



Mohamed v Kenya Railways Corporation (Environment & Land Case E058 of 2024) [2024] KEELC 6923 (KLR) (17 October 2024) (Ruling)

Neutral citation: [2024] KEELC 6923 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS
ENVIRONMENT & LAND CASE E058 OF 2024**

**A NYUKURI, J
OCTOBER 17, 2024**

BETWEEN

ABDI ALI MOHAMED PLAINTIFF

AND

KENYA RAILWAYS CORPORATION DEFENDANT

RULING

1. Before court is a motion dated 6th August 2024 filed by the plaintiff seeking the following orders;
 - a. This application be certified urgent and be dispensed with *ex parte* and in the first instance.
 - b. That the defendant/respondent be restrained either by themselves, their employees, servants and/or agents or by anyone whomsoever claiming to derive authority from them from entering, constructing upon, selling, leasing, transferring, developing or in any manner whatsoever from interfering with the applicant's quiet enjoyment, possession and use of the parcel of land more particularly described as KR land within Athi River logistic Hub in Athi River pending hearing and determination of this application.
 - c. That costs of this application be awarded to the plaintiff.
2. The application is premised on the affidavit sworn by Abdi Ali Mohamed, the plaintiff in this case. The applicant's case is that on 12th April 2024, the applicant was issued with an offer letter by the respondent for lease of the parcel of land known as KR land within Athi River Logistic Hub in Athi River at a consideration of Kshs.1,131,000/-. He stated that on 30th May 2023 and 2nd June 2023, the applicant made payments to the respondent of Kshs. 630,000/- and Kshs. 501,000/- respectively making a total of Kshs. 1,131,000/-. He stated that he sought to transfer the lease to his company called M/S Raaho Builders Limited by a letter dated 12th March 2024, and in response, the respondent in their letter of 8th April 2024 stated that the offer letter of 12th April 2023 had not been honoured and that upon payment of the aforesaid amount the plaintiff would be required to avail the necessary documentation.



3. He stated that he made payments to the respondent again of Kshs. 565,500/- on 13th April 2024 and Kshs. 565,500/- on 15th April 2024 totalling to Kshs. 1,131,000/-. Further that vide their letter of 9th May 2024, the respondent informed the applicant that the suit property had been allocated to another party, and the amount paid was applied to clear the plaintiff's outstanding arrears on other 3rd party account with the respondent. He complained that the respondent had breached the agreement and gone back on its word. That if the unlawful acts of the respondent are not stopped, he stood to suffer immense and serious loss. He attached the offer letter; bank statements; applicant's letter dated 12th March 2024; respondent's letter dated 8th March 2024; deposit slips; and the respondent's letter dated 9th May 2024.
4. The application is unopposed.

Analysis and determination

5. The court has carefully considered the application together with supporting affidavit. The only issue that arises for determination is whether the plaintiff has met the threshold for grant of orders of temporary injunction.
6. Order 40 Rule 1 of the Civil Procedure Rules grants the court power to order a temporary injunction where it is evident and demonstrated that the suit property is in danger of being wasted, damaged or alienated by a party to the suit or where a defendant intends to remove or dispose the suit property in circumstances that will result in obstruction or delay of execution of any decree that may be made against the defendant.
7. Conditions for grant of a temporary injunction are well settled. The applicant must demonstrate that they have a prima facie case with chances of success; that if the injunction is not granted, they stand to suffer irreparable injury that may not be compensated in damages; and where the court is in doubt, it ought to decide the application on a balance of convenience.
8. In the case of *Nguruman Limited v. Jan Bonde Nielsen & 2 Others* CA No. 77 of 2012 [2014] eKLR, the Court of Appeal held as follows;

In an interlocutory injunction application, the applicant has to satisfy the triple requirements to (a) establish his case only at a prima facie level, (b) demonstrate irreparable injury if a temporary injunction is not granted and (c) allay any doubts as to (b) by showing that the balance of convenience is in his favour.

These are the three pillars on which vest the foundation of any order of injunction interlocutory or permanent. It is established that all the above three conditions and states are to be applied as separate distinct and logical hurdles which the applicant is expected to surmount sequentially.

9. A prima facie case is a case where the plaintiff demonstrates that there is an apparent violation of his or her right by the defendant which requires the defendant's rebuttal. In the case of *Mrao Ltd v. First American Bank of Kenya Limited* [2003] eKLR, the Court of Appeal described a prima facie case as follows;

In civil cases, it is a case in which on the material presented to the court a tribunal properly directing itself will conclude that there exists a legal right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter.



10. In the instant case, the plaintiff's case is that he received an offer from the defendant for lease of the suit property at a consideration of Kshs. 1,131,000/- in the offer letter dated 12th April 2023, which he honoured by paying the sums of Kshs. 630,000/- on 30th May 2023 and Kshs. 501,000/- on 2nd June 2023 respectively. His complaint being that the defendant has breached the agreement and threatens to lease the property to a third party. He argues that if the orders of injunction are not granted by court, he stands to suffer serious and immense loss.
11. The court has considered the offer letter for lease of the suit property by the respondent dated 12th April 2023. The same states the terms thereof to be for a term of 45 years with effect from 1st June 2023. The application fee is Kshs. 5,000/-, boundary affirmation fees of Kshs. 100,000/-, exclusive annual rental charges of Kshs. 488,000/-; security deposit of Kshs. 488,000/-, and administrative charges of Kshs. 250,000/-. These makes a total of Kshs. 1,131,000/-.
12. In the offer letter, the respondents expressly stated that if the offer was acceptable to the plaintiff, the plaintiff was to send the respondent a written acceptance together with remittance of Kshs. 1,131,000/- deposited in the respondent's bank account stated in the offer letter. Besides, the respondent also stated that the offer was valid for 30 days from 12th April 2023 and that if all payments will not have been received by then, the offer shall automatically lapse.
13. I have considered the plaintiff's attached documents and it is clear that there is no written acceptance of the offer from the plaintiff. In addition, the respondent's letter of 9th May 2024 stating that the recent payments made by the plaintiff was applied to clear outstanding arrears in the plaintiff's other account with the respondent, did not elicit any denial of existence of other accounts or engagements between the plaintiff and the defendant and therefore it is apparent that the plaintiff has other accounts with the defendants with financial obligations on the plaintiff.
14. The plaintiff attached bank statements for his payments of Kshs. 630,000/- on 30th May 2023 and Kshs. 501,000/- on 2nd June 2023, which he stated to be in settlement of the consideration of the lease of Kshs. 1,131,000/-. As the offer letter stated that all payments must be made within 30 days from 12th April 2023, and in default the offer will automatically lapse, it is clear that the plaintiff should not only have issued the defendant with a written acceptance, he also ought to have paid the sum of Kshs. 1,131,000/- not later than 12th May 2023. By paying the first deposit on 30th May 2023 of Kshs. 630,000, it is clear that the same was paid out of time and when the offer had already lapsed. In addition, there is no forwarding letter for the two payments made on 30th May 2023 and 2nd June 2023 and in view of the fact that the plaintiff has not denied having other unsettled accounts with the defendant, it is not clear, whether the said payments were in regard to the offer letter herein or in regard to other accounts.
15. For the above reasons, I am not satisfied that the plaintiff honoured and or accepted the offer made on 12th April 2024 as he has not demonstrated a written acceptance and or payment of the consideration within 30 days of the offer. Therefore at a prima facie level, the plaintiff has not demonstrated that he accepted the offer made by the defendant, hence there is no contract between the plaintiff and the defendant which has allegedly been breached by the latter.
16. In the premises, I find and hold that the plaintiff has not demonstrated a prima facie case with chances of success, and therefore he does not deserve orders of injunction. In addition, the plaintiff's presentation of facts reeks of non disclosure of material facts as he did not state that the intended lease was for 45 years and he was expected to pay annual rents of Kshs. 488,000/- which if he had accepted the offer, he would have been expected to pay by the 12th day of April of each succeeding year including 2024. He did not also state the other accounts held between himself and the defendant although he



did not deny their existence thereby blurring the facts regarding the particular transaction settled in respect of the money paid by himself.

17. A party seeking discretionary orders of injunction is duty bound to make material disclosure of relevant facts in regard to their prayer. Therefore, for failure to make disclosure of the above material facts the plaintiff is not entitled to the orders sought. Ultimately, I find and hold that the plaintiff/applicant has failed to demonstrate a prima facie case with chances of success.
18. The court has also noted that the plaintiff sought for injunction pending hearing and determination of this application. Essentially at this point, the applicant's prayer is spent, and nothing remains.
19. The upshot of the above is that the plaintiff's application dated 6th August 2024 lacks merit and the same is hereby dismissed. There is no order as to costs.
20. It is so ordered.

DATED, SIGNED AND DELIVERED AT MACHAKOS VIRTUALLY THIS 17TH DAY OF OCTOBER, 2024 THROUGH MICROSOFT TEAMS VIDEO CONFERENCING PLATFORM

A. NYUKURI

JUDGE

In the presence of;

Mr. Dudi for respondent

Ms. Mutai holding brief for Mr. Saad for applicant

Court assistant – Josephine

