



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
MILIMANI COMMERCIAL COURTS
CIVIL CASE NO. 472 OF 2010

DR. MOHAMED IRSHAD HASSAN
T/A AL SHIFAA MEDICAL SERVICESPLAINTIFF

VERSUS

NASSIR ARTE 1ST DEFENDANT/RESPONDENT
AMINA NASSIR ARTE 2ND DEFENDANT/RESPONDENT

RULING

The Applicant in the Chamber Summons dated 7th July 2010 was a protected tenant of the Respondent' in the latter's business premises at Plot No.637 Biashara Street, Garissa which he vacated during the month of May 2010. He has filed this application alongside a Plaint dated 7th July 2010, which was filed in this court for the purposes of obtaining injunctive orders against the Respondents, subsequent to the filing of a reference with the Business Premises Rent Tribunal, Embu on 24th May 2010. In the Plaint the Plaintiff/Applicant seeks the following orders:-

- (a) Special damages as particularized in paragraph 9 (a-d).
- (b) A permanent injunction compelling the defendant to restore the Plaintiff's goods, equipments official records and documents collected from them.
- (c) General damages
- (d) Costs of the suit.

The orders sought under the Chamber Summons are, inter alia, as follows:-

1. That this honourable court be pleased to grant a temporary injunction compelling the Respondent to return and/or restore the Plaintiff's goods, equipments and documents seized on 29th May 2010 pending the hearing and determination of this application.
2. That the honourable court be pleased to grant an injunction compelling the Respondent to return the Plaintiff's goods, equipment and documents seized on 29th May 2010 pending the hearing and determination of the main suit.

Prayer 1 above was granted at the ex parte stage and expressed to be for fourteen (14) days. Although extracted on 13th July 2010, the same has not been referred to in the written submissions filed in support of the application. The application is premised mainly on the grounds that on or about 28th May 2010 the Defendant/Respondent evicted the Applicant and removed the Applicant's goods, equipments, drugs, official records and documents and carried them to unknown place and that no inventory was taken in respect of the said goods. In paragraph 12 of the affidavit filed in support of the application, the Applicant has deponed that he reported the occurrence at the Garissa Police Station 26th June 2010. He however has not annexed any document to prove that, although he says the report was noted in the Occurrence Book OB;43/26/6/10. He contends that the eviction was illegal and unlawful but I do not consider this to be a relevant issue in this proceedings as it is a matter for determination by the Business Premises Rent Tribunal where a reference is pending.

The application is opposed on the strength of a replying affidavit sworn by the 1st Respondent on 20th September 2010, in response to which the Applicant filed what he calls a Further Affidavit of 8th October 2010. In paragraph 7 of the replying affidavit, the 1st Respondent has deponed that the Applicant vacated/yielded the premises voluntarily and carried his goods from the premises as evidenced by an inventory of the same date annexed as **Exhibit NA-4**. This followed a notice issued in January 2010 (annexture **NA-2**) which was extended by a further two (2) months, following negotiations held between the Applicant and the Respondents conducted with the assistance of two mutual friends as stated in paragraph 6 of the replying affidavit. An affidavit sworn by the said friends by the names Doctor Mohammed Subow and Doctor Hassan Dahiye is annexed as **NA-3**. The two have sworn that the Applicant yielded the Respondents business premises voluntarily, subsequent upon their own request that the Respondents grant the Applicant time to find alternative premises. The giving up of the premises, is said in paragraph 6 of **NA-3**, to have been subject to the Applicant paying outstanding rents, bills and repair costs to the Respondent.

The above facts have not been rebutted in any way, since no affidavit was filed in response thereto. Although parties agreed to file written submissions in the application, only counsel for the Applicant did so on 28th October 2010. The submissions mainly address to the Applicant's claim that he was illegally evicted from the premises, which I have already stated is not for this court to determine. The matters raised in the said submissions do not demonstrate that the Applicant has a prima facie case with a probability of success against the Respondents. Neither do they show that he would suffer irreparable loss not compensable by an award of damages as would entitle him to an order for injunction.

The Applicant having stated that the carting away of his properties by the Respondent was reported to the police he ought to have provided the court with solid evidence in that regard to persuade me that the allegations are indeed true. In view of the depositions contained in the replying affidavit and the annextures thereto, I find that the allegations cannot be believed. No special circumstances have been established as to warrant a granting of the mandatory injunction sought and the application cannot therefore succeed. The authority of **Sammy Kipruto Tonui –vs- Jeremiah Koech & Another [2008] eKLR** cited by the Applicant does not support his case. The same is distinguishable in that the Applicant in that case had obtained an order from the Tribunal pursuant to which he had deposited rent with the Tribunal which order was still subsisting when attachment was carried out.

In view of the above, I find that the Applicant has not made out a case for the mandatory injunction sought and the application is hereby dismissed with costs.

DATED, SIGNED and DELIVERED at NAIROBI this 25th Day of MARCH 2011.

M.G. MUGO
JUDGE

In the presence of:
Miss Kimei

For the Applicant

Miss Karumba

For the respondent