

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ELC CASE NO. 451 OF 2017

RAINLEX INVESTMENT LIMITED.....PLAINTIFF

VERSUS

MAXWELL OTIENO ODONGO.....1ST DEFENDANT

TYSONS LIMITED.....2ND DEFENDANT

RULING

The Plaintiff seeks an order against the Defendants to compel them to grant the Plaintiff access to Piedmont Plaza 4th Floor Wing B located on L.R. No. 330/671 Ngong Road (“the Suit Property”) to carry away its belongings pending hearing and determination of this application. The Plaintiff entered into a six-year lease with the 1st Defendant on 1st December, 2011 letting the Suit Property on which the Plaintiff was running the business of providing serviced working space for start-ups, techies and entrepreneurs. The 1st Defendant appointed the 2nd Defendant its agent for purposes of collecting rent from the premises.

The Plaintiff avers that it has on many occasions requested the 1st Defendant to maintain the Suit Property in a tenantable condition with respect to the leaking ceiling, spoilt lift and provision of proper sanitation which have adversely affected the Plaintiffs business and occasioned it great financial loss. The 1st Defendant failed to undertake the repairs prompting the Plaintiff to issue a notice of termination of the lease pursuant to Section 65(1)(f) of the Land Act. On receipt of the notice, the 1st Defendant denied the Plaintiff access to the Suit Property to collect its assets/belongings claiming that the Plaintiff must settle the rent for the remainder of the lease period. The Plaintiff avers that the 2nd Defendant is holding its sum of Kshs. 3,100,000/= as a deposit under the lease. Despite being served, the Defendants did not enter appearance or file any response.

The court has looked at the lease and notes that the Defendant had a duty to keep the lifts of the building in a proper, safe and working order. Under clause 3 (b) of the lease, the 1st Defendant covenanted to keep in good and tenantable repair the roof, main structure, drains and sanitary apparatus. Clause 3 (c) provides that the 1st Defendant would keep the passenger lifts in the building in proper safe and working order.

The court has considered the application together with the supporting affidavit and correspondence vide which the Plaintiff raised its concerns over the state of the Suit Property to the 1st Defendant. The term of the lease ends on 30th November 2017. According to the lease, the premises were to be used as offices and related purposes. The Plaintiff was carrying on the business of providing serviced working space to its clients on the Suit Property situated on the 4th floor. It needed a working lift for its clients to access its premises and proper sanitation. The other complaint is that the roof is leaking which would adversely affect the smooth running of the Plaintiff’s business.

The court finds that the Plaintiff has a prima facie case against the 1st Defendant. The Plaintiff will suffer irreparable harm if it is not allowed to access its belongings/assets so as to continue running its business. The 1st Defendant is holding the Plaintiff’s deposit of Kshs. 3,100,000/= which can be used to defray any sums the court may later find that the Plaintiff owes to the 1st Defendant.

The court grants prayers 3 and 4 of the Plaintiff's application dated 4th July 2017. The Plaintiffs will give an undertaking as to damages. The Plaintiff will have the costs of this application.

Dated and delivered at Nairobi this 31st July 2017.

K. BOR

JUDGE

In the presence of: -

Ms. Kiiru for the Plaintiff

No appearance for the Defendants

Mr. V. Owuor- Court Assistant