



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT OF KENYA AT ELDORET**

**E & L CASE NO. 1 OF 2016**

**CLARE JEMELI.....PLAINTIFF**

**VERSUS**

**SAMWEL OMBATI.....DEFENDANT**

**RULING**

Clare Jemeli T/a Tuiyo Chemist hereinafter referred to as the Defendant has come to court against Samwel Ombati claiming that the plaintiff leased out business premises in block No. 2300 situated at Langas Estate from the defendant in the year 2011 and has been carrying out business thereon to date. The defendant on or about the 24th December 2015 issued eviction threats against the Plaintiff to vacate the said premises on or before 31st December 2015. The plaintiff has been paying her rent regularly and has never defaulted nor breached any other terms of the lease. The plaintiff avers that the defendants' eviction threats are unlawful, illegal and without any basis. The plaintiff prays for an order restraining the defendant from evicting the plaintiff arbitrarily. The plaintiff also filed a notice of motion seeking orders that this Honourable Court be pleased to issue an order of temporary injunction restraining the defendant, his agents, servants or representatives from evicting, locking the applicants' premises, the applicant herein or in any other way dealing with the applicants' rental premises on Land Parcel No. 2300 pending the hearing of the main suit filed. The applicant prays that costs be in the cause.

The application is based on grounds that there is a threat of eviction without notice and yet she has never defaulted. She claims to have brought the application in good faith. The application is supported by the affidavit of Clare Jemeli who states that she is the respondents' tenant at plot no. 2300, Langas where she has been carrying on business since 2011 to date. That on 24th December 2015, the Respondent issued threats that the applicant should vacate the premises latest by close of business on 31st December 2015. That she is a pharmacist trading as such under the name of Tuiyo Chemist. That he proceeded to close the lavatories preventing me and my customers from accessing it in a bid to actualize his threats and to frustrate her to close shop and quit. She is informed by her advocate on record which information she trusts to be sound that her rights as a tenant are protected under the law as she has not done anything contrary to the terms of the lease. That the respondent has been frequenting her shop on daily basis claiming that she should have closed and moved elsewhere. She has not done anything in contravention of the lease agreement in any manner whatsoever. That her rent payment is up to date as she had paid all rent due up to 31st December 2015. She believes that no prejudice will be suffered if the prayers sought herein are granted.

The defendant filed a reply affidavit stating that the plaintiff is not entitled to the reliefs sought as he has never attempted to lock the premises. However that the plaintiff has not been paying rent and has rent arrears. He claims that he has not threatened the plaintiff with eviction despite the fact that she is in rent arrears.

I have considered the application, response and submissions of the parties and do find that the plaintiff has not demonstrated that there is any threat of eviction. Moreover, the plaintiff has not demonstrated that she has been paying rent on time or at all. The court finds that the plaintiff has not demonstrated that she has a *prima facie* case with a likelihood of success. On the issue as to whether the plaintiff is likely to suffer irreparable harm that cannot be compensated with damages, the court finds that the plaintiff has not demonstrated that she will suffer irreparable loss that cant be compensated with damages as her claim can be quantified in terms of profit she receives per day. Balance of convenience tilts towards dismissing the application as the plaintiff has not demonstrated that she has been paying rent. Ultimately, the application

is dismissed with costs.

**DATED, SIGNED AND DELIVERED THIS 8TH DAY OF JUNE, 2016.**

**ANTONY OMBWAYO**

**JUDGE**