



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT NAIROBI**

**E.L.C. SUIT NO. 1256 OF 2016**

**GRAND QUALITY RESTAURANT LIMITED.....1<sup>ST</sup> PLAINTIFF**

**WAKA MULTILINE LIMITED.....2<sup>ND</sup> PLAINTIFF**

**VERSUS**

**ENGLISH PRESS PROPERTIES LIMITED.....DEFENDANT**

**RULING**

The Plaintiff seeks a temporary injunction to restrain the Defendant or its agents from evicting, terminating the tenancy, or preventing the Plaintiffs, their employees or customers from accessing Grand Quality Restaurant in Reata House erected on L.R No. 209/10169 along Accra Road Nairobi ("the Suit Property"). The application is made on the grounds that the applicants which are sister companies have been tenants in the Suit Property from 2010.

The Defendant vide a letter dated 9<sup>th</sup> July, 2016 demanded the sum of Kshs. 4,582,671 as rent arrears from the Plaintiff and threatened to terminate the lease if that sum was not paid. The Defendant instructed Whitestone Auctioneers who proclaimed the Plaintiffs tools of trade making the Plaintiff apprehensive that the proclaimed items may be removed and sold thereby paralyzing their business. The Plaintiffs contend that the notice issued by the Defendant was not envisaged under the agreement and it would cause great loss to the Plaintiff.

The Defendant opposed the application for injunction. It relied on its Assistant Property Manager's Replying Affidavit sworn on 3<sup>rd</sup> May, 2017. The main ground in opposition is that the Defendant entered into a lease with the 1<sup>st</sup> Plaintiff on 21<sup>st</sup> July, 2016 over the Suit Property for 5 years and 3 months with effect from 1<sup>st</sup> June, 2015 under terms and conditions set out in the lease. The Defendant relies on the clauses in the lease which include the clause stating that rent is payable monthly in advance without any deductions and the clause setting the penalty for late payment of the rent at Kshs. 5% per month on any rent due.

According to the Defendant, the 1<sup>st</sup> Plaintiff is in default of its contractual obligation to pay rent and has failed to remedy the default despite being given notice. The Defendant claims that as at 27<sup>th</sup> February, 2017, the 1<sup>st</sup> Plaintiff was in arrears of Kshs. 3,114,611/= on account of rent together with interest at the contractual rate of 5% per month until payment in full.

When the application was filed in court it was certified urgent and the court issued a temporary injunction on condition that the Plaintiffs would continue to pay the undisputed rent when it fell due.

The court has looked at the application and affidavits and considered the submissions of the parties. The lease which the Plaintiff annexed to its application is dated 28<sup>th</sup> July, 2015 and was entered into between the Defendant and the 1<sup>st</sup> Plaintiff. The lease period is from 1<sup>st</sup> August, 2015 and is for a term of 5 years and 3 months. The rent is set out in the lease as well as the manner of calculating the biennial rent increment. The parties agreed that if the rent due is not paid on the due date the tenant will pay the landlord a penalty of 5% per month whether it is demanded or not.

The court is not satisfied that the Plaintiffs' have a prima facie case against the Defendant. The damage the Plaintiffs may suffer can adequately be compensated by an award of damages since the loss they may suffer is quantifiable. The balance tilts in favour of not granting the orders sought but instead directing that the suit be set down for hearing so that accounts may be taken and a determination made as to whether or not the Plaintiffs are in arrears in paying their rent. In the event that the court finds at the hearing that there was a different understanding outside the terms of the lease between the 1<sup>st</sup> Plaintiff and the Defendant, the court can order that the amount overpaid by the Plaintiff be reimbursed or applied towards the rent. The application is dismissed with costs to the Defendant.

Dated and delivered at Nairobi this 19<sup>th</sup> day of July 2017.

**K. BOR**

**JUDGE**

In the presence of: -

Ms. Okoth for the Plaintiffs

Mr. Ashitva for the Defendant

