



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**

**AT NAKURU**

**CIVIL CASE NO. 73 OF 2011**

**JAMES G. NJOROGE & 16 OTHERS.....PLAINTIFF**

**VERSUS**

**ZIPORAH NJERI MBURU.....DEFENDANT**

**RULING**

By a plaint dated 31/3/2011, the 17 plaintiffs who claim to be the tenants of the defendant in the suit premises Plot No. 1144/VI/2 situate at Naivasha seek an order of permanent injunction to issue, restraining the defendant from disrupting, remaining, evicting, harassing the plaintiffs and or interfering with the tenancy premises and secondly, that rent payable by the plaintiffs to the defendant be deposited in this court.

Filed simultaneously with the plaint is the Notice Motion of the same date in which the applicants seek the following orders:-

***2. That the defendant/respondent herein her servants, agents, associates and or any other persons herein be and are hereby restrained from disrupting, removing, evicting, harassing the plaintiffs and or interfering with the tenancy premises known as Plot No. 114/vi/7 situate at Naivasha town including causing threatened repairs thereto inter alia and or adversely dealing with the applicants tenancy premises pending interpartes hearing of this application.***

***3. That the defendant herein her servants, agents, associates and or any other person herein be and is hereby restrained from disrupting, removing evicting, harassing the plaintiffs and or interfering with the teanancy premises known as Plot No. 1144/vi/7 situate at Naivahsa town including causing threatened repairs thereto inter alia and or adversely dealing with the applicants tenancy premises pending the hearing and determination of this application and suit.***

The application is based on grounds found on the face of the application and an affidavit sworn by James G. Njoroge, the 1<sup>st</sup> applicant. The applicants described themselves as tenants in the suit premises Plot No. 1144/vi/7, Naivasha where they engage in different kinds of businesses. They contend that as from January 2011 the defendant/respondent has been demanding that they vacate the premises and demanding the signing of leases for increment of rent. On 24<sup>th</sup> and 31/3/2011 they were threatened with eviction by some people who did not have any eviction order from the court. The applicants are apprehensive that the respondent wants to remove them from the said premises and is colluding with the Municipal Council to write contradictory letters about the premises – the same are exhibited as TGM1. They contend that the procedure for condemning the premises has not been followed.

The applicants filed an affidavit of service in which it is deponed that the defendant/respondent was

served with the notice of motion and plaint, but declined to acknowledge service. That is why the court went ahead to hear this application ex parte. Though counsel seems to indicate that this is not the hearing of the application inter partes, but when counsel appeared before J. Emukule, the Judge directed that the application be served for inter partes hearing. This was the inter partes hearing.

The application is unopposed. Even if that is the case, the applicants must demonstrate that they are deserving of an order of injunction by establishing from the facts that they have a prima facie case with good chances of success and that if the order of injunction is not granted the applicants are likely to suffer irreparable loss or damage that cannot be compensated in damages and if the court is in doubt, to decide on a balance of convenience. (see **GIELLA V CASSMAN BROWN LTD 1973 EA 358**)

Apart from alleging that they are tenants of the defendants, the applicants have not placed any material before this court as evidence of their tenancy. There is no tenancy agreement or evidence of payment of rents to the respondent or any other evidence. I find that the applicants have not demonstrated that there exists any tenancy relationship between them and the respondent to entitle them to an order of injunction. The only documents exhibited are addressed to the defendant by the Municipal Council of Naivasha but not evidence that the applicants are threatened with eviction or that they are the tenants. The court find that the applicants have not demonstrated that they have a prima facie case with good chances of success or that they will suffer irreparably if the order of temporary injunction is not granted. This court declines to grant the interim order sought against the defendant. The Notice of Motion dated 31/3/2011 is hereby dismissed. The applicant to bear costs of the application.

**DATED and DELIVERED this 14<sup>th</sup> day of April 2011.**

**R.P.V. WENDOH**  
**JUDGE**

**PRESENT:**

.....for the plaintiff.  
.....for the defendant.  
Kennedy – Court Clerk.