



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL DIVISION

CIVIL CASE NO. 589 OF 2011

DAVID KARIUKI
..... PLAINTIFF

VERSUS

FRANCIS NGANGA MUNDIA

(Kindest Auctioneers)..... DEFENDANT

RULING

1. The Plaintiff filed this suit by plaint dated 29th December 2011 seeking one main relief as follows:-

“An injunction (to restrain) the Defendants ... from levying distress or auctioning the Plaintiff’s property, or from interfering with the Plaintiff’s quiet possession of (his) rented premises on Plot Number 209/4468 along Busia Road, Industrial Road in Nairobi... for as long as the Plaintiff has complied with the terms of the tenancy.”

2. The Plaintiff pleaded that he was the 1st Defendant’s tenant in the suit premises paying a monthly rent of KShs 65,000/00, and that his tenancy was controlled under the **Landlord and Tenant (Shops, Hotels & Catering Establishments) Act, Cap 301**. He further pleaded that notwithstanding that he did not owe any arrears of rent, the 1st Defendant instructed the 2nd Defendant to levy illegal distress against him, and that the 2nd Defendant did so.

3. Together with the plaint the Plaintiff filed **notice of motion dated 29th December 2011** seeking appropriate protection pending disposal of the suit. The application was brought under **Order 40, rules 1 and 2** of the **Civil Procedure Rules (the Rules)** and is the subject of this ruling.

4. The Defendants were duly served, but at the hearing of the application they had not filed any papers in response, and there was no appearance for them.

5. Learned counsel for the Plaintiff, in presenting the application, informed the court that the Plaintiff was no longer in the suit premises and thus no longer a tenant of the 1st Defendant, thus implying that the Plaintiff vacated the premises after filing the suit.

6. The temporary injunction sought in the application was, *inter alia*, to restrain the Defendants from “selling, disposing of or auctioning” the Plaintiff’s property attached in the distress levied against him pending adjudication of the issue whether or not he owed any arrears of rent.

7. Notwithstanding that he is no longer a tenant of the 1st Defendant, the temporary injunction sought will be necessary to protect the Plaintiff's attached goods against sale or disposal. I will grant the same, to extend only to protection of the attached goods against sale or other disposal. It is so ordered.

8. Costs of the application shall be in the cause.

DATED AT NAIROBI THIS 22ND DAY OF MARCH 2012

H.P.G. WAWERU
JUDGE

DELIVERED AT NAIROBI THIS 23RD DAY OF MARCH 2012