



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAROBI

CIVIL APPEAL NO. 539 'A' OF 2006

MUNICIPAL COUNCIL OF THIKA.....1ST
APPELLANT
TOWN CLEARK MUNICIPAL COUNCIL OF THIKA.....2ND
APPELLANT

Versus

PETER KAPANGA
WERUNGA.....RESPONDENT

JUDGMENT

This is an appeal against the ruling of the Senior Principal Magistrate delivered on 18th July 2006 in Thika CMCC No. 301 of 2006 granting the Respondents a mandatory injunction.

The claim in that case is that on or about 7th March 2006 the Respondents leased Stall No. 004 within Stadium Area Thika to the Respondent Kshs.3,000/=. On 10th April 2006 the Respondent's askaris closed the stall without any or any reasonable cause. On 13th April 2006 the Respondent filed the said suit and sought a permanent injunction from evicting the Appellant or interfering with his quiet occupation of the stall. Contemporaneous with the filing of the suit the Respondent also applied for a mandatory injunction. As I have said the trial court

Allowed that application and directed the Appellant to reopen the stall thus provoking this appeal.

Counsel for the Appellant first challenged the competence of that application arguing that **Order 39** of the **Civil Procedure Rules** does not provide for mandatory injunctions. On the merits of the appeal counsel submitted that mandatory injunctions are granted on matters of life and death. The respondent's case is not such a case and did not therefore merit the grant of mandatory injunction. No submissions were filed on behalf of the Respondent.

The contention for the Appellant that Order 39 does not provide for mandatory injunction has no legal basis. That Order provides for injunctions, both prohibitive and mandatory – **Kamau Muchunu Vs Ripples Ltd., CA No. NAI 186 of 1992.**

The contention that the Respondent's did not merit a mandatory injunction is also misplaced. Mandatory interlocutory injunctions are granted where the defendant attempts to steal a match – **Kenya Breweries Lt. Vs Okeyo [2002] 1 EA 109**. This is such a case and the trial court was perfectly entitled to grant mandatory injunction.

In the circumstances this appeal has no merit and I accordingly dismiss it with costs.

DATED and delivered this 19th day of July 2011.

**D.K. MARAGA
JUDGE**