



Efficient Dynamics & Supplies Limited v Gret Café Limited; Rnn Motors Limited (Interested Party) (Environment & Land Case E006 of 2023) [2024] KEELC 3888 (KLR) (14 May 2024) (Ruling)

Neutral citation: [2024] KEELC 3888 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE E006 OF 2023**

**JA MOGENI, J
MAY 14, 2024**

BETWEEN

EFFICIENT DYNAMICS & SUPPLIES LIMITED APPLICANT

AND

GRET CAFÉ LIMITED RESPONDENT

AND

RNN MOTORS LIMITED INTERESTED PARTY

RULING

1. Before this Court for determination is the Plaintiff’s application dated 11/07/2023 filed pursuant to Section 1A, 1B, and 3A of the *Civil Procedure Act*, Order 40 Rule 2 (1) and (4) & Order 51 Rule 1 of the *Civil Procedure Rules*, 2010 and other enabling provisions of the law seeking the following orders:
 - a. Spent
 - b. Spent.
 - c. Spent.
 - d. Spent.
 - e. That pending the inter partes hearing and determination of the main suit, a quia timet injunction be and is hereby issued restraining the Defendant/Respondent whether by themselves, their employees, servants and agents from carrying on any acts that directly and/or indirectly interfere with the Plaintiff/Applicant’s peaceful and quiet enjoyment of the demised premises and from further interrupting the Plaintiff/Applicant’s business, whether



by blocking the frontage and/or usage of the demised premises being LR Number 3734/843 situate off James Gichuru Road.

- f. That pending the inter partes hearing and determination of the main suit a mandatory injunction be and is hereby issued ordering the Defendant/Respondent to immediately and in any case not later than 24 hours after the issuance of this order, to remove its signboard, signages, tools, machines, generators, cars, sand and gravel dumped in and around the demised premises to immediately allow the Plaintiff/Applicant unhindered and unconditional access to the suit property being LR Number 3734/843 situate off James Gichuru Road.
 - g. That pending the hearing and determination of the main suit, an injunction be and is hereby issued restraining the Defendant/Respondent whether by themselves, their employees, servants and agents from any further interruption of the quiet passion and peaceful enjoyment of the suit property, including, but not limited to removing any of the properties of the Plaintiff/Applicant from the suit property being LR Number 3734/843 and from further trespassing and/or gaining entry to the said premises without prior notice to and consent of the plaintiff/applicant.
 - h. That if the defendant fails to comply with the timelines in (f) above, this Honorable Court be pleased to grant an order to the Plaintiff/Applicant pending the hearing and determination of the mains suit to remove its signboard, signages, tools, machines, generator, cars, sand and gravel dumped in and around the demised premises and deliver them to Muthangari Police Station for safe custody.
 - i. That this Honorable Court directs the Officer Commanding Muthangari Police Station to ensure compliance and to provide security for the enforcement of the orders.
 - j. That costs of this application be in the cause.
2. The Application was supported on the grounds on the face of it and further supported by the annexed affidavit of Martin Njenga sworn on 11/07/2023.
 3. The application is opposed by the Defendant/Respondent by way of a Replying Affidavit sworn by John Malago, a director of the Defendant Company on 5/03/2024. The Application is also opposed by Anthony K. Migwi, the operations manager of the Interested Party herein, through a Replying Affidavit sworn on 5/03/2024.
 4. When the Application came up before this Court for determination on 4/03/2024, the Court gave directions on filing of written submissions and a Ruling date was reserved. By the time of writing this Ruling, the only written submissions on record were the ones initially filed by the Plaintiff/Applicant. The Plaintiff/Applicant's written submissions are dated 20/11/2023.
 5. Before I delve into the determination of this application, I need to point out that this Court delivered a Ruling on 21/02/2024 and the Court had this to say (Paragraphs 54 to 72 of the said Ruling): -
 - i. Applying the tests for the grant of temporary and mandatory injunctions as explained in the foregoing I note that the claim by plaintiff to the suit property is based solely on the argument that there is a legal lease in existence which was executed on 28/10/2022 and was set to expire on 31/01/2028 yet the defendant has evicted the plaintiff from the leased property and locked them out of the suit premises. In fact, the defendant had executed a new lease agreement with the interested party on 28/06/2023.
 - ii. The principles for granting a temporary injunction are set out in the case of *Giella v Cassman Brown* (1973) EA 358. which are: that firstly, an Applicant must show a prima facie case with



a probability of success, secondly an interlocutory injunction will not normally be granted unless the Applicant might otherwise suffer irreparable injury, which would not adequately be compensated by an award of damages, and thirdly, if the Court is in doubt, it will decide an application on a balance of convenience.

- iii. On the other hand, the principles for granting a mandatory injunction are different from a prohibitory injunction in the sense that an applicant for mandatory injunction must prove his case on a standard higher than the standard in prohibitory injunctions. This is because issuance of a mandatory injunction in some circumstances concludes a case at the interlocutory stage.
- iv. For the grant of mandatory injunctions, the principles were set out by the Court of Appeal in *Kenya Breweries Ltd and another v Washington Okeyo* (2002) 1 E.A. 109 wherein it was held that there must be special circumstances shown over and above the establishment of a prima facie case for a mandatory injunction to issue, and even then only in clear cases where the court thinks that the matter ought to be decided at once.
- v. As to what constitutes a prima facie case, the Court of Appeal in *Mrao Ltd v First American Bank of Kenya Ltd & 2 Others* [2003] eKLR stated as follows:

“a *prima facie* case in a civil application includes but is not confined to a “genuine and arguable case.” It is a case which, on the material presented to the court, a tribunal properly directing itself will conclude that there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter.”

- vi. The plaintiff in this regard relied on its argument and submissions that the defendant has violated the terms of the lease agreement which required under the Further Conditions in the lease agreement that the lessor was to issue a written notice where the lessee breached the requirements of the lease requiring the lessee to remedy the same. In the event the lessee failed to remedy the said failure within 2 days upon receiving the written notice (emphasis mine), the lessor would terminate the lease. The lessor would then upon termination re-enter the premises which would revert to the lessor and who may take any action appropriate relating to the leasing of the suit property including renting it out to a new party.
- vii. On his part the defendant alleged that the plaintiff had violated the terms of the lease but there was no evidence presented that the defendant who is the lessor issued the required written notice that is provided for in the lease document. In fact, the plaintiff states that the defendant received the June rent in July and then went ahead to lock him out of the suit premises.
- viii. Referring to the application of those principles, the Court of Appeal in *Kenya Airport Authority v Paul Njogu Muigai & 2 others*, Civil Application No. NAI 29/97 (UR) stated that an order which results in granting a major relief claimed in the suit, which may not be granted at the final hearing, ought not to be granted at an Interlocutory stage. Again referring to the principle in the Shepherd Homes Case 1971 ICH 34 as adopted in the case of Locabail International Finance Ltd Mustil LJ said at page 906.

“The matter before the court is not only an application for a Mandatory Injunction, but it is an application for a Mandatory Injunction which, if a granted, would amount to the grant of a major part of the relief claimed in the action. Such an application should be approached with caution and the relief granted only in a clear case...”



- ix. It is the Plaintiff's contention that the lease agreement entered into between the parties was still in existence and is set to expire on 31/01/2028 and that the Defendant's continued occupation of the suit premises amounts to trespass. The plaintiff maintains that its lease is still running and the same has not been terminated in accordance with the Lease Agreement.
- x. In my considered view, and having taken into consideration the principles outlined for the grant of a Mandatory Injunction, and having applied the same to this case, the Plaintiff's case herein does not pass the tests outlined. From the facts that have emerged, it is apparent that this is not a case that one can regard as plain and clear and which the Court can decide at once. Ordering the Defendant to vacate from the Suit Premises at this stage will be tantamount to making a final decision in the case before the main issues are heard and determined in the main Suit, or the Suit is otherwise determined in summary manner. In my view, granting the orders sought at this stage would leave nothing further to await in the main suit.
- xi. For the interlocutory orders sought, the test applicable when considering an application for an interlocutory injunction is well settled and I need not belabour it. Such an applicant is required to establish a *prima facie* case with a probability of success. Even where a *prima facie* case is established, an injunction will not issue if damages are an adequate remedy in the circumstances of the case. If the court is in doubt as to whether damages will be an adequate compensation, then the court will determine the matter on a balance of convenience. All three conditions and stages are to be applied as separate, distinct and logical hurdles which the applicant is expected to surmount sequentially. If *prima facie* case is not established, then irreparable injury and balance of convenience need no consideration. See *Nguruman Limited v Jan Bonde Nielsen & 2 Others* [2014] eKLR.
- xii. As to what constitutes a *prima facie* case, we need look no further than the decision of the Court of Appeal in *Mrao Ltd v First American Bank of Kenya Ltd & 2 Others* (2003) KLR 125 where the court defined the term as follows:
- ... a case in which on the material presented to the court a tribunal properly directing itself will conclude that there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter... [it] is more than an arguable case. It is not sufficient to raise issues. The evidence must show an infringement of a right, and the probability of success of the applicant's case upon trial. That is clearly a standard which is higher than an arguable case.
- xiii. The plaintiff has indicated they that they are protected by the lease agreement and in particular Clauses 7(1) of the Lease agreement and Section 65 (1) (a) of the [Land Act](#) No. 3 of 2012.
- xiv. The defendant deny that the plaintiff has honoured their part in the lease agreement having failed to make regular payment of rent as and when it fell due. They however, do not deny that there was a lease agreement with the defendant but they aver that now they have a new agreement with the interested party and that the lease with plaintiff has been terminated by the actions of the plaintiff. However, the defendant's position is that he has no intention of evicting the interested party from the premises.
- xv. I am inclined to consider that the existence of a lease agreement which is set to expire on 31/01/2028 which is about four years away as evidence sufficient to support the plaintiff's *prima facie* case against the defendant. However, I must stress that conclusive proof of the issue is dependent on the production of evidence at the main trial.



- xvi. At present it is clear from the defendant's side that the interested party is in possession and that it was the plaintiff's duty to show that he was evicted unfairly from the suit property despite fulfilling the requirements of the existing lease. This allegation will also be expected to be proved by way of evidence at the hearing of the main suit.
 - xvii. Though the denial by the defendant of receipt of rent under the agreement with the plaintiff is denied, this court is also aware of the need to put such a crucial issue to the test of evidence before reaching a conclusive determination of the same.
 - xviii. It is worth noting that the orders sought by the plaintiff seek to inhibit the defendant or its employees, servant and its agents from directly and/or indirectly interfering the plaintiff's/applicant's peaceful and quiet enjoyment of the demised property and immediate unhindered and unconditional access.
 - xix. In the end this court finds that the plaintiff has not established a *prima facie* case with a probability of success against the defendant. There is some doubt as to whether the plaintiff would suffer any loss that cannot be compensated for by way of damages. I need not examine the other grounds since there is no *prima facie* case established.
6. It was the Defendant/Respondent's case that the present Application has been overtaken by events as the Landlord and Tenant relationship ceased 12 months ago. The Defendant/Respondent did not dispute the existence of a lease agreement dated 28/10/2023 however, it disputes that the Plaintiff itself made the payments of Kshs. 2,700,000.00 to its accounts as indicated in the lease agreement namely (the Gret Café-Equity Bank, Mayfair Branch A/c No. xxxx). They also contended that annexure 2 of the Plaintiff's affidavit only consists of a WhatsApp screenshot between unknown persons and several purported messages of payments with no dates or sender's particulars.
 7. The Defendant further contended that the actions of the Plaintiff in not paying rent and constructively vacating the premises is what led to the termination of the lease. He reiterated that the contents of paragraph 9 consisted of an admission that indeed the Plaintiff defaulted in payment of rent from the month of March 2023 to date. Thus he cannot claim to be a legitimate tenant worth of the discretionary orders as sought. The Defendant also confirmed that the show room is now under the management of the Interested Party who has fully paid rent and stocked the car yard.
 8. The Interested Party deponed that they are the current lessee and in possession of the suit property via a lease dated 28/06/2023 and have currently carried out massive structural renovations worth millions. That they have faithfully complied with its obligations under the lease by the payment of rent and other statutory obligations including obtaining licences and remittance of government taxes. They contend that they acquired the vacant premises with no knowledge and presence of the plaintiff.
 9. This Court notes that the circumstances in this matter have not changed since 21/02/2024. The position is still that the Plaintiff was locked out of the premises and that the interested party is in possession and has been issued with a lease dated 28/06/2023. There has been no demonstration that the suit property is not in any kind of immediate threat of being wasted, the Court holds the view that there is equally no evidence that the plaintiff/applicant is likely to suffer irreparable injury if the orders sought are not granted that cannot be compensated by an award of damages. On the balance of convenience, I am of the view that the Plaintiff having failed to satisfy the preceding requirements, the balance of convenience in this case will ultimately tilt in favor of not giving the orders sought by the plaintiff/applicant.
 10. Consequently, with the above in mind, this Honourable Court finds and holds that the Application dated 11/07/2023 is devoid of merit and the same is hereby dismissed with costs to the Defendant.



11. It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 14TH DAY OF MAY 2024.

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MOGENI J

JUDGE

In the virtual presence of:

Mr. Githiomi for Plaintiff

Ms. Chege for proposed Interested Party

Mr. Mbichire for Defendant

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MOGENI J

JUDGE

