Memorandum of Appeal Against an Injunction Blocking Commercial Office Rent Recovery

Educational sample 236 | Mombasa

Educational reconstruction from a reported Kenyan decision. Newly drafted wording, not an original court filing or a matter handled by our team. Specimen identities are bracketed. Adapt to genuine facts, current law, jurisdiction and court directions before signing, swearing or filing.

Reconstructed formal document

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MOMBASA

ENVIRONMENT AND LAND APPEAL NO [reference]

[APPELLANT] v [RESPONDENT]

MEMORANDUM OF APPEAL

1. The Appellant appeals from the interlocutory ruling delivered on [date] in Mombasa ELC [subordinate case number]. The impugned order restrained [exact act]. This memorandum concerns that injunction and its legal and evidential basis, leaving the substantive rent and measurement issues to the proper trial.

2. The trial court erred in failing to apply the signed letter of offer dated [date] when assessing whether the Respondent had a prima facie right to restrain contractual rent recovery. The relevant clauses defining the demised space, service area, rent and default are [record pages].

3. The trial court erred in treating the Respondent disputed measurement of 740 square feet as established against the contractual figure of approximately 1,040 square feet inclusive of service space. The Appellant relies on the admitted lease, plans and payment records, rather than seeking a final measurement finding from new material on appeal.

4. The trial court erred in failing to consider the proved rent arrears and the effect of the Respondent paying only for the area it regarded as undisputed. The actual rent ledger, due dates, credits and disputed balance are [pages]. The Appellant does not treat an unexplained aggregate as conclusive proof of debt.

5. The trial court erred in its assessment of irreparable injury and balance of convenience under the injunction principles. The Appellant identifies [specific misdirection], the Respondent evidence of threatened business disruption and the landlord evidence of continuing contractual loss.

6. The Appellant seeks setting aside or appropriate variation of the injunction, directions for determination of the substantive suit and costs. Any further action for rent, distress or possession must comply with its own legal procedure; success on this appeal is not a warrant for forcible entry.

DATED at [place] on [date]. Signed [party or advocate]. DRAWN AND FILED BY [name and address for service]. TO BE SERVED UPON [each affected person and address].

Use and evidence notes

Identify the exact lower-court judgment or ruling, operative decree, parties, concise grounds and requested disposition. Use the procedure for this particular appellate court: an ELRC appeal and a High Court or ELC first appeal are not Court of Appeal proceedings. Check limitation, any necessary leave or extension, record, fees, service and directions. Filing an appeal is not an automatic stay.

Supporting material: [date]; [author or custodian]; [description]; [bundle page]; [authenticating witness]; [admission or permission]. Attach genuine records only. This public specimen contains no exhibits, signatures, personal identifiers or sworn declaration.

Source and procedural limits

A commercial tenant disputed the space charged under an office lease, contrasting 740 square feet of office space with 1,040 square feet including service areas. The landlord relied on the signed 2017 offer, arrears and its rent-recovery rights. The tenant claimed to have paid the undisputed space and service charge and feared removal of business equipment. The appeal concerned a September 2021 magistrate injunction, not a final trial of every rent and measurement issue.

The Mombasa ELC allowed the landlord appeal, set aside the injunction ruling, awarded appeal costs and directed retrial before another magistrate. It held that the lease and arrears had not justified the protection given. The source tenant argument that the undisputed part was paid is distinct from the Court finding that contractual arrears remained. Historical mention directions do not establish the later trial result.

An injunction appeal must address the discretionary decision and the admitted contract and evidence. Payment for a self-selected floor area is not automatically full performance of the actual lease. Distress, debt recovery, eviction and forcible entry remain different procedures; reversal of an injunction does not approve every auctioneer act. Verify the lease term, controlled-tenancy status, forum, valuation evidence and actual notice before use.

[2023] KEELC 22572 (KLR) - 4 October 2023. Source decision: https://new.kenyalaw.org/akn/ke/judgment/keelc/2023/22572/eng%402023-10-04

Reproduced primary text checked: https://sheriahub.com/cases/ke/caselaw/mombasa-trade-centre-ltd-v-excellent-transporters-limited-environment-and-land-appeal-70-of-2021-2023-keelc-22572-klr-4-october-2023-judgment

The original decision may identify participants. The specimen brackets identifying details. A source judgment does not prove this reconstruction was filed, an allegation succeeded, a later order remains unchanged or the same result will follow in another case.