

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL SUIT NUMBER 368 OF 2013

DR. JOHN NGOME MUTSUMI. PLAINTIFF

VERSUS

DR. CHRISTINE K MUASYA.1ST DEFENDANT/APPLICANT

S O JUMA T/A INTIME AUCTIONEERS. 2ND DEFENDANT

R U L I N G

The application before the court is the Notice of Motion dated 11th September, 2013 and amended on 12th September, 2013. It sought seven reliefs but all but the 7th prayer for costs of the application, remains to be decided. The prayers, almost without exception sought for orders of mandatory injunction except prayer 5 which sought that ex parte orders that had been granted in the suit, be varied discharged or set aside. Prayer (6) sought a stay of proceedings in Business Premises Tribunal case Number 576 of 2013. As stated all the prayers except the prayer for costs, are spent.

There is no denial that this application was brought under a certificate of urgency and amended on similar circumstances. It is clear from the record of 16th September, 2013 that the court ordered that the application be served. The record of 18th September, 2013 confirms that the application may have been served and the applicant sought a hearing date.

On 7th October, 2013 the matter was placed before this court and in presence of both sides, directions to file written submissions were given. On 10th February, 2014 it was reported to the court by the Applicant that the prayers in the application were already spent or overtaken by events because the Respondent/Plaintiff, had without giving notice vacated the premises in October, 2013. Mr. Wachira for Plaintiff confirmed that they had indeed vacated the premises and handed them over on the 31st January, 2013. It was then agreed in court tentatively, that the parties would sit together and iron out the issue arising from the said vacation of the suit premises.

By 11th March, 2014, Mr. Wachira who had undertaken to call the settlement meeting, had not done so and since this application still pended, particularly on the prayer for costs, the applicant sought final resolution of costs.

On 24th June, 2014 the Applicant/1st Defendant informed court that he had filed written submission on costs related to this application. The court then ordered that the Plaintiff needed to file his responding submission before the court could resolve the issue. It gave Plaintiff/Respondent 21 days to do so and fixed highlighting on 7th October, 2014. The court ordered that the order granting Plaintiff a chance to respond must be served upon them immediately of 24th June, 2014.

When the matter came for highlighting on 7th October, 2014, the Plaintiff had not filed responding submissions aforementioned. That is when the court reserved this ruling on costs only.

I have carefully considered the issue. The application was filed seeking vacant possession. Without

informing the Applicant/1st Defendant that it was willing to let go the premises, the Plaintiff closed the premises in October, 2013 but as I have stated, failed to notify the 1st Defendant who was at the time clearly entitled to the same. The Plaintiff is said to have taken possession forceably, after obtaining court orders ex parte. The issue as to whether the court orders giving the Plaintiff authority to take over the premises were valid, proper or justified, is not presently before this court. The same may, or is being pursued in a different suit or this suit and the result will definitely be determined.

This court's concern presently is the issue of costs of this application. Since the Plaintiff yielded the premises to the 1st Defendant as sought in the application, it is the view of the court that the event in the application fell in favour of the Applicant/1st Defendant who eventually obtained all the reliefs he sought, though not through regular process sought in the application. In the circumstances, he is entitled to the costs of this application. It is so ordered.

Dated and delivered at Nairobi this 29th day of July, 2015.

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D A ONYANCHA

JUDGE