



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT MOMBASA

CIVIL CASE NO. 6 OF 2011

KINGFISHER PROPERTIES LIMITED PLAINTIFF

V E R S U S

1. NANDLAL JIVRAJ SHAH

2. VIMAL NANDLAL SHAH

3. MEHUL NANDLAL SHAH (all trading as

JIVACO AGENCIES) DEFENDANTS

RULING

- a. This Court entered judgment in favour of Plaintiff on 23rd August, 2013. The terms of that judgment was that Defendants were to give to Plaintiff vacant possession of property known as Manyara Building/Mbsa/Block 1/351. Judgment for Plaintiff for-
 - (a) **Kshs. 232,000/- plus mesne profit.**
 - (b) **Kshs. 46,400/- from 3rd July 2010 till Defendant vacate property Manyara Building.**
2. Defendant filed Notice of Motion dated 20th September 2013 seeking for orders that there be an injunction restraining Plaintiff from interfering with Defendant's peaceful and quiet possession of Manyara Building and that Plaintiff do return Defendant's goods detained by it.
3. The Defendant said application essentially seeks stay of execution of this Court's judgment of 23rd August 2013 pending appeal at Court of Appeal. Defendant filed a Notice of Appeal against that judgment on 3rd September 2013.
4. The grounds for seeking stay of execution are that the Plaintiff executed the aforesaid judgment on 20th September 2013 when a group of thirty (30) people removed Defendants goods from the premises and in the process destroyed many of them. Defendant by their affidavit sworn by MEHUL NANDLAL SHAH deponed as follows-

“6. THAT the decree has not been perfected at all, nor have I been served with any

warrants either of attachment or of eviction.

7. THAT the capricious acts of the Plaintiff have completely destroyed the Defendants business and am particularly worried about crucial documents that the so called auctioneers destroyed.”

5. That is the only evidence Defendant relies on in support of the application for stay pending appeal. Defendant did not elaborate what substantial loss they will suffer if the stay is not granted other than saying the acts of Plaintiff complained of destroyed Defendant business. There is no information how the business was destroyed or how it would suffer further loss if stay was not granted.
6. Defendant has failed to meet the threshold of Order 42 Rule 6 of Civil Procedure Rules. It is for that reason that the Notice of Motion dated 20th September 2013 must and does fail.
7. The Court is also considering Defendant’s application dated 21st September 2013. That application sought that this Court do order that if stay is granted to Defendant that an order be made for the amount of the judgment be deposited by Defendant in Court and further that Defendant be ordered to pay mesne profit due as ordered by the judgment of Court. Since the Court has found that Defendant application for stay has no merit the orders sought by Plaintiff in that application will not be considered.
- h. In the end the Court orders-

(a) The application dated 20th September 2013 be and is hereby dismissed with costs to Plaintiff. The stay order of 20th September 2013 is therefore hereby vacated.

(b) The application dated 21st September 2013 is dismissed with no orders as to costs.

DATED and DELIVERED at MOMBASA this 20th day of MARCH, 2014.

MARY KASANGO

JUDGE