



REPUBLIC OF KENYA
IN THE ENVIROMENT AND LANDS COURT

AT MALINDI

ELC NO.177 OF 2016

EMMANUEL JAMES KASSIWAPLAINTIFF

= VERSUS =

KILIFI DISTRICT CO-OPERATIVE UNION.....DEFENDANT

RULING

1. I have before me an application dated and filed herein on 8th June 2016. The Plaintiff/Applicant Emmanuel James Kassiwa is praying for Orders of injunction restraining the Defendants, their agents and/or servants from levying distress, evicting or in any manner interfering with the Plaintiff's peaceful occupation of the parcel of land known as Plot No. 528/Kibaoni Kilifi pending the hearing of this Application and the suit.

2. The Applicant supports his application by an Affidavit sworn by himself on 8th June 2016 and another one sworn on 5th October 2016. The main grounds for filing the suit and the Application are that the Plaintiff is the owner and proprietor of Plot No. 528/Kibaoni Kilifi and that the Defendant Kilifi District Co-operative Union has threatened to evict the Plaintiff and levy distress on the Plaintiff's property. It is thus the Plaintiff's contention that the Defendant's threatened action is illegal and that he (the Plaintiff) stands to suffer irreparably unless the Defendant is restrained by an order of this court.

3. The Application is opposed. Winstone Tunje Gambo describing himself as the Vice- Chairman of the Defendant has sworn an Affidavit on 30th July 2016 wherein he gives the Defendant's reply to the issues raised by the Plaintiff. Dixon Muranga Kalama describing himself as the former Chairman of the Defendant has also sworn an Affidavit the same day to supplement Winstone's Affidavit in Reply. In addition, the Defendants have filed a Resolution dated 31st October 2016 allowing Fatuma Mwakidudu-described as the Chairlady to pursue this case and to replace the said Winstone who is said to be ailing.

4. It is the Defendant's case that Kilifi District Co-operative Union which has since 21st October 2014 changed its name to Kilifi County Co-operative Union Ltd is the owner of the suit premises which it had rented to the Plaintiff way back in 1997. It is their case that the Plaintiff dutifully paid rent up until July 2014 when he refused to do so forcing the Defendants to issue him with a notice to vacate the suit premises. When the Plaintiff refused to vacate and/or pay rent then said to be in arrears of Kshs 400,000/=, the Defendants were compelled to hire an auctioneer who distrained for the rent and sought to evict the Plaintiff from the suit premises vide Kilifi Principal Magistrate's Court Misc Application Case No. 7 of 2015.

5. I have carefully perused the Application before me and the Affidavits in reply. I have also considered

the submissions filed by the Plaintiffs Counsel and those filed by the Defendants who were representing themselves through their Chairlady Fatuma Mwakidudu aforementioned.

6. It is evident that the Plaintiff/Applicant first entered the suit premises as a tenant of the Defendant Co-operative Society in 1997. It is also evident that at some point in time the Plaintiff tried to have the suit premises allocated to himself. Convinced that he had succeeded, he declined to pay rent to the Defendants. In response, the Defendants engaged Messrs Tip Top Auctioneers who distrained for rent and filed Kilifi Magistrate's Court Misc Application No. 7 of 2015 on 1st July 2016 seeking to be allowed to break open the premises where the Applicant operates a business known as "Ushirika Bar" for the purpose of recovering rent arrears through the goods distrained therein. In addition, the Auctioneers sought an order to have the premises known as Ushirika Bar returned back to the Defendants.

7. From the court records availed before me by both the Plaintiffs and the Defendants, it is evident that the Auctioneers application was heard by the Court and on 16th November 2015 the Learned Senior Resident Magistrate Hon. L.N. Wasige(Mrs) granted Orders as follows:

a. That the respondent (Plaintiff herein) shall within 30 days from the date of this Ruling clear the outstanding rental arrears.

b. In the event that Order (1) above is not complied with, the Applicant shall be at liberty to break open the respondent's premises and distrain for the unpaid rent owing to the Landlord.

c. The respondent shall also vacate from the premises within 30 days from the date of this Ruling.

d. The OCS Kilifi shall ensure compliance of orders (ii) and (iii) above.

8. On 9th December 2015 just before the expiry of the deadline given by the Learned Honourable Magistrate, the Plaintiff moved to the High Court and filed Malindi Judicial Review Application No. 26 of 2015 seeking inter alia orders of Stay of Execution of the Magistrates Orders as well as an order of certiorari to quash the said decision on the basis that the suit before the Magistrates Court having been filed in the name of the Auctioneer and not the Defendant Co-operative Union was invalid. The High Court granted an interim stay as requested.

9. Having heard the substantive application however, the Honourable Justice Chitembwe delivered his Ruling on the matter on 30th May 2016 in which he found that the Plaintiff was seeking to reap where he had not sowed and proceeded to dismiss his application with costs to the Defendant which had been joined as an Interested Party in the Judicial Review Application.

10. One week later on 8th June 2016, the Plaintiff moved to court seeking the orders of injunction sought herein. Having considered the issues, it is clear to me that the Orders granted in the Kilifi Magistrates Court Misc Application No. 7 of 2015 were not appealed. The order of Stay of Execution in the Judicial Review Application having been vacated by Justice Chitembwe's Ruling on 30th May 2016, the Magistrates Orders remain alive and in existence. The Applicant is not at liberty to come to this court in the exercise of its Original jurisdiction without appealing and/or seeking to stay the Magistrate's Court's Orders.

11. In any event, I have gone through the two Rulings both by the Magistrates Court and the High Court and it is evident that both have made a substantive finding clearly showing that the Plaintiff was a tenant of the Defendant. I am accordingly unable to see any chances of success that would warrant the grant of an order of injunction as sought herein.

12. The acts of the Plaintiff in filing this and other suits and seeking orders in different courts every time a ruling is made against them without appropriate disclosure in my view amounts to an abuse of this court's

process. Indeed the averment contained in the Plaint herein that there are no pending proceedings between the Plaintiff and the Defendant over the same matter in any court is a blatant attempt to mislead this court. It is incumbent upon this court to prevent an abuse of its processes.

13. Accordingly, and to prevent any further abuse of the court process, the Application dated the 8th June 2016, is hereby dismissed with costs to the Defendant/Respondents.

Dated, signed and delivered at Malindi this 16th day of June, 2017.

J. O. OLOLA

JUDGE