



Canarian Holdings Limited v Abdulrehman (Sued as the Attorney of the Wakf of the Late Harith Al-Amin Bin Mazrui) (Environment & Land Case 300 of 2018) [2023] KEELC 203 (KLR) (24 January 2023) (Ruling)

Neutral citation: [2023] KEELC 203 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
ENVIRONMENT & LAND CASE 300 OF 2018
NA MATHEKA, J
JANUARY 24, 2023**

BETWEEN

CANARIAN HOLDINGS LIMITED PLAINTIFF

AND

MOHAMED SAID ABDULREHMAN (SUED AS THE ATTORNEY OF THE WAKF OF THE LATE HARITH AL-AMIN BIN MAZRUI) DEFENDANT

RULING

1. The application is dated July 19, 2022 and is brought under section 19(2) of the *Environment & Land Court Act*, 2011, sections 1A, 1B, 34, 38(f) of the *Civil Procedure Act*, order 40 rule 1 (a) & order 50 rule 1 of the *Civil Procedure Rules*, 2010, seeking the following orders;
 1. This application be certified urgent, service be dispensed with in the first instance and the same be heard on a priority basis. Pending hearing and determination of this application inter-parties, this honourable court be pleased to issue a temporary injunction restraining the defendant herein by themselves or anyone claiming through them or their servants and/or agents from taking any action or steps against the plaintiff arising from any purported default of that part of judgment of this honourable court ordering the plaintiff to pay to the defendant the rent due under the lease to-date.
 2. The rent due as at March 23, 2022 together with all future rents that may fall due under the Lease over sub-division No 2419 (original No part of 48) section VI Mainland North situate in Mombasa Municipality and registered as CR No 13097/1 on November 27, 1963, being the head lease of all that property known as subdivision number 3071 (original number 2419/5) of section VI Mainland North amounting to Kshs. 321, 180 be and is hereby deposited in court.



3. Consequent to order No 3 above, this honourable court do declare that the plaintiff has fully satisfied its obligations to the defendant arising out of their claim for payment of rent over all that land known as subdivision number 3071 (original number 2419/5) of section VI Mainland North (being a portion of the premises comprised in a Lease registered in the land titles registry at Mombasa as number CR 13155/1 for a term of 99 years from July 1, 1963.
4. The costs of and occasioned by this application be borne by the defendant.
2. It is based on the grounds that the court by its judgment and decree dated April 13, 2022 ordered the plaintiff/applicant herein to pay rent due under the lease to the defendant. In compliance with the court order, the plaintiff's advocates wrote to the defendants' advocates by the letter dated March 28, 2022 requesting for the details where the payment of rent was to be made. The defendants' advocates requested for time to consult their client, and by a letter dated April 22, 2022, the defendants' advocates wrote back requesting for a cheque to be drawn in the defendant's name for the payment of rent to be forwarded to them for onward transmission to their client. By a letter dated May 4, 2022, the plaintiff's advocates forwarded the cheque for payment of rent to the defendant's advocates. The defendant's advocates received the cheque and after a month, by a letter dated June 10, 2022, returned the cheque to the plaintiff's advocates stating that those were the express instructions of the defendant. It is for this reason that the instant application to deposit the rent due under the lease into court is made in order for the plaintiff to comply with the judgment and decree of the court.
3. That this application has been necessitated by the plaintiff's desire to comply with the final judgment and decree of the court, where the defendant has refused to accept rent paid in compliance with the judgment of the court by returning the rent paid and refusing to provide bank details for payment, purposely to create an impression that the plaintiff is disobeying the final judgment and decree of the court. That the plaintiff makes this application to deposit the rent in court pursuant to the judgment and decree of this court as the defendant has thwarted all attempts to be paid rent by returning cheques paid and involving the plaintiff in unfruitful correspondence.
4. Subsequently, the plaintiff did by a letter dated March 28, 2022 notify the defendant that it intended to immediately pay the rent due to the defendant and sought for confirmation of the defendant's bank account details for purposes of making payment and further sought for the defendant's full address i.e. physical, postal and email addresses. The defendant's advocates did promise to revert substantively to the request by their letter dated March 30, 2022. In the meantime, the plaintiff through its advocates did seek and obtained the defendant's approval of the draft decree as evinced by the letters dated April 5, 2022 and April 12, 2022. Consequently, the plaintiff's did extract the decree which was issued by this honourable court on April 13, 2022 and duly served on the Defendant's Advocates on April 14, 2022 and which expressly stipulated the orders of this honourable court as per the judgment.
5. By a letter dated May 4, 2022, the plaintiff did forward cheque number 000826 for Kenya shillings sixty-nine thousand nine hundred and sixty only (Kshs 69,960.00) being in respect of the rent for the period between January 1, 2012 and December 31, 2022 at Kshs 530 per month as tabulated on the backside of the said cheque. The plaintiff further sought for a response in regard to the defendant's Bank account details and full address i.e physical, postal and email addresses to facilitate timeous payment of monthly rent in terms of the lease. Despite the foregoing, the defendant failed to not only present the said cheque for payment and but also persisted in his failure to provide the plaintiff with his bank account details and other full details to facilitate the timeous payments of monthly rent as and when they fall due as had been previously requested.
6. Consequently, and to avoid the cheque going stale, by letter dated May 25, 2022, the plaintiff demanded that the defendant do present the said cheque for payment forthwith to facilitate full



- compliance with the decree and to further provide his bank account details plus full address within fourteen (14) days from the date of the said letter, failure to which the plaintiff would make the necessary application to have the rents deposited to court.
- 7 Notwithstanding the aforesaid express terms of decree issued on April 13, 2022 and the judgment delivered on March 23, 2022 that the rent payable under the head lease is Kshs 530/- per month and that the plaintiff do pay the defendant rent due under the lease to date, the defendant has by a letter dated June 10, 2022 purported to unlawfully decline the payment of rent by returning the plaintiff's cheque in respect thereof.
 - 8 The institution of this application had been precipitated by the defendant's similar action of returning a cheque issued by the plaintiff in settlement of the rent due under the lease and contemporaneously purporting to issue a forfeiture notice dated November 1, 2018 alleging breach of the lease for non-payment of rent which has since been nullified by this honourable court. Consequently, the plaintiff is apprehensive that the defendant is once again seeking to induce a breach of the head lease by returning the cheque herein to purportedly justify an intended issuance of a forfeiture notice and it is therefore imperative to have the rent due together with all future rents that may fall due under the lease amounting to Kshs 321, 180 be deposited in court to avert the defendant's hide and seek tendencies and erratic modus operandi.
 - 9 The defendant filed a replying affidavit sworn by Mohamed Said Abdulrehman on October 3, 2022 and filed in court on even date, as well as the annexures. That sometime on or about the October 23, 2018, the defendant presented to the plaintiff a duly registered power of attorney dated July 11, 2018 showing that he had been appointed with effect from that date to be the lawful attorney for the Zeid Harith Al Amin Mazrui and Al Amin Mohammed Mazrui being the successors to the Wakf created by the late Sheikh Ali Bin Abdula El - Mazrui with powers as specified at paragraph 2 of the replying affidavit. That this honourable court did by its judgment delivered on March 23, 2022 also find that the defendant had failed to establish his counterclaim on a balance of probabilities and dismissed the same with costs to the plaintiff as evidenced at page 29 of annexure marked "MSA 1" in the replying affidavit. That being dissatisfied with the judgement they have filed a notice of appeal. That in reply to paragraph 6 of the replying affidavit, the respondent confirms that in compliance with the judgment of this court, the plaintiff's advocates to forward the rental sums as ordered by the court which the advocates did by the letter dated May 4, 2022 forwarding cheque number 00826 for Kshs 69,960.00 being in respect of rent for the period between January 1, 2012 and December 31, 2022 at Kshs 530/ = per month. That accepting the payment of rent would render his intended appeal nugatory. That in there is no justification to pay the amount of Kshs 321,181/= being rent up to the date of expiry of the lease upto June 30, 2062.
 - 10 This court has considered the application and the affidavits in support and against the same. It is not disputed that the court by its judgment and decree dated April 13, 2022 ordered the plaintiff/applicant herein to pay rent due under the lease to the defendant. By a letter dated May 4, 2022, the plaintiff did forward cheque number 000826 for Kenya shillings sixty-nine thousand nine hundred and sixty only (Kshs 69,960.00) being in respect of the rent for the period between January 1, 2012 and December 31, 2022 at Kshs 530 per month as tabulated on the backside of the said cheque. The defendant refuse to accept the same stating that accepting the payment of rent would render his intended appeal nugatory. That there is no justification to pay the amount of Kshs 321,181/= being rent up to the date of expiry of the lease upto June 30, 2062. Due to this refusal the plaintiff is apprehensive that the defendant is seeking to induce a breach of the head lease by returning the cheque herein to purportedly justify an intended issuance of a forfeiture notice and it is therefore imperative to have the rent due together with all future rents that may fall due under the lease amounting to Kshs 321, 180 be deposited in



court. I find that filing an appeal does not stay the orders of this court as per the judgement delivered in this matter. Since the defendant is not willing to receive the same I order that the same be deposited in court when it falls due. I agree with the defendant that there is no justification to pay the amount of Kshs 321,181/= being rent up to the date of expiry of the lease upto June 30, 2062 as these were not the orders of the court. I therefore find the application is merited to that extent and I grant the following orders;

1. That the plaintiff do pay into court the rent due under the lease as and when it falls due as per the terms of the lease until further orders of this court.
2. Each party to bear its own costs of this application

It is so ordered.

DELIVERED, DATED AND SIGNED AT MOMBASA THIS 24TH DAY OF JANUARY 2023.

N.A. MATHEKA

JUDGE

