

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NYERI
ENVIRONMENT AND LAND COURT
CIVIL CASE NO.109 OF 2009

KASTURI LIMITED..... PLAINTIFF

VERSUS

NYERI WHOLESALERS LIMITED.....DEFENDANT

R U L I N G

The applicant is a limited liability company duly incorporated and registered under the Companies Act Cap 486 laws of Kenya. The respondent is also a limited liability company duly incorporated under cap 486 Laws of Kenya.

The dispute herein revolves on a tenancy relationship between the two which has not been good due to an alleged fraud or review of the lease agreement, alleged rent arrears and attempted eviction.

In the Notice of Motion dated 31/7/2014 the applicant prays for an order that there be a stay of the order issued herein on 9/7/2010 pending the vacancy of the premises on 31/12/2014. The application is grounded on the facts that the applicant had filed an appeal which was dismissed on 30th July 2014. The defendants who are partial decree holders are likely to commence eviction proceedings now that the said stay orders have since collapsed. The applicant needs time to arrange for an alternative premises and clear the stock and the debt of the suppliers and that the respondent is likely to forward the matter to the auctioneers to execute who will swiftly proceed with execution. The application is brought without delay and that the applicant stands to suffer substantial and hefty loss unless an order for stay is granted.

The application is opposed by the respondent on grounds that the Honourable Court does not have jurisdiction to entertain this application as it is now functus officio. The application is *Res judicata* in view of the plaintiff's application dated 16th September 2010 and orders granted on the 7th October, 2010 staying execution of the decree pending determination of the appeal. The Appeal Nyeri Court of Appeal No.248 of 2012 was heard and determined and therefore there can be no further extension of the court order staying execution of the decree. The plaintiff had ample time since 23rd April, 2010 when judgment was delivered, a period over four (4) years to make arrangements for alternative premises. The status of plaintiff employees does not form part of the lease contract. The plaintiff was in year 2010 issued with notice to give vacant possession which it failed to heed to and that justice is not one sided and if the order sought are granted it will prejudice the defendant immensely and occasion a miscarriage of justice. The respondent states that the plaintiff does not pay rent and therefore the orders sought are inequitable. The mesne profit continues to accumulate and now stand at Kshs.13 million. If the plaintiff is acting in good faith it should settle the rent arrears and accumulated mesne profit first. The foregoing notwithstanding, the plaintiff has not furnished any security for the due performance of the obligation to the court.

The respondent argues further that the terms of the lease has since lapsed by effluxion of time and the same has therefore determined. The plaintiff should therefore be coerced to yield and give vacant possession. The Honourable Court does not have jurisdiction to extend the term of lease contract as requested by the plaintiff. The stay order ought if granted would be tantamount to an extension of the terms of the lease and or the contract hereof, which has since determined.

According to the respondent this application is an abuse of the court process and was brought merely to frustrate the defendant from recovering the rent arrears due and possession of the premises. The plaintiff

continues occupying the premises against the will of the defendant and is a trespasser and therefore destitute of any rights as pertains the said premises.

This court finds that the applicants appeal having been dismissed with costs, litigation herein has come to an end hence one party must enjoy the fruits of judgment and this party is the respondent. However this being a case for eviction the court is not oblivious of the fact that the same is likely to disrupt the business of the applicant and affect the numerous persons in the applicant's employment, hence I'm inclined to grant the applicant upto the 8th of November 2014 to vacate the premises. The applicant to pay the outstanding rent on or before the 31st of October 2014. Each party to bear its own costs.

Dated, signed and delivered on 7th day of October, 2014.

A. OMBWAYO

JUDGE