



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KITALE**

**ENVIRONMENT & LAND DIVISION**

**LAND CASE NO. 20 OF 2014**

**WILLY KIPCHUMBA BOIT ..... PLAINTIFF**

**VERSUS**

**WILSON SANG ..... DEFENDANT**

**R U L I N G**

1. The applicant Willy Kipchumba Boit brought a notice of motion dated 5th February 2014 in which he seeks what he describes as a temporary order of eviction of the respondent from plot No. 88 Endebess shopping centre.
2. The applicant contends that he has put up a building on the aforesaid Plot. On 1/6/2013 the respondent who is his friend requested him to allow him to operate a Pub for three months as he waited for a place where he was finally to settle. Unknown to the applicant, the respondent constructed illegal structures on his plot and connected power to the premises. The applicant asked him to move out after the expiry of the agreed period but the applicant has refused to move out forcing him to bring this motion.
3. The application is opposed by the respondent who contends that the applicant allowed him into the premises as a tenant and that the power which he connected to the premises was with the knowledge of the applicant who had wanted to connect power and had gone ahead to take stima loan for that purpose. That the rent he paid the applicant went to offset the loan the applicant had taken.
4. The respondent further contends that he has done a lot of renovations to the building and that the applicant is out to kick him out after he has made the premises tenantable.
5. I have carefully gone through the applicant's application as well as the opposition to the same by the respondent. The issue for determination is whether the applicant can be evicted from the premises at interlocutory stage. The applicant is acting in person. What he is seeking is eviction of the respondent from the premises. The main prayer in the plaint is eviction. The same relief cannot be granted at interlocutory stage as to do so will amount to giving a mandatory injunction at interlocutory stage.
6. The applicant has not shown any special circumstances which can warrant the court to issue an eviction at this stage. The applicant's application lacks merit. The same is hereby dismissed with costs to the respondent.

It is so ordered.

Dated, signed and delivered at Kitale on this 9th day of April, 2014.

**E. OBAGA,**

**JUDGE**

In the presence of Mr Ingosi for defendant/respondent and plaintiff/applicant in person. Court Clerk – Kassachoon.

**E. OBAGA,**

**JUDGE**

**9/4/2014**