



REPUBLIC OF KENYA
IN THE ENVIRONMENT & LAND COURT OF KENYA

AT MILIMANI

ELC CASE NO. 38 OF 2017

JOHN NDUNG’U MWAURA

ESTHER NGUHI NDUNG’U.....PLAINTIFFS

=VERSUS=

EDWARD OBWOKOR OKWARO OMATAKINYI

CATHERINE MUENI MUTISYA

T/A TWINLIGHT ACADEMY.....DEFENDANTS

RULING

1. The applicants had entered into a tenancy agreement with the respondents who are trading as Twinlight Academy. The respondents operate a school on LR No.36/11/313 at Eastleigh in Nairobi. The applicants brought a notice of motion dated 18th January 2017 in which they seek eviction orders against the respondents on the ground that the respondents are in rent arrears of kshs.2,193,960/=. In the alternative, the applicants are seeking an order that the respondent do deposit the rent arrears in court and continue to deposit monthly rent of Kshs.246,960/=with effect from February 2017 until hearing and determination of this case.

2. The applicants contend that they issued a notice of forfeiture in accordance with Section 75 of the Land Act of 2012, requiring the respondents to clear the rent arrears but that the respondents have not complied. It is on this basis that the applicants are seeking eviction orders.

3. The respondents have opposed the applicants’ application based on a replying affidavit sworn by Edward Okwaro on 12th May 2017. The applicants contend that the current application is an abuse of the process of Court. That there is a suit pending in the lower court where an order for reconciliation of accounts has been given but that the applicants have failed to comply with the same. The respondents further contend that following the demand by the applicants through their letter of 29th September 2016, the respondents paid Kshs.230,000/= in late January 2017 and thereafter filed a suit for reconciliation of accounts. Instead of the applicants reconciling accounts, they have been sending auctioneers to harass the respondents despite the Court Order restraining any such action.

4. I have carefully considered the applicants’ application as well as the opposition to the same by the respondents. What the applicants are seeking at interlocutory stage is what they are also seeking in the main suit. This in essence is a call for a mandatory order at inter-locutory stage. The principles for grant

of mandatory orders are well set out. A mandatory injunction can only be given in special circumstances and only in clear cases where the issues in contention can be decided at once or where the case is a simple one which can be remedied in a summary manner or where the defendant has attempted to steal a March on the Plaintiff.

5. In the instant case, the applicants are seeking rent arrears of Kshs.2,193,960/=. The respondents are contesting the arrears owed and have already filed a suit and obtained orders for reconciliation of accounts. The applicants have not complied with the order but are instead pushing for eviction of the respondents. The respondents made a deposit of Kshs.230,000/= on 13th January 2017. This application was filed on 20th January 2017. According to the account statement annexed to the supporting affidavit, the respondents were in rent arrears of Kshs.2,193,960/=. There was no credit made for the payment made on 13th January 2017. It therefore follows that the accounts which are the basis of this application are not accurate.

6. There is nothing difficult in reconciling accounts and giving the correct figures. The documents filed in this case show that the parties are litigating both in this court and the lower court at the same time. This clearly amounts to an abuse of the process of court. The respondents had obtained an order for reconciliation. The applicants should have at least complied with it even though they seem to take issue with the manner it was obtained. It is therefore clear that this is not a case which can be summarily or readily remedied. The respondents are not trying to steal a march from the applicants. The respondents are asking for accounts. If the applicants would have given an accurate account of the rent arrears owed, then their application would have been looked at differently. As for now, I do not find that this is an appropriate case for grant of eviction order at interlocutory stage. I find that the applicants' application lacks merit. The same is hereby dismissed with costs to the respondents.

It is so ordered.

Dated, Signed and delivered at **Nairobi** on this **23rd** day of **October, 2017**.

E.O.OBAGA

JUDGE

In the absence of parties who were aware of the time and date of delivery of ruling.

Court Assistant: Steve

E.O.OBAGA

JUDGE