



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**CIVIL DIVISION**  
**CIVIL CASE NO. 399 OF 2011**

**1. VERTIX COMMUNICATIONS LTD**  
**2. JOSEPHAT MATHI NDUNGU**

(t/a Ambassadeur Studio)

**3. DAPCO PHARMACEUTICALS (KENYA) LIMITED**

**4. DIMPLES MOBILES & ACCESSORIES LIMITED**

**5. SIMON GATEMBU MUGAA**

**6. EDWARD KIMARI MUTURI.....PLAINTIFFS**

**VERSUS**

**1. FRANCIS CHEGE MAINA**  
**2. JOSEPH MACHARIA MAINA**  
**3. JAMES KIHARA MAINA**  
**4. DEDAN MUTHAIGA MAINA**

**5. AMBASSADEUR INVESTMENTS (K) LIMITED..... DEFENDANTS**

**RULING**

1. The Plaintiffs are the tenants of the 5<sup>th</sup> Defendant occupying various portions of the suit premises. The 5<sup>th</sup> Defendant appears to be a family company. The 1<sup>st</sup> to 4<sup>th</sup> Defendants appear to be members of that family.

2. It further appears that there is a dispute amongst the family members (including the 1<sup>st</sup> to 4<sup>th</sup> Defendants) as to who amongst themselves should be collecting rents on behalf the 5<sup>th</sup> Defendant.

3. It is the Plaintiffs' case that they have been paying their due rents to the 5<sup>th</sup> Defendant through its duly designated or appointed agent or director. The Plaintiffs further pleads that a search at the Registry of Companies does not disclose any of the 1<sup>st</sup> to 4<sup>th</sup> Defendants to be directors of the 5<sup>th</sup> Defendant.

4. The Plaintiffs' complaint in this suit is that the 1<sup>st</sup> to 4<sup>th</sup> Defendants have undertaken a

campaign of harassment and intimidation against them in order to compel them to pay rents to the 1<sup>st</sup> to 4<sup>th</sup> Defendants instead of to the duly designated director or agent of the 5<sup>th</sup> Defendant. They came to court for necessary protection against such harassment or intimidation by appropriate permanent injunction. The Plaintiffs have also sought appropriate relief by way of temporary injunction pending disposal of the suit.

5. The temporary injunction is sought by **notice of motion dated 16<sup>th</sup> September 2011** brought under **Order 40, rules 1, 2 and 4** of the **Civil Procedure Rules** (the **Rules**). The application is supported by the affidavit of the 2<sup>nd</sup> Plaintiff which I have read.

6. The 1<sup>st</sup> to 4<sup>th</sup> Defendants have opposed the application by replying affidavit sworn by the 2<sup>nd</sup> Defendant and filed on 10<sup>th</sup> November 2011. I have read the same.

7. The 5<sup>th</sup> Defendant does not oppose the Plaintiffs' application.

8. The application was canvassed by way of written submissions. I have duly considered them. No authorities were cited.

9. The dispute between the 1<sup>st</sup> to 4<sup>th</sup> Defendants and their siblings over the management of the 5<sup>th</sup> Defendant does not concern the Plaintiffs, and they should not be drawn into that dispute. The Plaintiffs are the 5<sup>th</sup> Defendant's tenants. They are not the tenants of the 1<sup>st</sup> to 4<sup>th</sup> Defendants; nor are they the tenants of the siblings of the 1<sup>st</sup> to 4<sup>th</sup> Defendants or any directors of the 5<sup>th</sup> Defendant with whom the 1<sup>st</sup> to 4<sup>th</sup> Defendants are quarrelling over management of the 5<sup>th</sup> Defendant. The Plaintiffs ought to be able to enjoy their tenancies without any disturbance occasioned by that dispute.

10. There is evidence before the court that the Plaintiffs have been paying their due rents to the duly designated director or representative of the 5<sup>th</sup> Defendant, and that at the time of coming to court they did not owe any arrears of rent. *Prima facie*, such designated director or representative of the 5<sup>th</sup> Defendant is not any of the 1<sup>st</sup> to 4<sup>th</sup> Defendants.

11. I am thus satisfied upon the material now before the court that the Plaintiffs have made out a *prima facie* case with a probability of success. I am also satisfied that unless the temporary injunction sought is granted the Plaintiffs stand to lose the premises upon which they conduct their businesses. In any case, and at the very least, there will be adverse effects upon their businesses should the acts of the 1<sup>st</sup> to 4<sup>th</sup> Defendants complained of continue. The resultant loss may not be readily quantifiable in terms of money.

12. In the event I am satisfied that the notice of motion dated 16<sup>th</sup> September 2011 has merit. It is hereby allowed as prayed in prayer 2. Costs of the application shall be in the cause. It is so ordered.

**DATED AT NAIROBI THIS 13<sup>TH</sup> DAY OF MARCH 2012**

**H.P.G. WAWERU**  
**JUDGE**

**DELIVERED AT NAIROBI THIS 16<sup>TH</sup> DAY OF MARCH 2012**