



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT ELDORET

ELC NO. 90 OF 2018

SAMUEL NGUGI NJOROGHE.....PLAINTIFF

VERSUS

HASHAM LALJI PROPERTEIS LIMITED.....1ST DEFENDANT

SEDCO CONSULTANTS LIMITED.....2ND DEFENDANT

PAUL MBURU KARANJA T/A ZAMZAM BAR AND BUTCHERY.....3RD DEFENDANT

RULING

This ruling is in respect of an application dated 7th June 2018 brought by way of Notice of Motion by the plaintiff /applicant for orders:

1. Spent
2. That the defendants by themselves, their servants and or agents be restrained from harassing the plaintiff, interfering with his tenancy interests, denying him access, or in whatsoever manner evicting him or placing into occupation any new tenant or entering into any leasing arrangement with any third party or taking possession of the premises situated on the land parcel known as ELDORET MUNICIPALITY/ BLOCK 6/58 pending the hearing and determination of this suit.
3. That the Officer Commanding Eldoret Central Police station do assist in compliance of the orders and ensure peace prevails.
4. That directions be given as to the payment of rent to the effect that should the 1st and 2nd defendants be unwilling to accept rent during the pendency of the suit the plaintiff be at liberty to deposit the same in court.
5. That the costs of this application be provided for.

This matter was brought to court under certificate of urgency on 12th June 2018 when the court certified the same as urgent and ordered the applicant to serve the application within 7 days. The same was served and the parties came to court to argue the application on 3rd July 2018.

Mr. Njuguna for the applicant argued that there were serious issues of authenticity of the signatures in the affidavit by the respondent which borders on criminal offence. He urged the court to summon the deponent of the replying affidavit for cross examination by the court and direct the DCIO Eldoret to investigate the matter on the authenticity or otherwise of the signature on the replying affidavit.

Counsel further prayed for conservatory orders as the applicant is still in occupation of an office, a public toilet, and a caretaker room which he constructed. It was further Counsel's submission that the issue of sub tenants in 2 shops, 2 stores, a hotel and bar, that the applicant has been operating the business since 1983 and has been subletting the premises.

Mr Njuguna submitted that the allegation that the applicant is in breach of the terms of the lease is untenable as the same had been acquiesced by the respondent for more than 25 years. He therefore urged the court to grant conservatory orders as prayed in the application.

In response to the application Mr. Tororei submitted that the signatures appearing on the replying affidavit were commissioned by a Commissioner for Oaths and that the same signatures are similar to the ones in the lease agreement filed before court.

It was Counsel's submission that the only other remedy is to report the matter to the police to investigate and that it cannot operate as a stay to the proceedings before the court. Counsel further submitted that the lease between the plaintiff and the 1st defendant expired on 30th June 2018 and any occupation by the plaintiff is not anchored in law. He stated that the court cannot rewrite contracts for parties and that if a lease

has expired then the court cannot restore occupation of the plaintiff.

Mr. Tororei submitted that the only premises that are running are the public toilets which were restored to the bar and restaurant as originally designed. It was his submission that the lease strictly prohibited sub tenancy and that the premises are now occupied by the new tenants. He further stated that there is no legal justification for ordering that the rents be paid into court as the plaintiff has no interest in the property. Further that the damage that can be incurred is quantifiable therefore there would be no need for conservatory orders being granted.

It was Counsel's further submission that there are other 4 sub tenants apart from the 1st defendant who have not been enjoined in the suit which is against natural justice to be condemned unheard. Counsel also stated that the law allows a landlord to enter into fresh leases and that the argument that the 1st defendant had waived his right on the issue of subletting does not hold any water.

Mr. Tororei finally submitted that the summoning of the deponent of the replying affidavit can only happen if the court has made a finding that the signature is suspect and if there is a report from the DCIO on the same. He prayed that the court declines to issue conservatory orders.

In brief response Mr. Njuguna reiterated his earlier submissions and submitted that the law is clear that upon expiry of a written lease and when a tenant continues to be in occupation then the tenancy becomes a monthly tenancy. Clause 5 of the lease agreement provided for right of renewal of lease which the applicant gave a written intention to renew the lease in March 2018. It was his submission that if a tenant has expressed his intention to renew the lease then the landlord has no authority to enter into fresh leases with other parties. He therefore urged the court to grant the conservatory orders.

Analysis and determination

This application is for orders restraining the defendants and his agents from interfering with the tenancy of the plaintiff pending the hearing and determination of this suit. It should be noted that during the inter partes hearing of this application the court ordered that the status quo be maintained in that the applicant continues occupying and running the public toilets, caretaker room and an office pending the delivery of this ruling. The court further ordered that the applicant keeps records of the rent collected to be tabled in court for verification and if the court finds that the applicant is not entitled then the applicant shall refund the rent collected to the respondent.

The issues for determination are whether the applicant has met the threshold for grant of the conservatory orders sought, whether there existed a landlord tenant relationship between the applicant and the 1st defendant when this suit was filed in court, whether the 1st defendant followed due process in entering into fresh leases with 3rd parties.

It is clear from the supporting documentation and from the submissions of both Counsel for the applicant and the respondent that there existed a lease agreement between the applicant and the respondent. It is also evident that the applicant has been in occupation of the demised premises for a long period of time. Further it is also not in dispute that the lease was to expire on 30th June 2018.

The 1st defendant appointed the 2nd defendant as an agent who introduced himself to the applicant with specific terms of reference as pertains to the duties and responsibilities to be undertaken. The 2nd defendant wrote a letter dated 7th February 2018 reminding the applicant that the lease was to expire on 30th June 2018 and asked the applicant to intimate to them the desire to renew the lease within 14 days to enable them make necessary arrangements for the renewal of the lease. Upon receipt of the letter the applicant responded vide a letter dated 6th March 2018 and indicated that he was desirous of renewing the lease agreement with effect from 1st July 2018.

The applicant forwarded the documents requested for purposes of renewal of the lease to the 2nd defendant vide a letter dated 23rd March 2018. The 2nd defendant further wrote a letter dated 21st May 2018 informing the applicant that his lease has expired and that a new tenant entered into a new lease and his continued stay on the premises is inconveniencing the new tenant.

From the above correspondence between the applicant and the 2nd defendant it is clear that by the time this matter was filed in court there existed a landlord tenant relationship between the applicant and the 1st defendant. The lease was to expire on 30th June 2018 and there is correspondence of intention to renew the lease with the 1st defendant.

I agree with Counsel for the respondent that the court cannot rewrite contracts for parties but the ones that have been entered into must be protected by the law. There has to be order and the rule of law must be followed when parties disagree on the terms of the contract and how to sever their relationships.

The 2nd defendant's letter dated 21st May 2018 is a clear indication of the law of the jungle where he informs the applicant that they have already put in other tenants into occupation who have signed a lease before the expiry of a legally binding lease which is still subsisting.

I further agree with Counsel for the respondent that landlords have a right to enter into fresh lease agreements upon expiry but they must follow the law and the laid down procedures. As this is an interlocutory application for conservatory orders, I will not go into the merits of the case as that will come during the full trial. The issues highlighted tilts against the respondents as they have acted in a manner that is injurious to the applicant. If the respondents wanted to sever their relationship with the applicant they should have followed the law.

I will also not go into the issue of the signatures at this juncture, the same can be canvassed during the hearing when the parties will be required to give evidence.

I therefore confirm the earlier conservatory orders that the court had granted to preserve the substratum of the case by maintaining the status

quo ordered by the court.

Dated and delivered at Eldoret this 19th day of September, 2018

M. A ODENY

JUDGE

Ruling read in open court in the presence of Mr. Njuguna for Plaintiff/Applicant and in the absence of Mr. Tororei for the Defendant/Respondent.

Mr. Koech: Court Assistant.