



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT**  
**AT CHUKA**  
**CHUKA ELC CASE NO 24 OF 2017**  
**FORMERLY MERU ELC CASE NO.86 OF 2016**

**MUGO & GATUNGO LTD.....PLAINTIFF**

**VERSUS**

**MUTEGI MUGWETWA.....DEFENDANT**

**RULING**

1. This application is dated 24.6.2016 and seeks orders:-

1. That this matter be certified urgent and be heard ex-parte in the first instance.
2. That the Defendant by himself, his servants and/or agents and or anyone acting under his instructions or otherwise howsoever be restrained by a temporary injunction from evicting the Plaintiff and or from interfering in any manner whatsoever with the Plaintiff's quiet occupation of the shop and store it occupies in the business premises known as Plot Number L.R No. C 64 situated in Chuka Town known as Murango Building, initially pending the inter partes hearing of the application and after the inter partes hearing, pending the final determination of this matter.
3. That pending the hearing and determination of this suit, the Plaintiff do pay the rent for the demised premises if and when the same falls due for payment in court.
4. That costs of this application be provided for.

2. The application is buttressed by the affidavit of Njue Mugo, a director of the plaintiff and has the following grounds:-

1. The Applicant has been a tenant in the business premises known as plot Number L.R No. C 64 situated in Chuka Town known as Murango Building, owned by the Defendant, wherein it occupies a shop and a store and carries on the business of a Shoe Shop and store, since 1975. The Plaintiff has observed all the terms and conditions of its Tenancy.
2. The Plaintiff and the Defendant have a written Tenancy Agreement dated 2<sup>nd</sup> February, 2011 for a period of 6 ½ years which will lapse on 30<sup>th</sup> June, 2016. The said Tenancy Agreement contains a clause for automatic renewal of the tenancy upon expiry of the term but despite the Plaintiff having given notice of its intention to renew the same, the Defendant has refused to renew the tenancy by

giving unreasonable rent increment of 7 times more than the rent of Kshs.40,000/= per month which the Plaintiff currently pays.

5. Further, the Defendant has commenced unwarranted and unlawful interference with the Plaintiff's occupation by demanding that the Plaintiff should stop operating the shop and vacate the premises prior to the end of the term. He has also threatened to have the Plaintiff's workers arrested and detained in the police cells if they continue operating the Plaintiff's business. The Defendant wants the Plaintiff to vacate before the end of the term.

6. It is apparent that the proposed increment was intended to obstruct and prevent the Plaintiff from renewing the Tenancy Agreement and therefore unreasonably deny the Plaintiff's enjoyment of the automatic right of renewal of the tenancy contained in the Tenancy Agreement, which could not have been the intention of the parties when they incorporated the clause in the Agreement. The Defendant's conduct also constitutes a constructive refusal to renew the tenancy agreement and amounts to breach of contract.

7. The Plaintiff is reasonably apprehensive that the Plaintiff (sic) will evict it at any time without following due process upon which it will suffer irreparable loss and damage and this suit and the application will be rendered nugatory.

3. When the application came up for interpartes hearing on 22.3.2017, the Plaintiff/Applicant despite having been properly served did not come to court to prosecute its application. Miss Kiome, holding brief for Murango Mwenda, for the defendant, urged the court to dismiss the application for non-prosecution.

4. I find it necessary to dismiss the application.

5. This application is dismissed.

6. Costs shall be in the cause.

7. The plaintiff is ordered to fully comply with order 11, CPR, within 30 days of today.

8. The defendant is ordered to fully comply with order 11, CPR, within 30 days after receipt of the plaintiff's compliance documents.

9. Directions concerning a possible hearing date will be given on 12.7.2017.

10. It is so ordered.

Delivered in open court at Chuka this 22<sup>nd</sup> day of March, 2017 in the presence of:

CA: Ndegwa

Miss Kiome h/b Murango for the defendant

**P. M. NJOROGE,**

**JUDGE.**