



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT NAKURU

HCC NO. 167 OF 2009

PRIVATE DEVELOPMENT COMPANY LIMITEDPLAINTIFF

VERSUS

REBECCA NGONYO1ST DEFENDANT

SAMUEL KAMAU MACHARIA2ND DEFENDANT

AND

JACKSON NJENGA NJOROGE.....1ST INTERESTED PARTY

JAMES GICHARU GICHUHI2ND INTERESTED PARTY

RULING

(Application to remove an agent appointed to receive rent on disputed premises; agent not giving a good account of rent received; application allowed)

1. The application before me is that dated 10 August 2015 filed by the plaintiff. It seeks the following orders :-

(a) That this Honourable Court be pleased to issue summons to Messrs Njema Construction Company to account for the rent collected from the suit property with effect from 7th November 2014 when this court delivered its ruling to date.

(b) That in the alternative, this Honourable Court be pleased to grant an order for distress of rent to all the tenants that have defaulted and/or are in arrears of rent payment with effect from 7th November 2014 to date.

(c) That costs of this application be provided for.

2. On record is also an application dated 10th July 2015 filed by the 2nd interested party in this case. It seeks orders inter alia to vacate the orders directing that rent be collected by M/s Njema Construction Co. Ltd and that the rent be collected by the 2nd interested party.

3. Both applications aver that there is an order issued by court which appointed M/s Njema Construction to act as agent and collect rent from the property under dispute which is Nakuru Municipality Block 4/46.

The order directed the agent to deposit the money in court. It is contended that to date, despite collecting rent, no money has been deposited in court and there has therefore been non-compliance with the court order.

4. There is no question that there is an order in court issued on 7 November 2014 directing that the rent proceeds of the suit premises be collected by M/s Njema Construction Company Ltd and the same be deposited in court. The complaint that the parties have is that M/s Njema Construction is collecting rent but not depositing the same in court and not accounting for it.

5. Upon service, Mr. David Manyara a director of the company did appear in court. He stated that he had some accounts which I directed him to share. The same are as follows :-

6. The first account statement is from January to June 2015. The expected rent is Kshs. 1, 247,900/=. Of this only Kshs. 699,000/= is said to have been collected from the tenants. Out of these, there were expenses of Kshs. 594,000/= as follows :-

(a) *Agents Commission - Kshs. 69,990/=*

(b) *Meter box and wiring - Kshs. 90,000/=*

(c) *Office building - Kshs. 260,000/=*

(d) *Security and eviction expenses - Kshs. 55,000/=*

(e) *Store and Hotel - Kshs. 45,000/=*

(f) *Toiltes - Kshs. 75,000/=*

This left a balance of Kshs. 104,910/=. What is due from tenants is said to be Kshs. 548,000/=.

7. The second account statement that he has tendered is for the period July 2015 to June 2016 . It shows the rental income receivable to be Kshs. 3,044,000/=. Of this sum, only Kshs. 1,490,000/= was collected. The agent has stated that he incurred the following expenses :-

(a) *Salary - Kshs. 435,000/=*

(b) *Agent Commission - Kshs. 223,530/=*

(c) *Water - Kshs. 3,490/=*

(d) *Electricity - Kshs. 11,130/=*

(e) *Watchman - Kshs. 60,000/=*

(f) *General Office expenses - Kshs. 14, 370/=.*

The total expenses are shown to be Kshs. 747,520/= and the sum to be deposited is Kshs. 742,680/=. The rent due from tenants is shown to be Kshs. 1, 553,800/=.

8. The accounts did not have any particulars or receipts of the expenses. Neither did it have the particulars of the tenants who have paid rent and those who have not. I directed Mr. Manyara to have a meeting with counsels so that he can avail to them the said particulars. I was informed by counsels that they did hold a meeting but Mr. Manyara had no documents.

9. I have considered the application. I think the agent has totally failed the parties and has failed to comply with the order of court requiring him to deposit the money collected in court. The parties no

longer want him to be agent. I cannot fault the parties for holding this position. I therefore order that M/s Njema Construction Company Limited do cease forthwith to be agent for collection of rent or for any other purpose over the suit property. I also hereby order the said firm to remove all its personnel from the said property if they have a presence there. Henceforth, the said firm should not receive a single shilling from any of the persons/tenants in the suit property.

10. I am aware that the 2nd interested party has an application to be allowed to receive rent. I think it may appear unfair to the other litigants if I allowed one party to be the one collecting the rent. The best thing to do is for all parties to sit and agree on a new agent who is acceptable to all of them. I will leave it to the parties to agree on the new agent.

11. On the prayer for distress against the tenants on the premises, it is not clear who has paid and who has not. I think this first needs to be established before any order of distress can be allowed.

12. The parties are also free to file any appropriate application that they may deem fit against M/s Njema Construction Limited for consideration.

13. M/s Njema Construction shall shoulder the costs of the applications dated 10 July 2015 and 10 August 2015.

14. It is so ordered.

Dated, signed and delivered in open court at Nakuru this 9th day of November 2016.

MUNYAO SILA

JUDGE

ENVIRONMENT & LAND COURT

AT NAKURU

In presence of :

Mr. Baragu holding brief for Mrs. Mukira for the plaintiff/applicant.

Mr. Kibet present for defendants.

Mr. Ooga holding brief for Mr. Githui for 2nd interested party.

CA: Wanjohi

MUNYAO SILA

JUDGE

ENVIRONMENT & LAND COURT

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