



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT

AT MALINDI

CIVIL CASE NO. 9 OF 2014

JUSTINE KAZUNGU BAYA.....PLAINTIFFS/APPLICANTS

=VERSUS=

NAIROBI HOMES (MSA) LTD.....DEFENDANT/RESPONDENT

R U L I N G

Introduction:

1. What is before me is the Plaintiff's Application dated 29th January, 2014 seeking for the following reliefs:
 - a. **That there be a temporary injunction restraining the defendant by itself, agents, servants, legal representatives or any other person claiming interest through it from evicting,, denying the Plaintiff with access to his business or interfering with the Plaintiff's smooth running of business in the suit premises on plot number 726 in any manner whatsoever pending the hearing and determination of the suit.**
 - b. **The costs of the application to be in the cause.**
2. The Application is premised on the grounds that the Plaintiff has been a tenant of the Defendant for a period of more than ten years; that for some unavoidable reasons, the Plaintiff got into rent arrears commencing the month of January 2013 which accumulated to a sum of Kshs.275,600/= at the rate of Kshs. 40,000/= per month and that the Defendant has refused to take the accumulated rent arrears and has instead issued a notice under section 4(2) of the Land lord and Tenant (Shops, Hotels and Catering Establishment) Act.
3. The Applicant finally averred in the grounds on the face of the Application and in the Supporting Affidavit that he is ready to deposit in court a sum of kshs. 60,000/= and clear the balance in a period of less than five months.

The Respondent's case:

4. In response, the Defendant's Managing Director has deponed that having issued a statutory notice, the land lord cannot accept rent; that the Applicant has without the consent of the landlord sub-let several portions of premises and that he has failed for a whole year to remit the full rent of Kshs.506,500/= as at the time of the statutory notice.
5. The Respondent's director finally deponed that the Plaintiff's suit has no chances of success because the Plaintiff has admitted that he is in rent arrears.

Submissions:

6. The parties disposed of the Application by way of written submissions. The Plaintiff's advocate submitted that his client is ready to pay the rent arrears in a period of five months and that the premises are commercial in nature and have earned goodwill.
7. The Plaintiff's counsel submitted that if the Plaintiff is evicted, his suit shall be rendered nugatory.
8. The Defendant's counsel on the either hand submitted that the act of payment of rent by a tenant takes precedence; that the Plaintiff is not even offering to deposit the whole rent arrears in court and this court cannot allow him to pay the said arrears in installments.
9. According to the Defendant's counsel, the Defendant wants vacant possession of the suit premises together with mesne profits as pleaded in the counter-claim.

Analysis and findings:

10. The Plaintiff has admitted that he has defaulted in paying rent to the Defendant for a period of about five months. The Plaintiff has not given any lawful reason for the default other than stating that it was due to "some unavoidable circumstances".
11. The Plaintiff wants this court to issue restraining orders as against the Defendant and to be allowed to pay the rent arrears in installments.
12. It is not in the province of this court, at an interlocutory stage, to dictate to the parties how the rent arrears should be paid. Indeed, this court cannot compel the Defendant to agree the arrangement that has been proposed by the Plaintiff on how he wants to settle the rent arrears in view of the fact there is no judgment on record.
13. In the circumstances, I find and hold that the Plaintiff has not established a *prima facie* case with chances of success to warrant this court to grant him an order of injunction. The issue of the Plaintiff suffering irreparable loss that cannot be compensated by way of damages does not arise considering that the Defendant is entitled to the rent that is due and owing.
14. Consequently, and for the reasons I have given above, I dismiss the Plaintiff's Application dated 29th January, 2014 with costs.

Dated and delivered in Malindi this **9th** day of **May**, 2014.

O. A. Angote

Judge