



Zambezi Hospital Limited v Njiiri & 3 others (Environment & Land Case E033 of 2022) [2024] KEELC 1035 (KLR) (22 February 2024) (Ruling)

Neutral citation: [2024] KEELC 1035 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE E033 OF 2022
J OMANGE, J
FEBRUARY 22, 2024**

BETWEEN

THE ZAMBEZI HOSPITAL LIMITED PLAINTIFF

AND

RUTH NYAMBURA NJIRI 1ST DEFENDANT

**CAROLINE MWANGI T/A HOMES FIRST PROPERTY
CONSULTANTS 2ND DEFENDANT**

JOSEPH DBK KIMANI T/A PYRAMID AUCTIONEERS 3RD DEFENDANT

DENNIS WAFULA 4TH DEFENDANT

RULING

1. This dispute arises out of a lease agreement dated 20th March, 2021 between the 1st Defendant/Applicant and the Plaintiff/ Respondent. The 1st Defendant leased the suit premises to the Plaintiff at an agreed monthly rent of Kshs 230,000 with effect from March, 2021.
2. It is not in dispute that upto January, 2022 the Plaintiff had accumulated rent arrears of Kshs 1,250,000. The 1st and 2nd Defendant through the 3rd Defendant levied distress on the Plaintiffs equipment and took action that amounted to locking the Plaintiffs out of the suit premises. This prompted the filing of the suit.
3. In a Ruling delivered by this court on 23rd June, 2022 the court issued the following orders;
 - a. That pending the hearing and determination of this suit, a mandatory order of injunction does issue compelling the defendants to forthwith remove all padlocks placed at the main gate, grant unrestricted and unconditional access to and or restore the Plaintiff back into the premises known as The Zambezi Hospital, situated at South C, Mai Mahiu/Thogoto road, Nairobi.



- b. That pending the hearing and determination of the suit, a mandatory order of injunction does issue directing the defendants to forthwith return to the plaintiff all the hospital medical equipment and or tools of trade carried away or attached a the premises known as The Zambezi Hospital situated in South C, Mai Mahiu/Thogoto Road, Nairobi.
 - c. That an order of injunction is hereby issued restraining the Defendants whether by themselves their servants and or agents from levying distress for rent or in any other way interfering with the Plaintiff's quiet possession in all that property known as The Zambezi Hospital situated in South C, Mai Mahiu/Thogoto Road, Nairobi pending the hearing and determination of this suit.
 - d. That costs of this application do abide the outcome of the main suit.
4. The 1st Defendant seeks to review the court orders on the grounds that ever since the Plaintiff obtained the orders on 23rd June, 2022, it has not paid any rent which has now accumulated to Kshs 5,191,00 as at 18th July, 2023. The 1st Defendant argues that the Plaintiff has failed to comply with the courts directions that it should make a proposal on how to clear the rent arrears. This has not been done leaving the 1st Defendant at a loss on how to proceed as the mandatory injunction issued by this court prohibits it from levying distress or taking possession of the suit premises.
 5. On their part, the Plaintiffs state that their business has been adversely affected by the actions of the 1st Defendant in illegally attaching their tools of trade. They further argue that the 1st Defendant did not comply with the courts decision to return their attached equipment which has since been sold hence should not benefit from exercise of the court's discretion.
 6. Both counsels filed submissions which the court has considered. The 1st Defendant submits that the Plaintiff is in breach of its obligations to pay rent hence should not benefit from the orders the Court made in its favour. On the other hand, the Plaintiff submits that the 1st Defendant seeks to benefit from their initial wrongdoing and further that they have not satisfied the conditions for grant of review.
 7. Having considered the application herein, the affidavits by both parties and submissions by counsel, the court has to determine whether the Applicant has proved that there are sufficient grounds to review, vary or discharge the court orders made on 23rd June, 2023.
 8. Section 80 of the [Civil Procedure Act](#) provides as follows: -
 80. Any person who considers himself aggrieved-(a) by a decree or order from which an appeal is allowed by this Act, but from which no appeal has been preferred; or
 - (b) by a decree or order from which no appeal is allowed by this Act,May apply for a review of judgement to the court, which passed the decree or made the order, and the court may make such order thereon as it thinks fit.
 9. Order 45 Rule 1 of the [Civil Procedure Rules](#), 2010 provides: -

Any person considering himself aggrieved-

 - a. By a decree or order from which an appeal is allowed, but from which no appeal has been preferred; or
 - b. By a decree or order from which no appeal is hereby allowed, and who from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not



within his knowledge or could not be produced by him at the time when the decree was passed or the order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree or order, may apply for review of judgement to the court which passed the decree or made the order without unreasonable delay.

The grounds for review are limited to;

- a. discovery of new and important matter or evidence which after the exercise of due diligence, was not within the knowledge of the applicant or could not be produced by him at the time when the decree was passed or the order made or;
- b. on account of some mistake or error apparent on the face of the record, or
- c. for any other sufficient reason.

In all instances the application has to be made without unreasonable delay.

10. In the present case, there has been no discovery of any new and important matter or evidence neither is there mistake or error that is readily apparent on the face of the record that will not require some long drawn out process to determine. The last ground of sufficient cause grants the court wide latitude to grant review for any cause it deems sufficient. Quite properly sufficient cause is not defined but is left to the court to determine based on the individual circumstances of each case.
11. The undisputed facts of this case is that the Plaintiff has rent arrears which it has tried to pay without any consistency. The 1st Defendant did attach and sell the Plaintiff's tools of trade in defiance of the court order which was to the effect that "... the defendants to forthwith return to the Plaintiff all the hospital medical equipment and or tools of trade carried away or attached at the premises known as The Zambezi Hospital situated in South C, Mai Mahiu/ Thogoto Road, Nairobi. Both parties have thus only partially complied with the orders of the court.
12. The order which was issued by the court prevents the 1st Defendant from levying any distress or interfering with the Plaintiff's quiet possession until this suit is determined. This order was made one and a half years ago. The Plaintiff is not paying rent as ordered and has not made a proposal on how to pay the rent. Even if the Plaintiff were facing challenges occasioned by the attachment of its property, it should have made a proposal or informed the court of its difficulties.
13. The sword of justice must cut both ways. This court has inherent jurisdiction to ensure that one party does not suffer undue hardship on account of another. The decision by this court has rendered the 1st Defendant helpless to take any action against the Plaintiff who continues to accumulate arrears with no apparent end. The argument by the Plaintiff that they are in this position due to the 1st Defendant's failure to return their equipment can be addressed by other legal avenues and not by accumulating more rent arrears.
14. I find that in view of the foregoing situation there is sufficient cause to vary the order issued on 23rd day of June, 2022 as follows;
 - a. That an order of injunction is hereby issued restraining the Defendants whether by themselves, their servants and or agents from levying distress for rent or in any other way interfering with the Plaintiff's quiet possession in all that property known as The Zambezi Hospital situated in South C, Mai Mahiu/Thogoto Road Nairobi subject to clause (b) below.
 - b. The Plaintiff is to submit to the 1st Defendant within 30 days a proposal to clear the outstanding rent arrears and is to adhere to the payment schedule.



- c. Should the Plaintiff fail to comply then the order for injunction will automatically lapse.
- d. Costs of this application to abide the main suit.

DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS THIS 22ND DAY OF FEBRUARY 2024.

JUDY OMANGE

JUDGE

In the presence of: -

Mrs Muluri for Mr. Mutua (SC) for Defendant

Mr. Nyakundi for the Defendants

Steve - Court Assistant

