



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

CIVIL SUIT NO. 158 OF 2014

AL-RIAZ INTERNATIONAL LIMITED.....PLAINTIFF

VERSUS

GANJONI PROPERTIES LIMITED.....DEFENDANT

R U L I N G

1. On 14.12.2017 this court, after being informed that parties were negotiating but could not conclude because the plaintiffs director was out of Kenya, adjourned the matter and stood it over to the 25/1/2018 and implored the parties to meaningful engage and negotiate. The court said:-

“The tenancy remains and good faith should prevail.

Prevailing orders be maintained till the hearing date”.

2. It would appear that there were some steps taken by the defendant sometimes on or about the 7/01/2018 by which the plaintiff alleges it was constructively evicted while the defendant says it only levied distress and has sold the distrained goods on 20/1/2018.

3. On 16/1/2018, the file was placed before judge Njoki Mwangi who ordered that the status quo ordered on 14/12/2017 and prevailing them be maintained, the same Judge reiterated same orders on the 22/1/2018.

4. Today before the application dated 15/01/2018 could be heard Mr. Mutiso for the plaintiff sought the courts intervention that director be given on the alleged forceful or contractive eviction for having been conducted in violation of the court orders. This is indeed a serious allegation.

5. I proceed from the learning that a party in breach of a court order deserved no audience from the court^[1]. I entertain no doubt, just as Judge Njoki didn't on 22/1/2018, that the orders of 14/12/2017 are clear on their terms.

6. The parties were to preserve the status quo being the occupation of the suit premises by the plaintiff even as the parties negotiated. Any distress or interference with that position is clearly in breach of the court orders and should not be entertained but must be discouraged. For that reason, and in the interim I direct that the plaintiff be reinstated to the premises forthwith and before midday on 30/1/2018 and the OCS Central Police Station do provide security to ensure no public disturbance ensues.

7. I further order that pending the hearing and determination of the application dated 15/1/2017 there be registered a restriction against the transfer of any vehicles taken away and allegedly sold.

8. This matter shall be heard on the 20/2/2018. Let parties file any submissions they may wish to file on the application dated 15/01/2018.

Dated and delivered at Mombasa this 29th day of January 2018.

P.J.O. OTIENO

JUDGE

Read in open court in the presence of Mr. Kinyua for the defendant and Mr. Mutiso for the plaintiff.

P.J.O. Otieno J

29/01/2018

[\[1\]](#) Dorothy Kwonyike vs Victoria Commercial Bank Ltd [2000] eKLR relying on the Pharmacy and Poisons Board -vs- Sipri Pharmaceuticals Ltd.