



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT

AT MALINDI

ELC CASE NO. 264 OF 2016

MAKAZI MBWIYA.....PLAINTIFF

VERSUS

GURDEV SINGH.....DEFENDANT

RULING

1. The Application before me is dated 6th October, 2016. In the Application, the Plaintiff is seeking for the following orders:

a. That this Honourable Court be pleased to issue orders [of] injunction restraining the Defendant/Respondent and/or by himself, servants, agents, attorneys, partners and/or successors in title from initiating, commissioning and/or continuing with any processes for the Detraining for Rents and/or eviction and repossession from the Plaintiff of possession of the suit property until the hearing and determination of this suit;

b. That the costs of this Application be granted to the Plaintiff/Applicant.

2. The Application is supported by the Affidavit of the Plaintiff who has deponed that he is a tenant of the Defendant in the premises known as Title No. 571/111/MN on which there is an established and registered school known as Mtwapa North Secondary School (*the school*).

3. According to the Applicant, he entered into a Lease Agreement with the Defendant on 2nd May, 2003; that he has been paying rent and that he has no rent arrears.

4. It is the Plaintiff's case that despite paying the rent, the Defendant never used to properly acknowledge receipt of the same and that in any event, the Defendant cannot recover rent for the period between 2nd May, 2003 to 2nd May, 2009 because six (6) years have lapsed.

5. According to the Plaintiff, he is willing to pay the rent from the year 2009 if he is allowed to do so and that he will suffer irreparably if the injunctive orders as not granted.

6. In his response, the Defendant stated that vide a Lease Agreement of 18th January, 2002, he agreed with the Plaintiff that the Plaintiff shall be paying a total of Kshs. 44,000 per month for using the suit premises; that when the lease expired on 2nd May, 2003, they entered into another agreement in which the Plaintiff agreed to be paying Kshs. 50,000 per month and that the Plaintiff fell into rent arrears amounting to Kshs. 562,000 for the years 2004 and 2005.

7. According to the Defendant, the Applicant made some payments of Kshs. 134, 000 therefore extending the period of limitation and that in any event, the Applicant is still occupying the building.

8. The Defendant deponed that the last rent he received from the Plaintiff was in the year 2005; that the outstanding rent as at December 2016 is Kshs. 6,562,000 and that the Application is an abuse of the court process.

9. The advocates for the parties appeared before me on 24th November, 2016 and made brief oral submissions which I have considered.

10. In the suit that was filed by the Plaintiff, the Plaintiff sought for a declaration that the Defendant do supply him in writing with a Bank Account in which he may pay the rent and for a permanent injunctive orders to issue until a proper account of the rents paid is done and finalized.

11. In his Affidavit, the Plaintiff has deponed that the Defendant has not been acknowledging properly the rent that he has been paying, and that he does not have any rent arrears.

12. Although the Plaintiff claims that he has been paying the rent as agreed, he has not informed the court in which account he has been depositing the said rent.

13. Other than the few acknowledgment notes that he was issued with by the Defendants for some payments that he made in the year 2002 and 2003, the Plaintiff has not exhibited any other document showing that he has been paying the agreed rent of Kshs. 50,000 since that time.

14. Although the Plaintiff claims that the Defendant cannot claim the rent arrears for the period between the years 2003- 2009 because six (6) years have lapsed, there is no evidence that he has paid any rent for the subsequent years. The Plaintiff is therefore not entitled to an order of injunction.

15. For those reasons, I dismiss the Plaintiff's Application dated 6th October, 2016 with costs.

DATED AND SIGNED AT MACHAKOS THIS 2ND DAY OF MAY, 2017.

O.A. ANGOTE

JUDGE

DATED, DELIVERED AND SIGNED AT MALINDI THIS 12TH DAY OF MAY, 2017.

J.O. OLOLA

JUDGE