



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT

AT MALINDI

ELC CIVIL CASE NO. 197 OF 2013

**HARITHI ALI ABDULKADIR (suing as the attorney of
ALI ABDULHARI ABDALLA.....PLAINTIFFS**

=VERSUS=

DANIEL T. HALLER.....DEFENDANTS

R U L I N G

1. The Application by the Plaintiff is dated 16th December 2015. In the Application, the Applicant is seeking for the following orders:-

(a) Pending the hearing and determination of this suit the Defendant be ordered to pay the Plaintiff the sum of Kshs.1,406,250.00 being the total rent for the current five year period that commenced on 2nd February, 2015.

(b) The Defendant be given a limited period of 21 days from the date of the ruling to this Application within which to pay the sum of Kshs.1,406,250.00 in default of which he shall be evicted from the suit property.

(c) Costs of this application and suit be provided for by the Defendant.

2. The Application is premised on the grounds that the Defendant is lessee on plot number Kilifi/Mtwapa/1074 for 25 years; that the suit property belongs to the Plaintiff's father and that the rent payable for the current 5th year period commencing 2nd February, 2015 is Kshs.1,406,250.

3. According to the Plaintiff, his father relies on the rental income and that the Defendant has failed to carry out repairs.

4. In his Grounds of Opposition, the Defendant has averred that this court lacks jurisdiction to entertain the suit and the Application; that the orders sought in the Application are meant to circumvent the Counterclaim and that the Application offends the objectives of the judicial process envisaged under Article 159 of the Constitution.

5. The parties filed their respective submissions which I have considered.

6. In his Complaint, the Plaintiff is seeking for a declaration that the Defendant has breached clause 1a(vi) and

1c, d and e of the Lease Agreement dated 14th December 2005.

7. The Plaintiff is also seeking for payment of rent arrears of Kshs.1,012,500 which stands at Kshs.1,406,250 as at the time of filing the Application.

8. In his amended Defence, the Defendant has averred that by subsequent express and implied arrangements, practice and custom between the Plaintiff and himself, he has paid the rent leaving a balance of Kshs.693,750 as at the time of filing the Application.

9. It is the Defendants defence that he has made improvements on the suit property to the tune of Kshs.2,177,966.50 and that it is the Plaintiff who has been in breach of the Lease.

10. The issues before the court for determination is who between the Plaintiff and the Defendant is in breach of the Lease and whether any rent is due to the Plaintiff.

11. These issues can only be determined after full trial.

12. What the Plaintiff is seeking in the current Application are the same prayers that he is seeking in the Plaintiff.

13. Indeed, if the orders being sought in the Application are granted, there will be nothing to proceed to trial.

14. In any event, the amount of rent that is due and owing can only be determined after the parties have tendered evidence and not at this stage.

15. It is for those reasons that I find the application dated 6th December, 2015 to be unmeritorious and I dismiss it with costs.

Dated, signed and delivered in Malindi this **16th** day of **September**, 2016.

O. A. Angote

Judge