**

In the presence of :-

M/s Suna for Mr Monger for Plaintiff-Present

Court Clerk: Hilda

**E.O.OBAGA**

**JUDGE**