

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI

CIVIL CASE NO. 388 OF 2014

1. GEORGE NJOGU WAKIBI

2. SOLOMON MUNGAI WAKIBI.....PLAINTIFFS

VERSUS

TOUGH HIDE LTD & ANOTHER.....DEFENDANTS

RULING

1. Before me are two applications. A Notice of Motion dated 13th November, 2014 and 20th November, 2014. The application dated 13th November, 2014 seeks that an injunction do issue restraining the Defendants, their agents and/or servants from distressing or interfering with the Applicants' quiet occupation possession of Simla House, L.R. No. 209/664, Tom Mboya street until the hearing and determination of this suit.
2. The application is premised on the grounds on the body of the application and the supporting affidavit of George Njogu Wakibi sworn on 13th November, 2014. He averred that unless restraining orders are issued to the Defendants and their servants Little Vineyard Auctioneers who has distressed their goods without the leave of court, they stand to be prejudiced. He stated that they are in occupation of the subject property and that the sum claimed of KShs. 2,000,000/= is unknown to them save for the month of 31st October, 2014 when the Defendant refused to accept rent and instead sent their agents to levy distress on 1st November, 2014. That they took possession when the partners of New Thimbigua Provision Stores who were initially 19 retired as only 4 but are all aged 75 years. That they are protected tenants since 2005.
3. The Defendants did not file a reply but rather filed a Notice of Motion dated 20th November, 2014 seeking that there be stay of execution of the ex-parte orders of injunction given by this court on 14th November, 2014 and that the ex-parte orders given on 14th November, 2014 be set aside and/or vacated. The application is premised on the grounds on the body of the application and the supporting affidavit of Karim Javer sworn on 20th November, 2014. He contended that the Plaintiffs did not disclose that the rent arrears for which distress was levied had been the subject of litigation between the Plaintiffs who were trading under the firm name and style of New Thimbigua Provision Stores and the 1st Defendant in case no. 141 of 2013 at Business Premises Tribunal. That the said tribunal entered judgment on 3rd October, 2011 ordering the Plaintiffs to pay rent of KShs. 146,000/= per month with effect from 1st March, 2013. That the Plaintiffs sought to set aside the said orders but were denied. That this court has no jurisdiction to here this application since the issues in this application have been canvassed in a similar application before the tribunal. That the Defendant did not require leave to levy distress for rent truly owed.
4. **Mula on Code of Civil Procedure 16th Edition** states as follows on dispossession:-

“A person in possession cannot be dispossessed without due process of law. A bona fide possessor should not be dispossessed pending suit unless there is some substantial reason. The matter should be considered judicially in all its aspect.”

The Plaintiffs' contention that they were not in any arrears at the time distress was levied has not satisfactorily been controverted by any evidence. Considering that the essence of temporary injunction is

to preserve the status quo. I allow the Plaintiffs' application dated 13th November, 2014 on condition that the Plaintiffs do continue paying rent to the Defendants promptly. Orders accordingly.

Dated, Signed and Delivered in open court this 25th day of February, 2015.

J. K. SERGON

JUDGE

In the presence of:

Kabwa h/b for Kahuthu for the Plaintiffs

N/A for the Defendant