



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

E.L.C. CASE NO. 66 OF 2017

BAWAN LIMITED.....1ST PLAINTIFF
JEANNE WANJUI.....2ND PLAINTIFF
JOYCE-ANN WAMALWA.....3RD PLAINTIFF
MARY-ANN WAMALWA.....4TH PLAINTIFF
JOSEPH BENARD WANJUI.....5TH PLAINTIFF
JOAN-ANN WAIRIMU SHIKHULE.....6TH PLAINTIFF
BETTY-ANN MBOCHE.....7TH PLAINTIFF

VERSUS

UNLIMITED DIRECTIONS KENYA LIMITED.....DEFENDANT

RULING

The Plaintiffs seeks judgement against the Defendant on its admission of indebtedness to the Plaintiff in the application dated 31/1/2017. The Plaintiffs entered into lease agreement for apartment numbers A4, A6, A8, A10, B4, B7, B8 and B10 under which the Plaintiffs were entitled to a monthly rent of Kshs. 100,000/= for each of the nine apartments. The Plaintiffs claim that the rent was increased to Kshs. 150,000/= per apartment when the leases were renewed. The Defendant did not settle its rent arrears for which the Plaintiffs issued invoices between 8/12/2014 and 28/2/2015. The Plaintiffs claim that the Defendant admitted through emails, which admission was clear and unequivocal on the basis of which the Plaintiffs claim they are entitled to judgement.

The Plaintiffs relied on the email of 29/1/2015 in which Mr. Bob Kioko, the Defendant's director admitted delays in settling the Plaintiffs' rent and proposed to make a remittance of Kshs. 200,000/= towards each Plaintiff's account before the end of January, 2015. The email of 30/1/2015 assured the Plaintiffs that the rent arrears amounting to Kshs. 1.3 million per apartment would be paid between February and March 2015. The Defendant issued cheques in favour of the 1st to 6th Plaintiffs for sums varied between 200,000/= and 400,000/= and advised the Plaintiffs to cash the cheques after 10/2/2015. On presentation of the cheques for payment, the cheques drawn in favour of 2nd 5th and 6th Plaintiffs amounting to Kshs. 600,000/= were dishonoured. The Defendant admitted owing the Plaintiffs outstanding rent vide the email of 25/8/2015 and indicated that it would arrange to make payment as soon as it could. No payments were made. The Plaintiffs claim that the sum of Kshs. 26,650,000/= was owing from the Defendant to the Plaintiffs as at 31/12/2016 and that the amount continued to accrue. The Plaintiffs seek judgement for this sum.

The Defendant's director swore the Replying Affidavit in opposition to the application. He admitted that the Defendant entered into leases with the Plaintiffs and that the rent payable for each apartment was Kshs. 100,000/=. He denied that there was an agreement to renew the leases and revise the rent to Kshs. 150,000 per apartment as the Plaintiffs allege. He stated that the Defendant had made various payments towards settlement of rent arrears which the Plaintiff had failed to take into consideration in computing the outstanding sum. However, the Defendant did not provide evidence of the payments it made which the Plaintiffs had failed to take into account.

The Defendant denied owing the Plaintiffs the sum of Kshs. 26,650,000/= and urged that it deserves a chance to ventilate its case arguing that there was no admission that it is plain and obvious to warrant the grant of summary judgement.

Parties filed submissions. The Defendant maintains that it has a defence which raises triable issues. It disputes owing the Plaintiffs the sum of Kshs. 26,650,000/= or Kshs. 29,727,966/= claiming that it paid off the arrears it owed. The Defendant took up issue the issue of varying

amounts claimed by the Plaintiffs arguing that the Plaintiffs had not reconciled their accounts and were only giving estimates to its detriment. It denied entering into agreements with the Plaintiffs to revise the monthly rent upwards to Kshs. 150,000/=. The Defendants submitted that there is no admission on its part and relied on the case of **Vehicle and Equipment Leasing Limited v Coca-Cola Juices Kenya Ltd [2017] eKLR** in which the late J. Onguto J cited the finding in the case of **Ideal Ceramics v Suraya Property Group Ltd HCCC No. 408 of 2016** (unreported) that the purpose of Order 13 of the Civil Procedure Rules is to ensure that a party whose entitlement is evidently due and admitted does not need to wait for a determination by the court over a non-existent question. It is undesirable to litigate when there is no question or issue of fact or law and the summary process ensures that unnecessary costs and delays are not invited.

The court has looked at the documents relied on by the Plaintiffs. The heads of terms which was subject to tenancy agreement which the Defendant accepted provided that the lease was for a period of 2 years with effect from 1/2/2014 and was renewable. Clause 8 provided for interest at 2% per annum above the base lending rate of Barclays Bank of Kenya. The rent was stated to be Kshs. 100,000/= per month exclusive of service charge payable quarterly in advance for the first year of the term. A tenant was to pay a deposit of a month's rent. The Plaintiffs produced the invoices sent to the Defendant together with the email correspondence. The email of 29/1/2015 sent by the Defendant's director stated that after the expected payment was made, it would leave rental arrears of Kshs. 1 million per apartment for 2014. Another email from the Defendant's director promised to remit Kshs. 200,000/= to each Plaintiff before the end of January 2015 and to regularise all the payments in February and March. Another email promised to make payment on or before 31/3/2015.

The email of 26/8/2016 stated as follows:

"...Just know that I am truly sorry that we have owed each of you various amounts for this loan. We screwed up. I know you have each been amazingly patient and understanding despite your own personal challenges or circumstances.

..... On the payments, at this time we don't want to make any promises as we have given you those based on what we were told in the past and all it has done is to put us in the current situation we find ourselves in."

The email sought a month for notices to be issued to the tenants in the premises and for the Defendants to make alternative arrangements. The Plaintiffs' agent's emails of 30/12/2016 and 5/1/2017 addressed to the Defendant's director expressed concern that the Defendant's director could not be reached.

These emails and the other ones relied on by the Plaintiffs confirm that the Defendant admitted owing the Plaintiffs rent arrears. The Plaintiff's further affidavit sworn by Jeanne Wanjui produced copies of the Debt Settlement Agreement prepared in 2016 between the Plaintiffs and the Defendant which was forwarded to the Defendant. The Defendant followed up on the draft lease agreement through its director's email of 14/3/2016.

The court notes that the Debt Settlement Agreement was never executed, neither were the leases prepared by the Plaintiffs' advocates in 2016. The lease agreement stated the rent as Kshs. 100,000/= per month for each apartment and the commencement date was 1/2/2016 and was for a term of two years.

The court has considered the application, the affidavits and submissions of parties. The court notes from the computation of the Plaintiffs of the rent due that the Plaintiffs charged rent at Kshs. 150,000/= per apartment from January 2016 per month. The court agrees with the Plaintiffs that the Defendant has admitted being indebted to the Plaintiffs and there is no triable issue to go for trial. The court is of the view that the Plaintiffs are entitled to charge the monthly rent at Kshs. 100,000/= and not Kshs. 150,000/= for each apartment until the date the Defendant handed over the premises to the Plaintiffs.

The court enters judgement on admission for the Plaintiffs which is to be computed at Kshs. 100,000/= per month together with interest at court rates until payment in full.

The Plaintiffs are awarded the costs of the application and the suit.

Dated and delivered at Nairobi this 6th day of December 2018.

K. BOR

JUDGE

In the presence of: -

Mr. Khayota holding brief for Mr. Muthui for the Plaintiffs

Ms. Walubengo holding brief for Mrs. Mbugua for the Defendant

Mr. V. Owuor- Court Assistant