



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL DIVISION
CIVIL APPEAL NO. 317 OF 2013

CAJETAN PHIDELIS OMBERE

(t/a WELCO SERVICES INTERNATIONAL)APPELLANT

VERSUS

DR. RAJPAL SINGH JABARESPONDENT

R U L I N G

1. The Appellant's case against the Respondent in the lower court (the suit is pending there) is that he is a joint or co-tenant with the Respondent in the premises they occupy; that he had been paying his part of the rent through the Respondent; and that the Respondent was supposed to forward the rent to the landlord and obtain necessary receipts for it. Apparently the Respondent's case is that the Appellant is his sub-tenant in the premises and was in arrears of rent.

2. The Appellant's complaint in the lower court is that the Respondent unlawfully levied distress for rent against him, unlawfully because he was not a sub-tenant but a co-tenant of the Respondent and had paid his part of all rents due. The reliefs he sought in his amended plaint include an order to compel the Respondent to either refund all the money paid by him to the Respondent as part of his rent or deposit of the same in court. He also sought, *inter alia*, a declaration that the distraint for rent against him was unlawful.

3. It appears that in the course of proceedings in the lower court the Appellant was on 22nd March 2013 ordered to deposit rent in court within three (3) working days. It appears further that on 30th of April 2013 the lower court directed the Appellant do comply with the order of 22nd of March 2013 and in default the Respondent to be at liberty to proceed with the distress for rent.

4. Further, it appears that the Appellant applied for review of those orders of 22nd March and 30th April 2013. On 4th June 2013 the lower court dismissed the Appellant's said application for review. The court noted that the Appellant had not complied with the orders requiring him to deposit rent in court. On 6th June 2013 the Appellant lodged this present appeal against that order of 4th June 2013.

5. On 3rd July 2013 the Appellant filed **notice of motion** of the same date which seeks two main orders –

- i. **That the proceedings in the lower court be stayed pending hearing and determination of this appeal.**

ii. That a temporary injunction be issued to restrain the Respondent from interfering with the Appellant's business activities pending hearing and determination of the appeal.

6. The first prayer is clear enough; the second prayer is not. However, I note that the Appellant is a lay person. What he appears to be seeking is an order to protect him from distress for rent that may be levied by the Respondent pending disposal of his appeal. I will proceed upon that basis.

7. That application has not yet been fixed for hearing. Pending disposal of the application the Appellant has sought interim relief. I am persuaded that in the interests of justice such interim relief is necessary pending disposal of the application. I will order stay of the proceedings of the lower court pending disposal of the application at hand. I will also grant interim injunction as sought. But the same will be upon the condition that the Appellant deposits in this court the sum of KShs 10,000/00 per month from 1st July 2013 until the application is heard and determined. This condition is informed by the fact that from the receipts exhibited by the Appellant, this is the sum that he appears to have been paying towards rent.

8. For the avoidance of doubt this condition does not in any way determine the issue whether or not the Appellant is a sub-tenant or a co-tenant of the Respondent. That of course will be an issue to be determined when the action before the lower court is tried.

9. The deposit for July 2013 must be made within seven (7) days of delivery of this ruling. The deposits for subsequent months must be made on or before the 10th of each month.

10. In default of any one deposit the interim orders now granted shall automatically lapse. Costs of this application shall be in the cause. It is so ordered.

DATED AND SIGNED AT NAIROBI THIS 25TH DAY OF JULY 2013

H. P. G. WAWERU

JUDGE

DELIVERED AT NAIROBI THIS 26TH DAY OF JULY 2013