



Cedar Hospital Limited v Hasham Lalji Properties Limited & 2 others (Tribunal Case E040 of 2023) [2023] KEBPRT 1215 (KLR) (9 October 2023) (Ruling)

Neutral citation: [2023] KEBPRT 1215 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E040 OF 2023
P MAY, MEMBER
OCTOBER 9, 2023**

BETWEEN

CEDAR HOSPITAL LIMITED TENANT

AND

HASHAM LALJI PROPERTIES LIMITED 1ST RESPONDENT

SEDCO CONSULTANTS LIMITED 2ND RESPONDENT

RAZOR SHARP AUCTIONEERS 3RD RESPONDENT

RULING

1. A mere perusal of the pleadings filed by both parties reveal that the protagonists herein have engaged in protracted litigation in various fora including this Honourable Tribunal. The principle of finality in litigation seems to be strange to the parties herein as they engage in a vicious cycle of filing applications before the various dispute resolution platforms. The pronouncements made by the judicial bodies that have preceded the Tribunal seems to have emboldened the parties while the underlying intention was to resolve the disputes and give the parties some compass as they reflect on the best approach of resolving the disputes without any further casualties.

Introduction

2. The tenant approached the Tribunal by filing the application dated 28th February, 2023 seeking for orders of temporary injunction against the landlord and the other respondents. The application is premised on the grounds set out in the supporting affidavit sworn by Dr. Charles Jakait. The tenant stated that it had been meeting their contractual obligations pursuant to the various orders that have been issued by the various judicial bodies.
3. The parties are in agreement that the tenant had been in occupation of the demised premises and it was not until 2020 when the Tribunal delivered a judgement allowing for increment in rent. The parties



dispute the payment of rent as the tenant stated that it had been paying rent directly to the landlord. The estate agent indicated that there was an order made by the High Court in Nairobi HCCC E148 of 2019 which directed that it was the sole entity charged with receiving rent.

4. The 2nd and 3rd respondents filed elaborate replying affidavit stating the chronology of the dispute and the directions that have been given by the various courts. They maintained that the proclamation notices issued are proper and that the same should be allowed.
5. The parties elected to canvass the application by way of written submissions. I have considered the same and would proceed as follows:
6. The present application as stated above is one for orders of temporary injunction. The requirements for the grant of temporary injunctions are now well settled as were stated in the celebrated case of; *Giella v Cassman Brown* [1973] EA 358 and as were reiterated in the case of; [*Nguruman Limited v Jan Bonde Nielsen & 2 others*](#) CA No.77 of 2012 [2014]eKLR where the Court of Appeal held that;

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

These are the three pillars on which rests 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”

7. I have considered the affidavits on record and the corresponding annextures against the above set conditions. As stated at the opening paragraph, the parties have been engaged in a vicious litigation which has had impact on the trajectory of the proceedings.
8. In view of the forgoing, I am inclined to allow the application in terms of prayer 2 and direct that the parties do ventilate the issues raised during the hearing of the reference.
9. In the end, I shall issue the following orders:
 - a. The parties to file and exchange witness statements and the documents they shall seek to rely on at the hearing of the reference in a single bundle duly paginated within 7 days hereof.
 - b. The application dated 28th February, 2023 is allowed in terms of prayer 2.
 - c. The parties to take a hearing date on priority basis.
 - d. Each party shall bear their own costs.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY THIS 9TH DAY OF OCTOBER 2023

HON. P. MAY

MEMBER

9.10.2023

In the absence of the parties

