



**Streeper v Shua (Environment & Land Case E052 of 2023)  
[2024] KEELC 4598 (KLR) (12 June 2024) (Ruling)**

Neutral citation: [2024] KEELC 4598 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA  
ENVIRONMENT & LAND CASE E052 OF 2023**

**SM KIBUNJA, J  
JUNE 12, 2024**

**BETWEEN**

**ZULEKHA ABDALLA STREEPER ..... PLAINTIFF**

**AND**

**JAMAL JIMMI SHUA ..... DEFENDANT**

**RULING**

1. The plaintiff filed the notice of motion dated the December 19, 2023, seeking for temporary injunction order restraining the defendant, his servants or agents from collecting rent, trespassing or in any manner interfering with the management of the plaintiff's suit premises on a plot of land known as Mombasa/Block XV1/875, suit property, pending the hearing and determinations of this suit. The application is based on the eight grounds on its face marked (1) to (8) and supported by the supporting and further affidavits of Zulekha Abdalla Streeper, the plaintiff, sworn on the December 19, 2023, and January 15, 2024 respectively. It is the plaintiff's case that the suit property is registered in the joint names of her three sisters and herself. That under a memorandum dated October 26, 2020, she developed a modern four storey building on the property in which she owns the 1<sup>st</sup> to 3<sup>rd</sup> floors, that consists of six two bedroomed apartments that she has let out at Kshs.26,000 per month. That in September 2023, the defendant, who is her son invaded the said premises, ordered the tenants to be paying rent to him and chased away the caretaker and her agent, Fatuma, who had been collecting rent for her. She reported to the police and the matter is under investigation. That the defendant did not participate or contribute Kshs.15 million in the development of the building and has no proprietary rights over it. That the defendant had allowed the wife he married in September 2023 to live in one of the plaintiff's six apartments before she left him. That the defendant does not reside in that apartment and has put it up for rent, as he lives with his first wife at Kaloleni Apartments. That the defendant had interfered with her daughter, Amina's, apartment that she had rented from her to operate an Airbnb business.



2. The application is opposed by the defendant through the replying and supplementary affidavits sworn by Jamal Jimmi Shua, defendant, sworn on the 8<sup>th</sup> January 2024 and 19<sup>th</sup> February 2024 respectively. It is the defendant's case that there exists another case between the parties that is pending ruling, in which an injunction order against the plaintiff has been issued. That the plaintiff ran out of money before reaching 1<sup>st</sup> floor level, and the defendant continued with the construction to the level it is using his finances to the tune of Kshs.15 million. That the tenants have been paying him rent without any problems from the plaintiff, until after the dissolution of his marriage to Fatuma Yusuf Juma. That the said Fatuma was not the Plaintiff's agent, but his wife. That he had authority from the proprietors of the plot to put up the construction, and the plaintiff is trying to deprive him of his investment. That the plaintiff's documents confirms remittances of about Kshs.1,767,055.64 only, which could not have been enough to put up the development on the plot. That he lives in one of the apartments with his 2<sup>nd</sup> wife.
3. The court gave directions on filing and exchanging submissions on the 1 January 8, 2024. Subsequently, the learned counsel for the plaintiff and defendant filed their submissions dated the January 29, 2024 and February 5, 2024 respectively, which the court has considered.
4. The issues for the court's determinations are as follows:
  - a. Whether the plaintiff has met the threshold for issuing of injunction order at this interlocutory stage.
  - b. Who pays the costs of the application?
5. The court has carefully considered the grounds on the application, affidavit evidence by both parties, submissions by the parties' leaned counsel, and come to the following determinations:
  - a. That there is no dispute that the plaintiff is one of the four registered proprietors of land parcel Mombasa/BlockXV1/875, suit property, upon which the premises in dispute was developed. That under the memorandum of understanding dated the October 26, 2020, the plaintiff was allowed to develop a structure on the suit property, and indeed a development up to 3<sup>rd</sup> floor was put up.
  - b. That the dispute between the plaintiff and the defendant, who are mother and son, is whether the defendant participated in the said development, what financial contribution he made if any and whether he has any role in collecting rent arising therefrom. The plaintiff's position is that the development on the suit property was done wholly by herself, while the defendant has insisted that he not only supervised the construction, but also invested his finances totally about Kshs.15 million on the development.
  - c. The defendant has annexed to his replying affidavit copies of invoices dated between 24<sup>th</sup> January 2020 to November 10, 2022 of the building materials he alleges he paid for. The plaintiff has through the further affidavit disputed the invoices deposing that they are manipulated, and that she used to send money for some works on the suit property to the defendant.
  - d. The defendant has also annexed copies of statutory declarations by Jamila Jaffar Abdalla, and Rukia Jaffar Abdalla, who are two of the four registered proprietors of the suit property, sworn on the November 28, 2023 and November 18, 2023, inter alia deposing that they had agreed to the development on the suit property by the plaintiff; that the defendant contributed for and supervised the construction on the suit property. The plaintiff has not specifically rebutted the



depositions of Jamilla and Rukia, other than deposing that the defendant has no proprietary interests over the suit property.

- e. The plaintiff's authority to erect the development on the suit property has not been questioned by the defendant. What is in dispute is the defendant's role and or authority over the premises developed on the suit property. The defendant has posited that he not only supervised the construction of the premises, but also invested up to Kshs.15 million of his finances in that development. That claim has been disputed by the plaintiff. The extent of the defendant's contribution in the development on the suit property, if any, can only be established or ascertained through evidence to be tendered during the hearing of the main suit. However, the parties being mother and son, should be at liberty to discuss with or without the assistance of family members, friends, elders or religious leaders and come up with a settlement at any time. In the meantime, an order of injunction restraining the defendant by himself, servants or agents from collecting rent, or in any other manner interfering with the management of the plaintiff's suit premises on Mombasa/Block XV1/875, pending the hearing and determination of this suit, is granted. This order does not amount to an eviction of the defendant from any part of the suit premises that he lawfully used before the filing of this suit.
  - f. In view of the finding in (e) above, the costs in the application will abide the outcome of the suit notwithstanding the provision of section 27 of Civil Procedure Act chapter 21 of Laws of Kenya.
6. Flowing from the determinations above, the court finds the plaintiff's notice of motion dated the 19<sup>th</sup> December 2023 has merit and orders as follows:
- a. That an order of injunction restraining the defendant by himself, servants or agents from collecting rent, or in any other manner interfering with the management of the plaintiff's suit premises on Mombasa/Block XV1/875, pending the hearing and determination of this suit, is granted.
  - b. The above order does not amount to an eviction of the defendant from any part of the suit premises that he lawfully used before the filing of this suit.
  - c. The costs in the application will abide the outcome of the suit.

It is so ordered.

**DATED, SIGNED AND VIRTUALLY DELIVERED ON THIS 12<sup>TH</sup> DAY OF JUNE 2024.**

**S. M. KIBUNJA, J.**

**ELC MOMBASA.**

In The Presence Of:

Plaintiff : M/s Kiptum

Defendant : Mr Paul Magolo.

Leakey – Court Assistant.

