



**REPUBLIC OF KENYA**

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

**E.L.C. CASE NO. 134 OF 2017**

**VIDONGE STORES PHARMACEUTICALS LIMITED.....PLAINTIFF**

**VERSUS**

**JOHN MWANGI KINGORI.....DEFENDANT**

**RULING**

The Plaintiff seeks a temporary injunction to restrain the Defendant from terminating its lease and from evicting, harassing, locking out or in any manner interfering with the Plaintiff's tenancy on the premises known as shop no. 3 situated on L.R. No. 209/1413/28 along Accra Road ("the Suit Property") pending hearing and determination of this suit. The Plaintiff further seeks that the order be enforced by the OCS Central Police Station.

The Plaintiffs application dated 16/2/2017 is supported by the affidavit of its Director, John Ngaruro Mugo who depones that the Plaintiff runs a pharmacy on the Suit Property pursuant to a lease entered into on 1/12/2009 for a term of 10 years and 6 months which remains valid to date. The Plaintiff maintains that since taking possession of the Suit Property it has dutifully honoured and performed its contractual obligations under the lease including payment of the agreed monthly rent of Kshs. 120,000/=.

The Plaintiff avers that it has had a cordial relationship with the Defendant. However, on 18/11/2016 the Defendant issued a notice of termination of tenancy indicating that the Plaintiff's lease would be terminated on the expiry of 3 months. The reason the landlord gave for termination was that he required the Suit Property for his own use.

The Plaintiff annexed a copy of an undated tenancy agreement which bears the stamp of the Collector of Stamp Duties dated 2/12/2009. The monthly rent under the lease is indicated to be 45,000/= payable in advance for every six months and subject to review periodically upon agreement by the parties. Clause 3E of the lease provides as follows:

"Not without the previous consent in writing of the landlord to erect or caused to be erected any alteration to said premises and or to subject and or part with possession of the said premises without landlord's consent in writing."

It was further agreed between the parties that if there shall be any breach of the conditions of the lease, or if the tenant becomes bankrupt then the landlord will be entitled to re-enter the leased premises and terminate the tenancy. The Plaintiff claims that the tenancy agreement did not have an exit clause nor did it provide for the early determination of the tenancy. The Plaintiff claims that the landlord's notice of termination is issued maliciously and in bad faith. It further argues that the notice is short and oppressive and that there are other businesses operating within the Defendant's building in respect of which the Defendant has not issued any termination notice.

The Plaintiff claims that it has spent colossal sums of money in making the Suit Property suitable for running its business and that it has fitted fixtures of high quality and high standards of workmanship which have improved the value of the Suit Property.

The Defendant filed a replying affidavit on 12/4/2017 in which he admits the existence of the lease but maintains that the Plaintiff is in breach of the tenancy agreement particularly clause 3(e) by undertaking unauthorised alteration of the Suit Property which have interfered with the stature of the Suit Property. The Defendant also argues that the Plaintiff has parted with possession of the Suit Property and or sublet the Suit Property to a third party known as Alfajiri Pharmaceutical Wholesalers and Retailers without his consent in writing. The Defendant maintains that he issued the termination notice when he realized that the Plaintiff was in breach of the tenancy agreement. The Defendant submits that the Plaintiffs application for injunction does not satisfy the threshold for the grant of injunctive relief since it does not disclose a prima facie case against him. He urges the court to dismiss the application with costs to the Defendant.

The Plaintiff's Director swore a further affidavit in which the Plaintiff states that Alfajiri Pharmaceutical Ltd is its strategic trading name besides being its associate company and that the directors of the two companies are the same. The Plaintiff claims that the Defendant has known this fact all along. The Plaintiff annexed copies of the Memorandum and Articles of Association of Alfajiri Pharmaceutical Ltd and a certificate showing that this company was incorporated on 12/9/2011.

What this court has to determine is whether the Plaintiff has made out a case for the grant of a temporary injunction. The Plaintiff has to demonstrate that it has a prima facie case against the Defendant and that it will suffer irreparable harm if the orders are not granted. If in doubt, the court determines where the balance of convenience lies. The Defendant has annexed a photograph showing that Alfajiri Pharmaceutical Ltd is in occupation of the Suit Property and not the Plaintiff. There is no evidence that the Plaintiff obtained the written consent of the landlord to allow the Plaintiff to part with possession of the Suit Property. The lease is between the Plaintiff and the Defendant. Even if the directors of both the Plaintiff and Alfajiri Pharmaceutical Ltd are the same, in law these two entities are separate legal persons.

The court finds that the Plaintiff has not established that it has a prima facie case against the Defendant. The application dated 16/2/2017 is dismissed with costs to the Defendant.

**Dated and delivered at Nairobi this 21<sup>st</sup> September 2017.**

**K. BOR**

**JUDGE**

In the presence of: -

Mr. Olonde holding brief for Mr. Gikaria for the Plaintiff

Mr. Babu holding brief for Mr. Ngugi for the Defendant

Mr. V. Owuor- Court Assistant