



IN THE HIGH COURT OF KENYA

AT NAKURU

CIVIL SUIT NO.238 OF 2010

**FRED CHIEF MAIRURA
NYAMORAMBO MAIRURA
(BOTH T/A PAPA REGOS HOTEL).....APPLICANTS/PLAINTIFFS**

VERSUS

**DAVID MANYARA NJIKI
ZAKAYO WAWERU MAINA
PETER OTIENO OKETCH**

**CHARLES MAINA WANDAKA (AS
TRUSTEES/EXECUTIVE COMMITTEE OF**

**KENYA AFRICAN NATIONAL
UNION.....RESPONDENTS/DEFENDANTS**

RULING

The applicants, Fred Chief Mairura and Nyamorambo Mairura t/a Papa Regos Hotel have bought this suit against the Trustees/Executive Committee of the Kenya African National Union (K.A.N.U.), Nakuru Branch (the respondent) for a declaration that the lease agreement in respect of the applicants' business on NAKURU MUNICIPALITY BLOCK 9/31 is valid and binding and a perpetual injunction to restrain the respondents from interfering with the applicants' quiet enjoyment of the demised premises located on the suit property.

In the meantime the applicants are seeking in the present application a temporary restraining orders on the grounds that the respondents renewed the lease to the demised premises on 7th September, 2010 for a term of ten (10) years; that in compliance with the terms of the renewed lease the applicants paid the rent for one year in the sum of Kshs.240,000/=; that the respondents appear to have changed their minds and directed that the rent cheque be returned to the applicants hence this application.

The Trustees/Executive Committee of KANU, Nakuru Branch sued in this matter are David Manyara Njuki, the chairman, Zakayo Waweru Maina, the Treasurer, Peter Otieno Oketch, the Secretary and Charles Maina Wandaka, the Organizing Secretary. All of them, except the chairman have sworn replying affidavits in which they are categorical that on 6th September, 2010 the Executive Committee of KANU, Nakuru Branch in the absence of the Chairman who had been arrested, resolved to renew the applicants' lease for a further term of ten (10) years and three (3) months.

The Chairman in his reply maintains that the Executive Committee at its earlier meeting of 16th July, 2010 and confirmed on 29th July, 2010 having declined the applicants' application for renewal, it was irregular for an improperly convened Executive Committee meeting to purport to overturn the earlier decision; that the meeting was convened when the chairman had been arrested; that the meeting was convened and the resolution in question made in collusion with some officials; that in a subsequent meeting of the Executive Committee held on 18th September, 2010, it became apparent that the Treasurer had been misled into endorsing the renewal; that this last mentioned meeting resolved to maintain its earlier decision not to renew the lease.

I have considered the arguments in this application. An interlocutory injunction will issue if it is proved that any property in a dispute in a suit is in danger of being wasted, damaged or alienated by a party to the suit or the defendant is about to commit a breach of contract. The applicant must demonstrate that there is a *prima facie* claim and that the injury he is likely to suffer if injunction is not granted may not be adequately compensated by an award of damages. If the court is in doubt then the matter must be decided on a balance of convenience.

The applicants had been tenants to the respondents for a period in excess of seven years from 2003. Their application for renewal upon expiry of the first lease was initially rejected but subsequently granted. Acting upon the respondents' resolution in favour of renewal and in accordance with the terms of the renewed lease, the applicants paid one year rent in advance. The only contention in this matter is that the chairman was not a party to the latest decision to renew the lease.

I reiterate that the other three respondents have maintained that the renewal was regular and the meeting was properly convened and chaired by Joshua Toroitich, the Vice Chairman of the Executive Committee, the chairman being unavailable to chair the meeting. In the absence of any evidence that the vice-chairman was not authorized to chair the meeting, I find *prima facie* that the meeting was regularly convened and the business transacted culminating with the resolution to renew the lease in order. Indeed the national office of K.A.N.U. through the Secretary General has endorsed the decision for the renewal of the applicants' lease. That being so, I find that the applicants have demonstrated that they have a *prima facie* case with a probability of success at the trial.

In the result, there shall be a temporary injunction in terms of paragraph 2 of the chamber summons dated 24th September, 2010,

pending the hearing and determination of this suit, the applicants will continue to pay rent in accordance with the terms of the renewed lease.

Costs in the cause.

Dated, Delivered and Signed at Nakuru this 25th day of March, 2011.

**W. OUKO
JUDGE**