



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

MILIMANI LAW COURTS

ELC NO. 418 OF 2014

**JOSEPH GITAU MWANGI & SOPHIA WANJIRU GITAU T/A TRUST
OPTICIANS.....PLAINTIFF/APPLICANT**

=VERSUS=

**DHIRAJLAL JUTHALAL
SHAH.....DEFENDANT/RESPONDENT**

RULING

When the Plaintiff's application dated **4th April 2014**, came up for hearing *ex-parte*, the Court granted an order of injunction restraining the Defendant from evicting the Plaintiff or interfering with the Plaintiff's quiet enjoyment of the leased property on **L.R. No. 209/477/25**, pending the hearing and determination of the application. It is this order that the Plaintiff seeks that it be confirmed pending the determination of the suit. The application is premised on the ground that the Defendant continues to threaten and intimidate and is likely to carry out the threats to the detriment of the Plaintiff, whereas the Plaintiff has paid all outstanding rent.

In the Supporting Affidavit sworn by **Joseph Gitau Mwangi**, he deposed that they entered into a lease agreement on **27th June 2002**, for a period of 5 years 3 months with a renewal clause upon expiry of the term. It was his deposition that the parties have been renewing the term of the lease and that the same was last renewed on **12th March 2012**, for the same period. However, on **12th November 2013**, the Defendant through his advocates demanded **Kshs. 567,968/-** allegedly being rent, rates and water arrears. In a response dated **11th October 2013**, he explained that rent was paid through cheques which the Defendant failed to deposit on their due dates rendering them stale. The deponent contended that the Defendant's demand for land rates, rent and water bills is based on assumptions, has not been pro-rated and thus rendering the sum erroneous. Further, that the Defendant has declined to supply them with the water bills for purposes of confirming and accounting as the property comprises of a building with three floors whilst the business occupies only 1/6 of the building.

The Defendant swore a Replying Affidavit on **23rd June 2014**, wherein he deposed that it was an express term of the agreement that rent would be paid on the 1st day of each quarter, which term the Plaintiff persistently breached as the payments were never ready on time. He deposed that the Plaintiff failed to notify him of the availability of funds and the cheques were rendered stale on presentation to the bank. Consequently, on **8th July 2013**, upon his instructions, his advocates wrote to the Plaintiff demanding the payment of **Kshs. 1,167,968/-** which letter the Plaintiff failed to act upon prompting a subsequent letter dated **4th October 2013**. The Defendant deposed that the

Plaintiff made various payments reducing the outstanding amount to **Kshs. 567,968/-** . It was also the Defendant's deposition that the parties had in the lease agreed on the land rent, rates and payment of water consumption and thus the Plaintiff is estopped from denying the agreed portion of charges. The Defendant contended that the Plaintiff had come to court with unclean hands and that the purpose of the suit was to frustrate him and continue with the breach.

The application was canvassed by way of written submissions which I have carefully read. The task at hand at this stage of the suit is to determine whether the Plaintiff's case has met the threshold for the grant of injunction orders enunciated in the case of **Giella v Cassman Brown & Co Ltd, (1973) EA 358** that:

“Firstly, the applicant must show a prima facie case with the probability of success, secondly, an injunction would not normally be granted unless the applicant might otherwise suffer irreparable injury, and thirdly, when the Court is in doubt, it will decide the application on a balance of convenience.”

It is not in contention that the parties herein are in a landlord-tenant relationship. The dispute is over payment of rent, rates and water consumption wherein the Defendant contends that the Plaintiff is in arrears of **Kshs. 567,968/-** and that he has instituted this suit to continue with the breach. The Plaintiff refutes this claim stating that he has without fail been making payments as stipulated in the lease agreement. Further, that the Defendant has declined to furnish him with water bills and apportion the land rates and rent accordingly and therefore the demand is unsubstantiated. To prove that he has been making regular payments each quarter, the Plaintiff annexed copies of cheques in favour of the Defendant and a schedule of payment detailing the amount in arrears and the cheque numbers settling the amounts. The Plaintiff also referred to replacements made to the cheques that were rendered stale upon presentation.

From the above, it is clear that the issue for determination is whether the Defendant's claim of rent, rates and water consumption arrears is substantiated. This issue can only be determined at on trial where both parties will have an opportunity to adduce evidence. In the interim, however, the Court is satisfied that the Plaintiff has established a prima facie case and it would be in the interest of justice that his tenancy be safeguarded pending the determination of the suit.

Having now considered the Notice of Motion dated **4th April 2014** , the court finds it merited and it is allowed as follows:-

- 1. A temporary injunction is hereby issued restraining the Defendant by themselves, their agents, employees, and/or servants from evicting the Plaintiff and/or interfering with the Plaintiff's quiet enjoyment of the leased property pending the determination of the suit.***
- 2. The injunction granted herein will last for a period of 12 months from the date hereof and will lapse at the expiry of that period unless the same is extended by the court following an application made in that regard.***
- 3. The parties are directed to comply with Order 11 of the Civil Procedure Rules and set the matter down for hearing without delay.***
- 4. Costs of the application shall be in the cause.***

Dated, Signed and Delivered this **21st day of March 2016**

It is so ordered.

L. GACHERU

JUDGE

In the Presence of:-

.....for the Plaintiff/Applicant

.....for the Defendant/Respondent

..... Court Clerk

L. GACHERU

JUDGE