

REPUBLIC OF KENYA

High Court at Kakamega

Civil Case 147 of 2010

KIZITO AURA APPLICANT

VERSUS

NAVIT SHAH 1ST RESPONDENT

AMRISTLAL LALJI SHAH 2ND RESPONDENT

RULING

The application by way of Notice of Motion dated 31.3.2011 seeks orders that pending the hearing of this suit there be a temporary order of injunction restraining the defendants, their agents and/or assigns from damaging, wasting and/or alienating and/or in any other manner interfering with the Plaintiff's occupation and use of Land No. **ISUKHA/SHIRERE/1685**.

The application is supported by the affidavit of the applicant, **KIZITO AURA** sworn on 31.3.11. The applicant's case is that he has been in occupation of the suit land openly and continuously since the year 1983. According to the applicant, the respondents have threatened to demolish the houses the applicant has built on the suitland.

In opposition to the application, the 1st respondent, **NAVIT LALJI SHAH** swore a replying affidavit on 2.2.11 and a further affidavit on 10.8.11. According to the said affidavits the respondent's are the registered owners of the suit land and the applicant has been their tenant since 1983 but started defaulted in rent payment since 1092. The respondents then filed a case against the applicant in the Rent Restriction Tribunal but the applicant filed the suit herein for adverse possession.

According to the respondents, the filing of the case before the Rent Restriction Tribunal extinguished the applicant's interest by way of adverse possession. The respondent has averred that judgment was entered on admission in the claim for rent arrears. The respondent also accused the applicant of having invited one **CHRISANTUS LUBEMBE** to construct and alleged structure operated as a bar and uses it on the suit land.

The respondents have annexed a certified true copy of the order dated 7th July, 2010 from the Rent Restriction court Kakamega case No. 8 of 2020 where, *inter alia*, judgment was entered in admission to the plaintiff/Landlord therein, **NAVIT LALJI SHAH**, the respondent herein. The applicant was also ordered to pay rent arrears.

The applicant has not moved to controvert this evidence from the respondent. The evidence from the respondent shows that *prima facie*, the applicant is a tenant at the suitland.

This suit was filed on 5.10.2010 while the case at the Rent Restriction Tribunal was filed on 13.4.2010 and judgment entered on 10.5.10. The Rent Restriction Tribunal case therefore was instituted first. An order was given on 5.10.2010 giving the applicant 30 days within which he was to remove the illegally erected structures from the suit premises in default the landlord to demolish the same.

On the same 5.10.2010 when the Rent Restriction Tribunal issued the demolition orders is when the applicant moved to this court with his claim for adverse possession and subsequently filed the instant

application.

The applicant therefore concealed material facts when she obtained the interim orders. Now that the court has all the facts at hand, it is clear that the applicant has failed to establish a *prima facie* case with a probability of success.

In the premises therefore, the application has no merit and is dismissed with costs.

Delivered, dated and signed at Kakamega this 18th day of December, 2012

B. THURANIRA JADEN
JUDGE