



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI (MILIMANI LAW COURTS)**  
**CIVIL CASE NUMBER 346 OF 2010**

**BAKERY, CONFECTIONERY, FOOD  
MANUFACTURING ALLIED WORKERS**

**UNION. ... PLAINTIFF/APPLICANT**

**VERSUS**

**BONIFACE NGURE NDUNG'U. ....**

**DEFENDANT/RESPONDENT**

**R U L I N G**

Before me is a Chamber Summons dated 8<sup>th</sup> July 2010 filed by M/s Khaminwa & Khaminwa Advocates for the plaintiff/applicant. It was brought under section 63© and 3A of the Civil Procedure Act (Cap 61) and Order 39 Rule 1, 2 and 3 of the Civil Procedure Rules. The application was filed under certificate of urgency. The prayers are as follows; -

- 1. THAT this application be certified as urgent and service of the same be dispensed with in the first instance.**
- 2. THAT this Honourable Court be pleased to restrain the Respondent by himself or through his agents, employees and/or servants from harassing, threatening, interfering, locking, intermeddling with the peaceful operations and running of the suit premises LR No. 412/2 Nairobi, Lengo House, 3<sup>rd</sup> Floor rooms 18, 19, 20 and 21 of the applicants pending the hearing and determination of this application.**
- 3. THAT in granting prayer 2 above this Honourable court be pleased to direct that the OCS Central Police Station to ensure the enforcement of these orders.**
- 4. THAT costs of this application be provided for.**

The application has grounds on the face of the Chamber Summons. It was filed with a supporting affidavit sworn on 8<sup>th</sup> July 2010 by George M Muchai described as the General Secretary and Chief Executive of the applicant. The affidavit gives the background of the application and the reasons why the applicant came to file the application. It was deponed, inter alia, that the previous landlord and Methodist Church of Kenya sold the subject premises in which the applicant was a tenant to another institution who were now trying to unlawfully evict the applicant.

The applicant through their counsel on 12<sup>th</sup> October, 2010 filed written submissions. They contended that

they had been tenants in the subject premises as from 1977 and were paying rent. That they did extensive renovations and improvement of the premises. That the respondents who were the new landlords were now intimidating them and harassing them. It was submitted that the respondent should be estopped from terminating or altering the terms of the tenancy. Reliance was placed on the **Halsburys Laws of England and Section 53 of the Registered Land Act (Cap 300)**. The court was urged to intervene through exercise of equitable powers to protect the rights of the applicants.

The application was opposed a replying affidavit sworn by Boniface Ngure Ndungu, the defendant on 8<sup>th</sup> September 2010 was filed. It was deponed in the said affidavit, inter alia, that the applicant was a rent defaulter. That the respondent was occupying and using common area, while they were only entitled to occupy rooms 18, 19, 20 and 21. That because the applicant was guilty of presenting falsehoods to court, they were not entitled to the equitable relief for injunction.

The respondent also through their counsel filed written submissions on 11<sup>th</sup> October, 2010. It was contended that prayer (2) was pent. It was also contended that the statements in the replying affidavit that the applicant was a rent defaulter were not controverted.

Having considered the application, documents filed and submissions and the law, I am of the view that this application is for dismissal. This is because of jurisdiction.

Prayer (2) is the main prayer of the application. It requests for orders.

***“pending the hearing and determination of the application.”***

It is trite that jurisdiction of the court arises from the law, and the prayers. A court cannot manufacture a prayer for any party that comes to court. No attempt having been made to amend or expand that prayer, I cannot manufacture a prayer for granting orders pending the hearing of the case, which was commenced by way of plaint. The applicant got interim orders pending the hearing and determination of the application. At this stage of making this decision, which is the determination of the application, that prayer is pent, and cannot be extended beyond its intent and purpose. That being so, this application has to fail. I will dismiss the same.

For the above reasons, the application dated 8<sup>th</sup> July, 2010 is hereby dismissed. However, costs will be in the cause. Any interim orders granted have now lapsed.

It is so ordered.

Dated and delivered at Nairobi this 12<sup>th</sup> day of April 2011.

.....  
**GEORGE DULU**  
**JUDGE**

**In the presence of**

Dr. Khaminwa for applicant

C Muendo – court clerk