



SBS Dunhill Group (East Africa) Limited v Shah & others (Tribunal Case E536 of 2024) [2024] KEBPRT 1204 (KLR) (23 August 2024) (Ruling)

Neutral citation: [2024] KEBPRT 1204 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E536 OF 2024
GAKUHI CHEGE, CHAIR & J OSODO, MEMBER
AUGUST 23, 2024**

BETWEEN

SBS DUNHILL GROUP (EAST AFRICA) LIMITED TENANT

AND

AJEETKUMAR C SHAH & OTHERS LANDLORD

RULING

1. The landlord moved this Tribunal under Order 2 Rule 15(1)(d) of the Civil Procedure Rules seeking for orders that; -
 - i. The application be certified as urgent and be heard in priority to the Tenant/Applicant's application dated 7th May 2024.
 - ii. The Tenant/Applicant's application dated 5th May 2024 be struck out.
 - iii. The status quo orders of this Tribunal issued on 8th May 2024 be discharged.
 - iv. The costs of the application be awarded to the Landlord/Respondent.
2. The application is predicated upon the grounds that;
 - a. The Tenant/Applicant obtained the status quo orders on 8th May 2024 without making material disclosures regarding the nature and current status of the relationship between the parties.
 - b. The application dated 5th May 2024 and the supporting affidavit of Geoffrey Somoni Birundu sworn on 7th May 2024 are founded on untruths relating to the status of the relationship between the Tenant/Applicant and the Landlord/Respondent which is the subject of a dispute pending before the Environment and Land Court at Nairobi in Nairobi ELC Cause No. E112 of 2023 SBS Dunhill Group (East Africa) Limited versus Ajeetkumar C. Shah & 2 Others.



- c. Since the expiry of the lease agreement dated 1st October 2017 and the subsequent leave and licence agreements on 31st August 2023, the Tenant/Applicant has failed to settle its rent obligations which stand at Kshs. 20,970,184.40/- as at 31st May 2024 despite its continued trespass on the Landlord/Respondent's premises.
 - d. On 24th April 2024, the ELC Court in ELC Cause No. E112 of 2023 SBS Dunhill Group (East Africa) Limited versus Ajeetkumar C. Shah & 2 Others dismissed the Tenant/Applicant's application dated 9th October 2023 where the Tenant/Applicant was seeking a temporary injunction to restrain the Landlord/Respondent from evicting them from the suit premises or interfering with the Tenant/Applicant's business and clients.
 - e. The orders sought in the Tenant/Applicant's application dated 5th May 2024 are Intended to enable the applicant to continue unlawfully occupying the suit premises without paying rent. The Tenant/Applicant's application is an afterthought following the ruling of the ELC Court of 24th April 2024 and an abuse of court process (See *Nyarangi v Musyoki Mogaka & Co. Advocates (Civil Appeal 80 of 2020)* [2022]KEHC 345 (KLR) and Ephraim Miano Thamaini v Nancy Wanjiru Wangai & 2 others [2022] eKLR.
 - f. The Tenant/Applicant's application is founded on misleading information and material non-disclosure by the applicant. The Tenant/Applicant has not approached this Tribunal with clean hands and is not entitled to the remedies sought (See *Caliph properties limited v Barbel Sharma & another* [2015] eKLR and *Esther Nugari Gachomo v Equity Bank Limited* [2019] eKLR).
 - g. This Tribunal cannot sit on appeal or review or set aside the orders of the ELC issued on 24th April 2024.
 - h. The application is an abuse of court process.
 - i. It is in the interest of justice that this application be allowed, and the Tenant's application dated 7th May 2024 be struck out with costs to the Landlord.
3. The application is founded on the affidavit of Pankaj Chhaganlal Shah sworn on 31st May 2024 wherein he deposes that he is a partner in the Landlord/Respondent which is the registered owner of the of the suit property known as LR No. 1/1373 (Original Number 1/989/990) on which it has erected the building known as Senteu Plaza.
 4. He further deposes that having read the tenant's notice of motion dated 5th May 2024 and the supporting affidavit sworn by the tenant's Chief Executive Officer, Geoffrey Solomon Birundu on 7th May 2024 together with the documents annexed to the affidavit therein, the documents filed by the tenant contain a lot of untruths. The tenant has also attached falsified documents in support of its claim.
 5. According to the affiant, the tenant/applicant has been a tenant occupying premises on the 1st floor for the period between 1st September 2017 to 31st August 2023. Upon the expiry of the lease on 31st August 2023, the tenant was required to deliver up the premises with vacant possession together with the lessor's fixtures and fittings in such a state of repair and condition in compliance with the other provisions of the agreements pursuant to clauses 3(v) of the lease dated 1st October 2017 and clauses 2(s) of the three subsequent leave and license agreements. (Copies of the lease agreement dated 1st October 2017 and the subsequent leave and licence agreements are at pages 1 to 52 of the exhibit marked PCS-1 annexed to the affidavit.



6. It is further deposed that there was no agreement between the tenant and the landlord to sell the building known as Senteu Plaza to the tenant as alleged in paragraph (d) of the Tenant/Applicant CEO's affidavit. Further, the landlord has not sold or received any money from the tenant towards the alleged purchase.
7. The nature of the relationship between the Tenant/Applicant and the Landlord/Respondent herein is the subject of a suit filed by the Tenant/Applicant herein in Nairobi ELC Cause No. E112 of 2023SBS Dunhill Group (East Africa) Limited versus Ajeetkumar C. Shah & 2 Others seeking among other prayers a permanent injunction against the landlord to bar the landlord from evicting the tenant. from the suit premises and an order for specific performance to compel the landlord to honor the alleged agreement to sell the building to the tenant. A copy of the plaint filed by the tenant and the landlord's defence and counterclaim is on pages 53 to 74 of the exhibit.
8. The suit was filed together with an application dated 9th October 2023 seeking temporary injunctive orders to restrain the landlord from evicting the tenant or from interfering with the tenant's occupation and use of the suit premises pending determination of the suit. A copy of the notice of motion dated 9th October 2023 is at pages 75 to 91 of the exhibit.
9. The Tenant/Applicant's application dated 9th October 2023 was dismissed with costs by a ruling delivered by the ELC Court on 24th April 2024. A copy of the ruling delivered on 24th April 2024 is at pages 92 to 133 of the exhibit.
10. The tenant continues to occupy the premises without paying rent. Following the ruling delivered on 24th April 2024, the Landlord/Respondent is entitled to levy distress for accrued rent from the Tenant/Applicant. As at 31st May 2024, it was indebted to the Landlord/Respondent for a total sum of Kshs.20,977,593.20/-. A copy for the demand dated 6th May 2024 for settlement of the outstanding debt to the Tenant/Applicant's advocates in the ELC suit is at pages 134 of the exhibit.
11. In view of the foregoing, it is the Respondent's contention that the tenant's application dated 5th May 2024 is an abuse of court process for the following reasons:
 - a. The applicant herein has filed the instant application seeking equitable reliefs by misrepresenting the nature of its relationship with the Landlord/Respondent and failing to make material disclosure regarding the status of its occupation of the suit premises.
 - b. The applicant herein failed to disclose to this Tribunal that its applications seeking interim reliefs against the landlord herein had been dismissed by the Environment & Land Court.
 - c. This application is an afterthought by the applicant considering the ruling of the ELC issued on 24th April 2024 and is intended to legitimize the Tenant/Applicant's continued trespass on the suit premises.
12. Regarding the Tenant/Applicant's electricity connection, the Tenant/Applicant accrued a bill on KPLC account number 74541442 which it failed to transfer to its name pursuant to clause 3(c) of the lease dated 1st October 2017. The tenant is required to pay all charges in respect of electricity and water consumed on the demised premises.
13. Owing to the Tenant/Applicant's failure to transfer the electricity meter to its own name and the Tenant/Applicant's failure to pay for its electricity consumption, the Landlord/Respondent was forced to settle an outstanding electricity bill of Kshs. 508,219.00/- attributable to the Tenant/Applicant's premises in December 2023. This account was discontinued, and the tenant only gets electricity on the one account that is in its name. The sum of Kshs. 508,219.00/- is still owing to the



- Landlord/Respondent. A copy of the landlord's advocates letter to the Tenant/Applicant's advocates dated 19th December 2023 is on pages 135 to 136 of the exhibit.
14. The landlord has no control over the billing or payment or disconnection of electricity by KPLC to the tenant's account number 124741360. The orders sought against the landlord cannot be therefore be enforced.
 15. Regarding the Tenant/Applicant's water connection, it is deposed that the Tenant/Applicant was similarly required to pay all charges in respect of water consumed on the suit premises pursuant to clause 3(c) of the lease dated 1st October 2017. Since 11th December 2023 to 5th May 2024, the Tenant/Applicant accrued an outstanding water bill of Kshs. 7,408.80/-. A copy of the proforma invoice for this accrued bill is on pages 137 of the exhibit. In summary, the tenant owed the landlord the following amounts on account of electricity and water;
 - a. Electricity bill as at December 2023-paid top KPLC- Kshs. 508,219.00/=.
 - b. Water bill owed to the landlord- Kshs 7,408.80/=.
 16. As a result of the Tenant/Applicant's breach of its obligations to settle its accrued utility bills, the Tenant/Applicant's water connection was disconnected on 2nd May 2024 to prevent accrual of further bills. The Tenant/Applicant is not entitled to have the utilities reconnected prior to settling all accrued utility bills currently owed to the Landlord/Respondent.
 17. The affiant further deposes that on 9th May 2024, the tenant through its Chairman, Mr.Obure broke into the roof top of the building and reconnected the water illegally. The tenant has not paid the water bill.
 18. He further deposes that the tenant is misleading this Tribunal for reasons that:
 - a. In the claim before this tribunal, the tenant alleges that it has purchased the building and paid the purchase price in full which is false.
 - b. In the case before the ELC, the tenant has sought an order for specific performance to compel the landlord to honor the alleged agreement to sell the building to the tenant. He confirms that he has not bought or paid for the building.
 - c. The statements of account presented in the tenant's exhibit alleging payment to the Nishal Chandu (who is not the landlord) are forgeries.
 19. The Respondent therefore contends that It is in the interest of justice that the tenant's application dated 5th May 2024 be struck out with costs to the landlord.
 20. The application is opposed through the replying affidavit of Geoffrey Somoni Birundu, the Chief Executive Officer sworn on 10th June 2024.
 21. He deposes that the Tenant has been in occupation of the suit property known as L.R Number 1/1373 (Original Number 1/989 & 1/990 Nairobi) from 1st day of September 2017 to date.
 22. It is further deposed that the Tenant disclosed to this Tribunal that there exists a suit in the Environment & Land Court at Milimani between the parties herein which essentially meant to address the dispute regarding occupation and eventual ownership of the said suit property.
 23. The matter was coming up for mention for further directions before the Honourable Judge on the 3rd day of July 2024 and the issue before this Tribunal is not for determination of occupation and ownership as the Tribunal can take judicial notice of the Tenant's occupation of the suit property.



24. According to the Respondent the issue before this Tribunal is the contemptuous manner in which the Landlord is treating the Tenant and acting ultra vires in relation to services being supplied by third parties. The Landlord is not entitled to withdraw and/or interfere with provision of water and electricity services to a premise, which services essentially, he is not the principal provider.
25. The tenant contends that the Landlord is misleading the Tribunal when he avers that the water and electricity supply were disconnected by the service providers when in fact the same were done by agents of the Landlord which necessitated the Tenant to approach this Tribunal to seeking for reinstatement of the said supply.
26. It is further deposed that the Landlord is equally not approaching the matter with honesty, clarity and in good faith as the Tenant does not owe the Landlord the sum of Kshs 20,977,593.20.
27. It is deposed that as a matter of fact, the Landlord has received a total of USD (\$) 8,125,826.00 equivalent to Kshs.1,056,357,380.00 (One Billion Fifty-Six Million, Three Hundred and Fifty-Seven Thousand, Three Hundred and Eighty Kenya Shillings only), which disclosure is being handled by State Agencies, Directorate of Criminal Investigations (DCI) and the Environment and Land Court.
28. It is denied that the Chairman of the Tenant Company broke into the roof top of the suit property to reconnect water or at all is an attempt to steal a march against the Tenant and a cheap shot as the Chairman is a rational national leader who believes in the rule of law.
29. The application was directed to be disposed of by way of written submissions but only the landlord's Counsel complied. We shall consider the submissions together with the issues for determination.
30. The following issues arise for determination;
 - a. Whether the landlord's application ought to be allowed or dismissed.
 - b. Who is liable to pay costs?
31. The landlord through the application under consideration is seeking for striking out of the tenant's case on the basis that;
32. The application is predicated upon the grounds that;
 - a. The Tenant/Applicant obtained the status quo orders on 8th May 2024 without making material disclosures regarding the nature and current status of the relationship between the parties
 - b. The application dated 5th May 2024 and the supporting affidavit of Geoffrey Somoni Birundu sworn on 7th May 2024 are founded on untruths relating to the status of the relationship between the Tenant/Applicant and the Landlord/Respondent which is the subject of a dispute pending before the Environment and Land Court at Nairobi in Nairobi ELC Cause No. E112 of 2023 SBS Dunhill Group (East Africa) Limited versus Ajeetkumar C. Shah & 2 Others.
 - c. Since the expiry of the lease agreement dated 1st October 2017 and the subsequent leave and licence agreements on 31st August 2023, the Tenant/Applicant has failed to settle its rent obligations which stand at Kshs. 20,970,184.40/- as at 31st May 2024 despite its continued trespass on the Landlord/Respondent's premises.
 - d. On 24th April 2024 the ELC Court in ELC Cause No. E112 of 2023 SBS Dunhill Group (East Africa) Limited versus Ajeetkumar C. Shah & 2 Others dismissed the Tenant/Applicant's application dated 9th October 2023 where the Tenant/Applicant was seeking a temporary



injunction to restrain the Landlord/Respondent from evicting them from the suit premises or interfering with the Tenant/Applicant's business and clients.

- e. The orders sought in the Tenant/Applicant's application dated 5th May 2024 are Intended to enable the applicant to continue unlawfully occupying the suit premises without paying rent. The Tenant/Applicant's application is an afterthought following the ruling of the ELC Court of 24th April 2024 and an abuse of court process. See *Nyarangi v Musyoki Mogaka & Co. Advocates (Civll Appeal 80 of 2020)* [2022]KEHC 345 (KLR) and Ephraim Miano Thamaini v Nancy Wanjiru Wangai & 2 others [2022] eKLR.
 - f. The Tenant/Applicant's application is founded on misleading information and material non-disclosure by the applicant. The Tenant/Applicant has not approached this Tribunal with clean hands and is not entitled to the remedies sought. See *Caliph Properties Limited v Barbel Sharma & another* [2015] eKLR and *Esther Nugari Gachomo Vs Equity Bank Limited* [2019] eKLR.
 - g. This Tribunal cannot sit on appeal or review or set aside the orders of the ELC issued on 24th April 2024.
 - h. The application is an abuse of court process.
 - i. It is in the interest of justice that this application be allowed, and the Tenant's
33. We have looked at the ruling of the Environment and Land Court at Nairobi in ELC Case No. E112 of 2023 delivered on 24th April 2024 and noted that the case involves the same parties currently before us. It is not clear to us why the tenant decided to file its application before this Tribunal after losing its application for injunction in the said court. This we agree with the landlord amounts to gross abuse of court process.
34. It is further noted that at the time of filing the instant suit, the tenant did not disclose that a ruling had been delivered in the said matter dismissing its application for injunction. It is not proper for a party to engage in multiple litigations with an aim of securing what he fails to obtain in one Court through another forum. We believe that he who comes to equity must come with clean hands.
35. We have seen the decisions in the cases of *Beach Villas Limited vs Mogeni & 4 others* (2022) KEELC 2447 9KLR & *John Njue Nyaga vs Nicholas Njiru Nyaga & another* (2013) eKLR on the doctrine of Res Judicata and the position that a party cannot be allowed to benefit from his own wrong and we entirely agree with the same.
36. We have also seen the decisions in the case of *Satya Bhama Gadhi vs Director of Public Prsecutions & 3 others* (2018) eKLR & *Dr John Wangai vs John N Mugambi & another* (2012) eKLR on the position that filing a multiplicity of suits amounts to abuse of court process and that a court has inherent jurisdiction to stop such abuse respectively.
37. Based on the foregoing brief analysis of facts and the law and without delving deep into the issues in dispute, we are convinced beyond any peradventure that the case before us is an outright abuse of court process and the landlord's application ought to succeed.
38. Costs of every action before this Tribunal are at our discretion under Section 12(1)(k) of Cap 301 but always follow the event unless for good reasons otherwise ordered. We note that the tenant herein filed the instant suit without disclosing that he had lost a similar application in the Superior Court. It ought to pay exemplary costs in line with the foregoing provision of the law to discourage other such litigants from abusing court process by filing multiple suits.



39. In conclusion, we make the following final orders under Section 12(4) of Cap 301 on the landlord's application dated 31st May 2024;

a. The landlord's application dated 31st May 2024 is hereby allowed in terms of prayers 2, 3 and 4 thereof.

b. The tenant shall pay exemplary costs to the landlord assessed at Kshs 100,000/=.

It is so ordered.

RULING DATED, SIGNED & VIRTUALLY DELIVERED THIS 23RD DAY OF AUGUST 2024

HON GAKUHI CHEGE - PANEL CHAIRPERSON

HON JOYCE A OSODO - PANEL MEMBER

In the presence of;-

Masake/Onyango for the tenant

Andiwo/Makori for the landlord

